

# ATTACHMENT B

HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAI'I ELECTRIC LIGHT COMPANY, INC.,  
AND MAUI ELECTRIC COMPANY, LIMITED'S  
SUPPLEMENT TO REPLY STATEMENT OF  
POSITION

JUNE 6, 2025



**Hawaiian  
Electric**

**DRAFT**

**REQUEST FOR PROPOSALS**

**FOR**

**RENEWABLE DISPATCHABLE GENERATION**

**AND**

**ENERGY STORAGE**

**ISLANDS OF O‘AHU AND HAWAI‘I**

~~May 2~~June 6, 2025

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## **Chapter 1: Introduction and General Information**

Hawaiian Electric Company, Inc. and Hawai'i Electric Light Company, Inc. (individually or jointly referred to as the "Company" or "Hawaiian Electric")<sup>1</sup> seek proposals on O'ahu and Hawai'i Island to acquire renewable dispatchable energy generation, renewable firm capacity, and energy storage through this Request for Proposals ("RFP"), as further described in Section 1.2. Hawaiian Electric will target the acquisition of such resources in a manner consistent with the findings and planning methodologies of the IGP Report.<sup>2</sup>

The Company seeks five general types of projects in this RFP: (1) new variable renewable dispatchable generation projects (with or without energy storage systems),<sup>3</sup> (2) new standalone energy storage projects, (3) new firm renewable dispatchable generation projects, (4) Proposals from existing renewable generation projects, or existing fossil fuel projects that convert to a renewable source, for new terms after the expiration of their current agreements, and (5) Proposals from existing renewable generation projects adding energy storage systems.

Through this RFP, the Company intends to contract, upon mutually acceptable terms, (a) variable renewable dispatchable generation projects using its Model Renewable Dispatchable Generation Power Purchase Agreement ("RDG PPA"), which treats variable generation facilities as fully dispatchable; (b) firm<sup>4</sup> dispatchable generation projects using its Model Firm Renewable Dispatchable Generation Power Purchase Agreement ("Firm PPA"); and (c) standalone energy storage projects using its Model Energy Storage Purchase Agreement ("ESPA"). Collectively, these model purchase agreements are referred to as the "IGP Contracts" and separately as an "IGP Contract."<sup>5</sup> If selected, such Proposers will be required to execute an applicable IGP Contract. If a proposed Project utilizes a technology that is not encompassed by the IGP Contracts provided, the terms of the most applicable IGP Contract will be modified, with new terms added, as appropriate, to address the specific technology and/or component.<sup>6</sup> Proposers of existing generation projects proposing to add an energy storage component with grid forming capability may submit a bid even if the term of their current PPA expires after the target Guaranteed Commercial Operations Date ("GCOD") of this RFP.

In order to proceed toward development of its Project, all selected Proposals must agree to an applicable IGP Contract to provide the required electric services to the Company, which contract will be negotiated between the Company and Proposer and also subject to review and approval by the State of Hawai'i Public Utilities Commission ("PUC" or the "Commission"). Proposers

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<sup>1</sup> Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawai'i Electric Light Company, Inc. are each doing business as "Hawaiian Electric" and have jointly registered "Hawaiian Electric" as a trade name with the State of Hawai'i Department of Commerce and Consumer Affairs, as evidenced by Certificate of Registration No. 4235929, dated December 4, 2024.

<sup>2</sup> This RFP will also seek to acquire amounts targeted but not procured from the Company's previous Stage 3 RFPs.

<sup>3</sup> Any proposed photovoltaic ("PV") project must be paired with an energy storage component.

<sup>4</sup> For "firm" generation projects, other than during periods of outage and deration, up to 100% of the Project's contract capacity is available at any time for Company dispatch, independent of source energy resource availability.

<sup>5</sup> Herein, the term "IGP Contract" will be used generically to refer to the applicable purchase agreement for that technology (i.e., RDG PPA, Firm PPA, or ESPA).

<sup>6</sup> Proposers shall contact the Company if there is any uncertainty as to which IGP Contract most closely aligns with a Proposer's intended technology.

are instructed to thoroughly review the applicable IGP Contract, attached as Appendix J, L, and M, that represents the technology of a proposed Project. The structure of the RDG PPA, Firm PPA and ESPA intends to provide monthly payments to the Proposer by the Company (e.g., Lump Sum Payment, Capacity Charge payment), based upon the availability of the energy potential or contract capacity, as applicable, of the Facility, regardless of the actual energy dispatched. In exchange, the Company maintains full dispatch control of the Facility as needed. Under the RDG PPA, Firm PPA and ESPA, each Facility must meet certain performance requirements to receive the full Lump Sum Payment/Capacity Charge payment (as applicable) each month. The Firm PPA also permits Proposers to include a separate monthly Energy Charge payment.<sup>7</sup> RDG PPA and ESPA projects may not propose a separate Energy Charge payment. The requirements in this RFP ensure that each Facility is available to the Company for dispatch to meet system needs. The Company intends to use all Projects selected for the Final Award Group in accordance with the performance and dispatchability requirements described in each applicable IGP Contract.

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

The number of Proposals that the Company may select for each island in this RFP depends on, among other things, the quality and cost-effectiveness of Proposals received in response to this RFP; economic comparison to other RFP responses; updates to the Company's forecasts; transmission and distribution availability; and changes to regulatory or legal requirements. If attractive Proposals are received that will provide energy and other services in excess of the targeted amounts, the Company will consider selecting such Proposal(s) if benefits to its customers are demonstrated. Similarly, the Company may, in its sole discretion, opt to select Projects that, combined, fall below the targeted amounts.

All requirements necessary to submit a Proposal are stated in this RFP, including its appendices.

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**

This RFP is consistent with the Integrated Grid Planning Framework for Competitive Bidding ("Framework" or "Competitive Bidding Framework"), which was approved for use in the first round of integrated grid planning by Order No. 41568, issued on February 25, 2025 in Docket No. 2018-0165.

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<sup>7</sup> The Energy Charge payment would be based on actual production and delivery of energy to the grid. The Firm PPA allows the Company dispatch rights and does not guarantee Seller any amount of energy will be delivered to the Point of Interconnection. In the event that the Company does not accept any energy at the Point of Interconnection, the Company will not pay any Energy Charge payment.

## 1.2 General RFP Information

- 1.2.1 Consistent with the findings and planning methodologies of the Company’s Integrated Grid Plan, filed in Docket No. 2018-0165 on May 12, 2023 and the Supplemental Response filed on November 15, 2023 (collectively, the “IGP Report”), the primary purpose of this RFP is to stabilize rates and advance energy equity and affordability, grow the marketplace for large-scale renewables, create a modern and resilient grid, and secure reliability and resiliency of the Company System.

This RFP is the first in a series of rolling procurements, designed to align with the Integrated Grid Plan Preferred Plans (“Preferred Plan”) (available at <https://hawaiipowered.com/igpreport/>). Procurement fulfillment will be dependent on the types of Proposals received in this RFP. The Company may consider selecting Proposals that will provide additional energy and other services in excess of or less than the targeted amounts depending on whether such Proposals demonstrate benefits to customers and meet the needs of the grid. Subject to PUC approval of this RFP, subsequent issuance(s) of this RFP will not require further approval unless significant substantive changes are introduced. The Company intends to issue subsequent iterations of this RFP approximately fourteen (14) months after the issuance of the prior RFP, following a notification filing and thirty (30) day notice period.

Rolling Procurement	Project GCOD <sup>8</sup>	O‘ahu	Hawai‘i	Maui
Round 1	No later than March 1, 2030	Energy: 750 GWh  Stability: 350 MW <sup>9</sup> grid forming resources or equivalent	Energy: 435 GWh  Stability: 115 MW <sup>10</sup> grid forming resources or equivalent  Location: 20 MW for 6 hours <sup>11</sup> East Hawai‘i Island	N/A

<sup>8</sup> GCOD deadlines in subsequent iterations of this IGP RFP are subject to change based on then-current status of projects selected in previous procurements.

<sup>9</sup> System stability requirements will be evaluated during the Detailed Evaluation set forth in Section 4.7 below.

<sup>10</sup> System stability requirements will be evaluated during the Detailed Evaluation set forth in Section 4.7 below.

<sup>11</sup> East Hawai‘i Island generation requirement can be met by a combination of resources and will be evaluated during the Detailed Evaluation set forth in Section 4.7 below. The Company seeks to attain resources that have the equivalent of at least 20 MW, which can be sustained for at least 6 hours. The East Hawaii Island locations are specified in Section 2.3, Table 1.

	No later than December 1, 2032 <sup>12</sup>	N/A	Firm Capacity: <sup>13</sup> 30 MW	N/A
	No later than December 1, 2033	Firm Capacity: <sup>14</sup> 81 MW	N/A	N/A
Succeeding Round(s)	No later than December 1, 2033	Energy: 232 GWh, plus any remaining Round 1 needs, plus consideration for other projects withdrawn in previous procurements	TBD, based on any remaining Round 1 needs plus consideration for other projects withdrawn in previous procurements	Energy: 230 GWh plus consideration for other projects withdrawn in previous procurements

- 1.2.2 Projects that are not selected to the Final Award Group for the first issuance of this RFP, or choose to withdraw from this RFP, are not precluded from resubmitting the proposed Project for consideration in a subsequent issuance of this RFP.
- 1.2.3 Prospective proposers with Projects that may not be ready for immediate development due to a longer technology development period or projects with long-lead infrastructure requirements (e.g., new transmission lines or substations, or upgrades to existing transmission or substations that will not meet this RFP’s stated GCOD requirement) are invited to participate in a future long-term RFP.
- 1.2.4 In addition to the RFP documents, Proposers should review the IGP Report, the 2024 IGP Action Plan Annual Update, as well as related resources, available at [hawaiipowered.com/igpreport/](http://hawaiipowered.com/igpreport/). The IGP Report informs Proposers of the modeling analysis that was performed to develop the recommended grid needs and shape the basis of this RFP, including the manner in which the modeling software chose to dispatch resources based on Company System need.
- 1.2.5 Section 2.1.1 describes the grid needs sought as part of this RFP. The needs were primarily determined based on the Preferred Plans for O‘ahu and Hawai‘i Island. The Company made minor adjustments to the Preferred Plan to reflect actual projects acquired through the Stage 3 RFP and energy from facilities that have power purchase agreements that will expire in the near future. O‘ahu needs are based on unmet capacity

<sup>12</sup> The Company encourages a GCOD of December 1, 2030 or earlier.

<sup>13</sup> For firm generation, up to 100% of the contract capacity is available for Company dispatch at any time, except during periods of outage and deration, independent of source energy resource availability.

<sup>14</sup> For firm generation, up to 100% of the contract capacity is available for Company dispatch at any time, except during periods of outage and deration, independent of source energy resource availability.

and energy needs from the O‘ahu Stage 3 RFP that were assumed to be procured in the Preferred Plan, renewable energy and capacity that have withdrawn from the Stage 3 RFP process, and existing PPAs set to expire in the near future. Grid-forming capacity needs identified in the Preferred Plan are also included in this RFP for O‘ahu.

The variable generation needs for Hawai‘i Island are based on existing PPAs set to expire in the near term, renewable energy and capacity that have withdrawn from the Stage 3 RFP process, and the need for reliable firm generation. The Company added a firm capacity target for Hawai‘i Island based on recent issues with Hawai‘i Island’s firm generation due to the age of the firm generators and the increasing need for more frequent maintenance. Grid-forming capacity needs identified are also included in this RFP for Hawai‘i Island. If the entire firm capacity target is procured and the projects selected from the Stage 3 procurements are successful, the retirement of existing firm generation on Hawai‘i Island could be accelerated.

The Company intends to seek needs targeted for 2035 in the Preferred Plan in a separate RFP for long-term resources that require extended project development time or long-lead infrastructure to complete (i.e., new transmission lines or substations, or upgrades to existing transmission or substations).

Section 8 of the IGP Report provides information to Proposers on the grid needs of the System, including how new resources may be dispatched and used to provide grid services. Proposers can use this information to design their Project to better fit within the resource portfolio.

The modeling analyses conducted in the IGP Report show that new resource additions to be selected include variable renewables, firm renewables, and storage to meet grid needs identified in future years, as opposed to a focus on any particular technology. Therefore, acquiring sufficient resources needed to meet grid needs set forth in the IGP Report will be dependent on the final resource mix selected. As described in this RFP, during the detailed evaluation, modeling will be performed to assess how grid needs are met by the resources in the final selected portfolios.

- 1.2.6 Each Proposal submitted in response to this RFP must propose a Project that meets the requirements of this RFP without having to rely on the completion or implementation of any other Project or system upgrade outside the scope of its Proposal, or without having to rely on a change in law, rule, or regulation (or an absence of any change in current law, rule, or regulation).
- 1.2.7 Each Proposer must agree to provide Project financial information, including proposed Project finance structure information and a pro forma cashflow in a form specified in Appendix B. Such information will be used to evaluate Threshold Requirements and Non-Price Criteria (e.g., Financial Compliance, Financial Strength and Financing Plan, Project Development and Schedule) set forth in Sections 4.3 and 4.4.2. The Company may request that Proposers selected to the Final Award Group provide further detailed cost information if requested by the PUC or the Division of Consumer Advocacy (“Consumer Advocate”) as part of the IGP Contract approval process. If requested, such

information would be provided to the PUC, Consumer Advocate and the Company pursuant to a protective order in the docket.

- 1.2.8 No material changes or additions may be made to a Proposal without obtaining 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 the Proposal Due Date, the Company, in consultation with the Independent Observer and/or Independent Engineer (if applicable), and in consideration of whether the Company's evaluation of the Proposal is affected, will determine whether the change is permitted.
- 1.2.9 If selected, Proposers will be responsible for all costs throughout the term of the IGP Contract, including but not limited to all project development costs, completion of an Interconnection Requirements Study ("IRS"), the cost of conducting a greenhouse gas ("GHG") emissions analysis, land acquisition, site control, permitting, financing, construction of the Facility and all Interconnection Facilities, including system upgrades, all Station Service energy necessary to operate the Facility, and the operation and maintenance ("O&M") of the Facility and Interconnection Facilities. Payments to the Company for the IRS and GHG emissions analysis, and all other costs payable to the Company, must be made by the Seller as defined in the negotiated IGP Contract, and not a parent or affiliate company.
- 1.2.10 If selected, Proposers will be solely responsible for the decommissioning of the Project and the restoration of the Site upon the expiration of the IGP Contract, as described in Attachment G to the RDG PPA, Firm PPA or ESPA.
- 1.2.11 If selected, Proposers shall pursue all available applicable federal and state tax credits (including, without limitation, all available applicable tax credits from the federal Inflation Reduction Act). Proposal pricing must be set to incorporate the benefit of such available federal tax credits. If a Proposal is not eligible for any applicable tax credits, the Proposal must affirmatively state as such and be prepared to provide the Company with supporting documentation confirming such statement. In the event additional federal tax credits become available through new tax legislation after Proposals are submitted but before Proposals are selected to the Final Award Group, the Company may require applicable Proposals propose an additional downward only price adjustment to allow the benefits of those additional tax credits to be passed along to the Company's customers. In light of current uncertainties with respect to the applicability of currently available federal tax credits, the IGP Contracts will permit Proposers to seek and obtain a reasonable and verifiable price increase in the event that current applicable federal tax credits incorporated into a Proposer's pricing are subsequently eliminated or materially reduced. In addition to accounting for any changes in current tax law that operate to a Proposer's benefit (e.g., new tax credits, reduction in corporate income tax rate) in connection with any price increase sought by such Proposer, the Companies reserve the right and opportunity to propose other methods to adequately preserve a Proposer's pricing assumptions regarding such applicable federal tax credits.

However, to mitigate the risk on Proposers due solely to potential changes to Hawai‘i 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 IGP Contract 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. The IGP Contract will also provide that the Proposer will be responsible for payment of liquidated damages for failure to pursue such maximum available state tax credit.

- 1.2.12 Proposers are expected to address permitting requirements and provide a realistic project schedule in their Proposals reflecting the anticipated time necessary to complete all permitting requirements. If selected, Proposers will submit project schedules as required pursuant to Attachment S to the IGP Contract, including creating their schedules using Microsoft Project and submitted in .mpp file format, along with the pdf copy. Demonstrating there is a reasonable expectation the Project will reach GCOD and demonstrating the Company-Owned Interconnection Facilities (“COIF”) costs are sufficient are Threshold Requirements in Section 4.3.
- 1.2.13 Any existing projects must meet all of the terms of this RFP, including agreement to use the applicable IGP Contract attached hereto and meet, at a minimum, the performance metrics and standards included therein. Existing projects should review the current performance metrics and standards in their existing power purchase agreement and compare them to the requirements of the applicable IGP Contract to determine what will be required from their Facility, whether upgrades or replacement of equipment, to meet the new performance metrics and standards under the applicable IGP Contract. The terms of the existing project’s power purchase agreement will remain in effect until the earlier to occur of (1) the end of the term of the existing power purchase agreement, or (2) the GCOD of the new IGP Contract, upon which, in either case, the existing power purchase agreement will be terminated and superseded by the IGP Contract.<sup>15</sup> Existing projects not proposing an increase in project capacity will still maintain the right to use their existing point(s) of interconnection but may require potential upgrades and/or replacements to their present interconnection facilities to meet current interconnection requirements.<sup>16</sup> Existing projects are also required to provide a detailed explanation and

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<sup>15</sup> Certain terms of the IGP Contract may become effective prior to the end of the existing power purchase agreement, e.g., terms governing the PUC approval of the IGP Contract, repowering of the existing project or upgrades to existing interconnection facilities. The IGP Contract may also include provisions to resolve any conflicts between the existing and new contract if any contract provisions overlap, or should special provisions be agreed to during negotiations.

<sup>16</sup> Sections 2.1.11, 2.3, and Appendix H interconnection cost applications may or may not apply to existing projects currently interconnected and operating on the Company System. Please contact the Company via the respective RFP Email Address in Section 1.7 to seek clarification on what is specifically required for an existing project. For example, if an existing facility does not increase the capacity that its existing facility currently generates and does not propose any difference to their Facility technology, then the Company could, but shall not be obligated to, maintain an exception to the single point of failure requirement within Section 2.1.12. Conversely, even existing facilities not proposing any increases in capacity or differences in facility technology could be required to implement new interconnection requirements and equipment to meet current interconnection requirements. An IRS will be required for any existing project in order to ensure the proposed Project conforms with current interconnection standards and to identify any upgrades that may be required.

timeline or schedule of plans to repower, upgrade or refurbish the Facility, as stated in Appendix B, Sections 2.2.4 and 2.14.

### **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.

- 1.3.1 The Company will employ a closed-bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where the bid evaluation models, detailed evaluation criteria, Proposal scoring and rationale, and information contained in Proposals submitted by other Proposers will be kept confidential. The Company will provide the Independent Observer with all necessary information for the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis to ensure a fair process.

### **1.4 Role of the Independent Observer and Independent Engineer**

- 1.4.1 Part III.C.1 and Part III.D.1 of the Framework sets forth the circumstances under which an Independent Observer and Independent Engineer are respectively required in a competitive bidding process. Unless otherwise determined by the Commission, the Independent Observer will advise and monitor all phases of the RFP process and will coordinate with Commission staff throughout the RFP process to ensure that the RFP is conducted 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 An Independent Observer will be appointed by the PUC for this RFP.<sup>17</sup> 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 1.8
  - Monitor contract negotiations with Proposers
  - Report to the PUC on monitoring results during each stage of the competitive bidding process

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<sup>17</sup> See Order No. 40976, *Opening the Docket*, issued in Docket No. 2024-0258 on August 19, 2024 ("Order No. 40976"), at 9.

- Provide an overall assessment of whether the goals of the RFP were achieved, including any recommendations for improving future competitive bidding processes

An Independent Engineer will be appointed by the PUC for this RFP.<sup>18</sup> The Independent Engineer will provide technical expertise to oversee matters related to technical aspects of the RFP, specifically the engineering designs and interconnection-related components of Proposals. The Independent Engineer’s role will include, but not be limited to:

- Review the Company’s requirements and standards for interconnection
- Review the Company’s technical studies, including hosting capacity and feasibility studies in advance of the issuance of the RFP
- Review the interconnection documents provided by Proposers, including the technical models and the Company’s review of such models
- Review and advise the Independent Observer on technical aspects of Proposal evaluation criteria during the selection process
- Monitor all discussions between the Company and Proposers related to interconnection matters in advance of and during the RFP process
- Monitor and verify all interconnection assumptions and parameters of Proposals
- Participate in discussions with the Company and Proposers over interconnection requirements, scope, and cost
- Verify any one-time Net Energy Potential RFP Projection adjustment allowed in Section 2.1.18
- Review requirements imposed on Proposers that have interconnection cost implications
- Review system available MW capacity information to Proposers to ensure accuracy
- Oversee dispute resolution as it relates to technical, interconnection-related issues, including determination of whether an issue is eligible for the Interconnection Dispute Resolution Process, as approved by Order No. 39163 and clarified by Order No. 39286, issued in Docket 2017-0352 (“IDRP”)
- Investigate and review interconnection-related costs from the Proposers

1.4.3 The Independent Observer for this RFP is: **Bates White, LLC**  
The Independent Observer Email Address: [vincent.musco@bateswhite.com](mailto:vincent.musco@bateswhite.com)

The Independent Engineer for this RFP is: **PA Consulting**  
The Independent Engineer Email Address: [TBD]

## 1.5 Communications Between the Company and Proposers

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

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<sup>18</sup> Order No. 40976 at 9.

- 1.5.2 All broadcasted communication with prospective Proposers shall be conducted via posts on the Company's RFP website, via electronic mail ("Email") through the address specified in Section 1.7 (the "RFP Email Address"), or via pre-arranged and noticed technical conferences conducted by the Company electronically (via Microsoft Teams or similar format) to provide general or technical information to all prospective Proposers.
- 1.5.3 Any two-way communication with individual prospective Proposers before selection of the Final Award Group shall be conducted via Email through the RFP Email Address, with the exception of the PIR Meeting, discussed in Section 1.6.
- 1.5.4 All Proposal submissions shall be submitted only through the Electronic Procurement Platform.
- 1.5.5 To ensure the Independent Observer can monitor RFP Email communications, all correspondence to the RFP Email Address (Section 1.7) regarding the RFP or a proposed Project shall include the Independent Observer Email Address found in Section 1.4.3 above. In addition to the Independent Observer, Proposers shall also include the Independent Engineer on any technical related questions as reflected in Section 1.4.2. The Company reserves the right to provide copies of communications that should have included the Independent Observer and/or Independent Engineer but, for whatever reason, did not include either or both of them.
- 1.5.6 Frequently asked questions, or questions with common issues, submitted by prospective Proposers and responses to those questions that may have general relevance to all Proposers may be posted on the Company's RFP website. The Company reserves the right to post only comments and questions with respective responses it deems are appropriate and relevant to the RFP.
- 1.5.7 Proposers are allowed to submit questions up to, but no later than, fifteen (15) days before the respective Proposal Due Date (RFP Schedule in Section 3.1, Table 2). The Company will endeavor to respond to all questions no later than five (5) days before the respective Proposal Due Date but make no assurance that it will be able to do so by such time or even before the Proposal Due Date if such question(s) involve significant investigation and/or research that the Company is unable to complete.
- 1.5.8 After the Proposal Due Date, the Company may contact individual Proposers for purposes of clarifying information in their Proposal(s). Proposers will not have any right to change their Proposal based on the Company's clarifying questions unless such clarification reveals a manifest error in the Proposal that the Company, in its sole discretion, deems necessary to correct in order for the Proposal to continue.
- 1.5.9 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 the fully executed IGP Mutual Confidentiality and Non-Disclosure Agreement ("NDA"). See Appendix E.

1.5.10 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 PIR Meeting and Preliminary Interconnection Report**

- 1.6.1 After the RFP is issued, during the preparation period prior to the Proposal Due Date, in order to (1) provide an initial understanding of potential interconnection requirements for a prospective project to interconnect to the Company system at the Proposer’s selected interconnection point(s), and (2) improve the likelihood that Proposals will include an accurate assessment of necessary interconnection costs for their proposed interconnection point(s), the Company will schedule a mandatory meeting (conducted virtually, not in-person) with each prospective Proposer to discuss the interconnection associated with their potential Project(s) (a “PIR Meeting”). A PIR Meeting is a required prerequisite in order to submit a Proposal in response to this RFP. Based on the information provided in the written request from prospective Proposers, as described in Sections 1.6.2 to 1.6.10 below, the Company will prepare a report (a “Preliminary Interconnection Report” or “PIR”) for the prospective Proposer to facilitate the submittal of a complete Proposal with more informed anticipated interconnection costs associated with such Proposal.
- 1.6.2 Any prospective Proposer seeking to submit a Proposal in response to this RFP must submit to the Company:
- A completed PIR Request (Appendix O) per proposed Project,
  - An executed NDA (Appendix E), and
  - The applicable PIR Fee (see Section 1.6.5 below).
- 1.6.3 The PIR Request and the executed NDA must be submitted to the respective island’s RFP Email Address no later than the PIR Request Due Date shown in the RFP Schedule in Section 3.1, Table 2. All prospective Proposers must submit their PIR Requests by the PIR Request Due Date to be eligible to participate in this RFP.<sup>19</sup>
- 1.6.3.1 The PIR Fee shall be submitted in a manner consistent with the requirements applicable to the Proposal Fee, as set forth in Section 3.7.3.
- 1.6.3.2 The Company will not begin processing a PIR Request, nor will it begin work on the associated PIR until all required information (the PIR Request and executed NDA) and the associated PIR Fee is received. If any request for a PIR Meeting is not yet complete by the PIR Request Due Date, the Company, in its sole discretion, may decline to schedule a PIR Meeting for such prospective Proposer and such prospective Proposer will not be permitted to submit a Proposal in this RFP.

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<sup>19</sup> The Company reserves the right to extend the PIR Request Due Date at its discretion, with notice posted to the RFP website.

- 1.6.4 Each prospective Proposer may submit a maximum of three (3) PIR Requests per island for this RFP,<sup>20</sup> each with a maximum of up to three (3) Project variations (variations are described in Section 3.7.2.1), all of which must be completed and submitted prior to the PIR Request Due Date. Prospective Proposers may not change their request or their respective variations prior to the PIR Meeting. If the Company receives fewer PIR Requests than expected, the Company, at its sole discretion, may allow a prospective Proposer to submit additional PIR Requests or additional Project variations within such limits and deadlines as the Company may impose.
- 1.6.5 IPP and Affiliate Proposers are required to pay a non-refundable PIR Fee as described herein. The PIR Fee per island is \$2,000 for a single Project if the Project is interconnecting to a pre-screened location specified in Section 2.3.1, Table 1. If a prospective Proposer submits two or more PIR Requests covering two or more Projects interconnecting to a pre-screened location specified in Section 2.3.1, Table 1, the PIR Fee increases incrementally by \$2,000 per Project.

The PIR Fee (including its variations as described in Section 3.7.2) per island is \$4,000 for a single Project if the Project is interconnecting to other locations not specified in Section 2.3.1, Table 1. If a prospective Proposer submits two or more PIR Requests covering two or more Projects interconnecting to a location not specified in Section 2.3.1, Table 1, the PIR Fee increases incrementally by \$4,000 per Project.

If a prospective Proposer submits two or more PIR Requests covering two or more Projects proposing to interconnect at both a pre-screened location specified in Section 2.3.1, Table 1, as well as a non-pre-screened location, the PIR Fee (1) for the pre-screened location Project(s) shall be determined as set forth above, and (2) for the non-pre-screened location Project(s) shall be determined as set forth above. The fees per island for each different situation is displayed below:

<b>Number of Projects per Island</b>	<b>Fee per Island</b>
<b>1</b> Pre-Screened Location	<b>\$2,000</b>
<b>2</b> Pre-Screened Locations	<b>\$4,000</b> (\$2k + \$2k)
<b>3</b> Pre-Screened Locations	<b>\$6,000</b> (\$2k + \$2k + \$2k)
<b>1</b> Non-Pre-Screened Locations	<b>\$4,000</b>
<b>2</b> Non-Pre-Screened Locations	<b>\$8,000</b> (\$4k + \$4k)
<b>3</b> Non-Pre-Screened Locations	<b>\$12,000</b> (\$4k + \$4k + \$4k)
<b>1</b> Pre-Screened Location; <b>1</b> Non-Pre-Screened Location	<b>\$6,000</b> (\$2k + \$4k)
<b>1</b> Pre-Screened Location; <b>2</b> Non-Pre-Screened Location	<b>\$10,000</b> (\$2k + \$4k + \$4k)
<b>2</b> Pre-Screened Locations; <b>1</b> Non-Pre-Screened Location	<b>\$8,000</b> (\$2k + \$2k + \$4k)

If a prospective Proposer is uncertain as the amount of its PIR Fee, such Proposer should contact the Company via the RFP Email Address.

<sup>20</sup> A maximum of six (6) PIR Requests per Proposer if they submit the maximum three (3) for both islands.

- 1.6.6 The PIR will identify potential interconnection requirements for the given Project based only on information provided by the prospective Proposer in its PIR Request and such further information available and actually known to the Company at the time that the PIR is prepared. For purposes of completing the PIR, the Company will assume that only the prospective Proposer's Project is interconnecting to the Company System at a particular location. If the Company, in its sole discretion, determines that it is unlikely that a Project and the potential interconnection requirements can be completed by the RFP's GCOD deadline, or that interconnection of the Project at the prospective Proposer's selected interconnection point is either impossible or cost-prohibitive, the Company, to the extent it is able to do so, and subject to all of the disclaimers and limitations of this Section 1.6, will attempt to identify one or more potential alternative interconnection options for the Project. The alternative interconnection option(s), if any, will be described in the PIR.

As noted above, the PIR is based on one Project interconnecting to the Company System at the specific location identified by the Proposer in its PIR Request. Due to the interconnectedness of each island system, it is likely that requirements provided in the PIR will be superseded if any other Proposal proposing to interconnect at the same location is selected. As such, in submitting a PIR Request, requesters understand and acknowledge that any information and/or potential requirements identified in the PIR are non-binding, subject to change, and for informational purposes only and the Company assumes no responsibility for a prospective Proposer's reliance on the PIR, anything discussed during the PIR Meeting and any subsequent written summary thereof.

The Company makes no representation, warranty or other guarantee or assurance that any information, potential requirements and, if included, any alternative interconnection options, is accurate, complete, or cost-effective. The requestor is solely responsible for its review, interpretation, actions, plans, schedules, costs and contents of any Proposal completed using information obtained from the PIR. Further, the Company undertakes and assumes no obligation to update any information, requirements or options in any PIR once issued and provided to the requestor.

The scheduling and completion of the PIR Meeting and the issuance of a PIR shall not constitute acceptance by the Company of the prospective Proposer's Proposal, as all Proposals must be prepared and submitted in accordance with the procedures and format specified in this RFP. Moreover, issuance of a PIR does not obligate the Company to perform an IRS, nor does it negate any requirement for an IRS. An IRS will be required for all Projects selected to the Final Award Group for this RFP.<sup>21</sup> In the event of a conflict between a PIR and a subsequently prepared IRS, the IRS shall govern.

- 1.6.7 Consistent with the Eligibility Requirements set forth in Section 4.2, all prospective Proposers are required to request and complete a PIR Meeting with the Company (the Independent Observer and Independent Engineer will be invited to all meetings) to be

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<sup>21</sup> Any prior IRS conducted for a Project cannot be used as a substitute for this requirement.

eligible to submit a Proposal in response to this RFP.<sup>22</sup> The scope of the PIR Meeting shall be limited to discussing the applicable Project's PIR. Other RFP topics not related to interconnection will not be discussed and should be presented as questions to the RFP Email address in Section 1.7. Proposer's counsel may also attend the PIR Meeting, provided that a completed Certification of Counsel for Proposer (Appendix E, Attachment 2) is received by the Company prior thereto, and further provided that counsel for the Company is also present at the meeting. Each PIR Meeting will be scheduled for 1.5 hours each between the hours of 9:00am and 5:00pm, Hawai'i Standard Time ("HST"), and will be scheduled by the Company within the timeframes specified in the RFP Schedule in Section 3.1, Table 2, taking into account, among other considerations, the number of PIR Requests received by the Company and the availability of Company resources. The Company will schedule the Proposer-specific meeting upon receipt of a timely and complete PIR Request and associated materials as described in Section 1.6.2. Any requests to reschedule may be accommodated subject to availability, in the Company's sole discretion. If a Proposer timely submits multiple PIR Requests and all required information and applicable PIR Fees, a single PIR Meeting will be scheduled with the Proposer to discuss all Projects responsive to this RFP.

- 1.6.8 The information provided by the Company in a PIR Meeting may depend on the clarity and accuracy of the information provided by a prospective Proposer in the PIR Request(s), along with the specificity and detail of the questions and expertise and sophistication of a prospective Proposer's participants (e.g., technical personnel) present at the PIR Meeting. The Company assumes no responsibility to any prospective Proposers that information provided in one PIR Meeting will be consistent with information provided in another PIR Meeting, both as to content, complexity and scope, all of which is dependent on the level of detail, clarity and accuracy of the information provided, the questions presented and the level of expertise and sophistication of the PIR Meeting participants. The Company will attempt, subject to all of the disclaimers and limitations of this Section 1.6, to answer all questions presented but reserves the right, in its sole and absolute discretion, not to answer any questions posed by a prospective Proposer.

The Company will provide a written meeting summary, subject to all of the disclaimers and limitations of this Section 1.6, to prospective Proposers, as well as the Independent Observer and Independent Engineer, after the PIR Meeting. The summary is not intended to signify formal minutes of the PIR Meeting and may not contain all information discussed at the PIR Meeting. The Company assumes no responsibility for the accuracy of the summarizations of the PIR Meeting. Any inconsistencies should be raised with the Company for clarification. The Company reserves the right, with respect to non-confidential questions raised in any PIR Meeting that may be helpful to other prospective Proposers, to share such information with other prospective Proposers via the Q&A section on the RFP website.

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<sup>22</sup> The Independent Observer and Independent Engineer will be invited to all PIR Meetings with prospective Proposers, and will be included on all email conversations and PIR Meeting summary distributions.

1.6.9 A Proposal submitted to the Company in response to this RFP must be consistent with the specified technology and site information Project characteristics described in the corresponding PIR Request submitted by the prospective Proposer for the Project. A proposed Project's interconnection may deviate from that described in such Project's PIR Request received by the Company; provided, however, that such deviation must have been identified in the PIR Meeting, memorialized in the Company's written meeting summary of the PIR Meeting and, subject to all of the disclaimers and limitations of this Section 1.6, be deemed by the Company to be a reasonable alternative interconnection for the Project. The Company will also allow Proposals to deviate from the project characteristics discussed in the PIR Meeting with the Company's prior written consent, on the condition that topics discussed earlier during the PIR and/or PIR Meeting may or may not apply to the submitted Proposal, and system upgrades will be solely captured during the Interconnection Requirements Study phase. Proposers must obtain the Company's prior written consent through the communications process described in Section 1.5. Any other change to a proposed Project's characteristics that are inconsistent with the proposed Project described in the PIR will not be accepted and will be deemed by the Company to have not completed the mandatory PIR Meeting requirement. All such Proposals not completing a PIR Meeting will be automatically disqualified from this RFP without further review.

## 1.7 RFP Email Communication

The primary contact for this RFP is:

IGP RFP Team  
Hawaiian Electric Company, Inc.

RFP Email Address for prospective Projects on O'ahu:  
[oahurenwablerfp@hawaiianelectric.com](mailto:oahurenwablerfp@hawaiianelectric.com)

RFP Email Address for prospective Projects on Hawai'i Island:  
[hawaiirenewablerfp@hawaiianelectric.com](mailto:hawaiirenewablerfp@hawaiianelectric.com)

## 1.8 Dispute Resolution Process

1.8.1 If disputes arise under this RFP, including any disagreement with a position taken by the Independent Observer,<sup>23</sup> except for disputes governed by the IDRP, the provisions of Section 1.8 and the dispute resolution process established in the Framework will control.<sup>24</sup> Because of the nature of the information provided in a PIR and the acknowledged disclaimers and limitations of Section 1.6 with respect to such PIR, the interconnection information, including but not limited to any potential interconnection alternatives contained in such report, is not subject to question or dispute under this Section 1.8, or the dispute resolution process in the Framework.

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<sup>23</sup> See Part III.C.7 of the Framework.

<sup>24</sup> See Part V of the Framework.

- 1.8.1.1 Any person that challenges or contests any aspect of the RFP process must first attempt to resolve any concern 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.
- 1.8.1.2 Any and all disputes arising out of or relating to the RFP that 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 (the “Mediation”), pursuant to and in accordance with the agreed upon mediation rules of the American Arbitration Association (“AAA”) (or its successor). The Mediation will be administered by an independent mediator selected by the Company from the AAA list of approved mediators that have expertise with the subject of the dispute. Limited evidentiary requirements and pre-mediation procedural conditions shall be implemented and adhered to by the parties. 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 shall otherwise each bear their own Mediation costs and attorney’s fees.
- 1.8.1.3 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, the Proposer may submit the dispute to the PUC in accordance with the Framework.
- 1.8.1.4 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP. The PUC will use an informal expedited dispute resolution process to resolve the dispute within thirty (30) days, as described in Parts III.B.3 and V of the Framework.<sup>25</sup> There will be no right to hearing or appeal from this informal expedited dispute resolution process.
- 1.8.1.5 By submitting a Proposal in response to this RFP, each Proposer expressly agrees that if it initiates a dispute resolution process for any dispute or claim submitted in violation of or arising under or relating to this RFP (e.g., a court proceeding, arbitration, etc.), other than as permitted by Section 1.8 of this RFP and the Framework, such dispute shall be dismissed with prejudice and the Proposer filing such dispute or claim 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.

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<sup>25</sup> The Company submits that 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, issued in Docket No. 03-0372 on December 8, 2006, at 34-35; Framework Part III.B.4. Further, the informal expedited dispute resolution process does not apply to the Framework’s process relating to issuance of a 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 (see Framework Part IV.B.6.c); and (2) the Framework’s dispute resolution process applies to “Bidders” and there are no “Bidders” at this stage in the RFP process (see Framework Part III.B.7 and Part V).

- 1.8.2 With respect to any disputes that arise under this RFP specific to technical aspects of a Proposal, including interconnection, the Independent Engineer shall determine whether an issue is eligible for the IDR.

## **1.9 No Protest or Appeal**

No Proposer or other person will have the right to protest or appeal any award, non-award or disqualification of a Project made by the Company except through the dispute resolution process of Section 1.8 of this RFP.

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

## **1.10 Modification or Cancellation of the Solicitation Process**

- 1.10.1 Unless otherwise expressly prohibited, the Company may, at any time up to the final execution of an IGP Contract, 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.
- 1.10.2 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.<sup>26</sup> The Company will follow the same procedure with regard to any potential postponement, withdrawal, or cancellation of the RFP or any portion thereof.

## **Chapter 2: Resource Needs and Requirements**

### **2.1 Scope of the RFP**

- 2.1.1 In this RFP, Hawaiian Electric seeks proposals on O‘ahu to acquire 750 GWh annually of renewable electrical energy, with (1) 350 MW of grid-forming capacity<sup>27</sup> and (2) a GCOD no later than March 1, 2030. This RFP also seeks proposals on O‘ahu to acquire up to 81 MW of firm capacity, with a GCOD no later than December 1, 2033.

In this RFP, Hawaiian Electric also seeks proposals on Hawai‘i Island to acquire 435 GWh annually of renewable electrical energy, with (1) up to 115 MW of grid-forming capacity<sup>28</sup> and (2) a GCOD no later than March 1, 2030. This RFP also seeks proposals on Hawai‘i Island to acquire up to 30 MW of firm capacity, with a GCOD no later than

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<sup>26</sup> See Part IV.B.10 of the Framework.

<sup>27</sup> As noted in footnote 9, in Section 1.2.1 above, the total amount of grid forming resources selected will be subject to evaluation during the Detailed Evaluation.

<sup>28</sup> As noted in footnote 10, in Section 1.2.1 above, the total amount of grid forming resources selected will be subject to evaluation during the Detailed Evaluation.

December 1, 2032.<sup>29</sup> On Hawai‘i Island, the Company requires the interconnection of facilities to the transmission system (69 kV) and there is a strong preference to be sited on the east and south part of Hawai‘i Island.

The grid-forming requirement on the O‘ahu and Hawai‘i Island systems may be met by Standalone Storage Projects or Paired Projects with storage inverters able to operate in grid-forming mode as defined in the applicable IGP Contract that are grid chargeable.

#### 2.1.2 Proposals must be submitted as a:

- Project with a single-technology generation component (e.g., wind, biofuel, etc.) that does not include an energy storage component (“Generation Project”);
- Project with both a single-technology variable renewable generation component (e.g., solar, wind, etc.) and an energy storage component (“Paired Project”);
- Generation Project or Paired Project with a separate co-located energy storage component (“Co-located Project”) subject to independent dispatch by the Company; or
- Standalone energy storage Project (“Standalone Storage Project”);

Any proposed Project utilizing PV must be proposed as a Paired Project with its energy storage component sized to the minimum capacity and duration requirement. Wind generation may be proposed as a Generation Project, or, if it is proposed with storage, must be proposed as a Paired Project with an energy storage component sized to the minimum capacity and duration requirement.

In Paired Projects, the generation and energy storage resources are controlled by Company dispatch as a single combined resource. In Co-located Projects, the co-located storage is controlled independent of the generation resource or paired resource(s). Additionally, in Co-located Projects, the co-located storage and the generation resource or paired resource(s) share a single interconnection.

#### 2.1.3 All Proposals with a generation component submitted in response to this RFP must produce renewable electrical energy as defined in the Hawai‘i Renewable Portfolio Standards (“RPS”) law,<sup>30</sup> as amended from time to time, and the IGP Contract applicable to the Proposal (RDG PPA, Firm PPA, or ESPA). By statute, “Renewable Energy” means energy generated or produced using the following sources: (1) wind; (2) the sun; (3) falling water; (4) biogas, including landfill and sewage-based digester gas; (5) geothermal; (6) ocean water, currents, and waves, including ocean thermal energy conversion; (7) biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste; (8) biofuels; and (9) hydrogen produced from renewable energy sources.<sup>31</sup> So long as any of the following are not

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<sup>29</sup> Notwithstanding this requirement, the Company encourages proposals for firm capacity to include a GCOD of December 1, 2030 or earlier.

<sup>30</sup> RPS requirements in Hawai‘i are codified in Hawai‘i Revised Statutes (“HRS”) §§ 269-91 through 269-95. “Renewable electrical energy” is defined in HRS § 269-91.

<sup>31</sup> See HRS § 269-91.

specifically excluded as a “biofuel” in a subsequent amendment to the RPS Law, biodiesel, renewable diesel, renewable naphtha, and renewable natural gas are recognized and allowed as “biofuels” for this RFP.

Projects that produce renewable electrical energy with longer or uncertain development timeframes than permitted by this RFP are invited to participate in a future long-term RFP. In addition to producing renewable electrical energy as defined by the RPS law, proposed technologies must also meet the Proven Technology Threshold Requirement as defined and described in Section 4.3.

- 2.1.4 All Proposals with a generation component that operates on fuel must include any and all costs of such fuel for the entire proposed Firm PPA term in its Proposal, with the exception of biofuel Proposals.

Proposals operating on biofuel<sup>32</sup> do not need to include the cost of biofuel in its Proposal cost, but must provide a biofuel price forecast. The Proposal will not have to guarantee the biofuel forecast pricing, but the Company reserves the right to use an alternative appropriate fuel forecast when evaluating the Proposal (i.e., the Company may choose to use the Company’s biofuel forecast, or potentially look at more than one fuel forecast for evaluation purposes).

The Company also reserves the right to use an alternative appropriate fuel forecast when evaluating the non-renewable fuel aspects of a Proposal (i.e., the Company may choose to use the Company’s non-renewable fuel forecast, or potentially look at more than one fuel forecast for evaluation purposes).

- 2.1.4.1 All Proposals with a generation component that operates on fuel must also describe the preliminary plan to ensure the satisfaction of the requirements to acquire, transport and store an adequate supply of fuel required for the operation and maintenance of the Facility, as described in Section 14 of Attachment Y to the Firm PPA.

Alternative fuel management plans that meet the intent of the above requirements may be considered. The fuel requirements may be revisited and adjusted downward in the future if needs so require; provided, that the Company will maintain the right to consent to any fuel supply changes during the term of the IGP Contract.

- 2.1.4.2 All Proposals with a generation component that operates on fuel must also commit to provide fuel for the entire proposed term of the Firm PPA and, with the exception of biofuel Proposals, provide evidence (e.g., fuel supply contract or letter of intent) that the fuel will be secured for the duration of the Firm PPA term. Proposals operating on biofuel must commit to providing fuel for the entire duration, but do not have to provide evidence of a fuel supply contract for the entire duration of the Firm PPA term. However, Proposals utilizing biofuel must commit to provide evidence of a fuel supply

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<sup>32</sup> Biofuel is defined in HRS § 269-91: “Biofuels” means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

for at least the first 3 years of the Firm PPA term while still accommodating the possible fuel switching provisions of this section.

All Proposals utilizing a fuel source must also specify any minimum monthly, quarterly, and/or annual fuel purchases in its fuel contract. Proposals for facilities that elect to use a liquid or gaseous fuel source must also be capable of operating using fossil fuel in emergency conditions, unavailability of biofuel, or as otherwise requested by the Company, including obtaining the proper permitting, and include the costs for the use of such fuel in the Proposal.<sup>33</sup> Fuel switching is described in Attachment DD to the Firm PPA. Proposals shall demonstrate access to fossil fuel at any time during the term of the Firm PPA. Company is open to entering into a fuel tolling agreement, subject to Commission approval of such agreement, in the event that the participating parties are able to reach agreement on the terms of a tolling agreement. Whether or not the Company would be amenable to a tolling agreement will depend on, among other factors, the type of fuel utilized by the facility, the fuel needs, and the location of the facility. The Company will not be obligated to enter into a tolling agreement. Not all proposals utilizing a fuel source will be required to enter into a negotiated tolling agreement. In the event a tolling agreement is not reached or is not approved by the Commission, a Firm IPP will be responsible to supply its own fuel, pursuant to the terms of the Firm PPA. For purposes of this RFP, developers should assume they must supply all of the fuel needs, but should indicate that if the opportunity is available whether or not they are amenable to exploring a fuel tolling agreement. Seller is responsible for applying for and obtaining applicable permits necessary to operate the Facility as bid by the Proposer in its Proposal and consistent with the terms in the Firm PPA. The Facility must be capable of meeting the performance metrics and standards of the Firm PPA while operating within the limits of such permits throughout the term of the Firm PPA. Any operational constraints inconsistent with the above requirements, including any run-hour limits, must be identified in the Proposal. Proposers are responsible for researching permitting and environmental requirements in existence and identifying such requirements and any resulting operational limits in their Proposal. Proposers shall seek to permit the maximum potential run hours for the stated energy generating capacity of the Facility and not to any stated run-hour limitation proposed by the Proposer.

- 2.1.5 Proposals that will require Company System upgrades must account for and include such upgrades in the Proposal – including impacts on cost, schedule, and GCOD. Proposals that will require Company System upgrades the construction of which, in the reasonable judgment of the Company (in consultation with the Independent Observer and/or Independent Engineer), creates a significant risk that their Project’s GCOD will not be met, will not be considered in this RFP. All Company System upgrades may or may not be identified in the Company’s PIR to Proposers. The absence of any identified Company System upgrades, however, shall not preclude the necessity of any Company System upgrades identified in the applicable IRS for the Project.

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<sup>33</sup> Requiring fuel switching is consistent with the policy of the State of Hawai‘i, as described in Executive Order No. 25-01, “Accelerating Hawai‘i’s Transition Toward 100 Percent Renewable Energy,” issued on January 27, 2025, which states in pertinent part, that “[t]o provide the lowest cost to ratepayers, this [policy] requires collective action and shared accountability to maximize end-use efficiency, demand response, and *fuel switching* to balance new renewable energy projects with affordability, reliability, land use, and resilience.” (emphasis added).

- 2.1.6 Projects submitted in response to this RFP must be located either on O‘ahu or Hawai‘i Island.
- 2.1.7 Proposals may propose a term of any length for the IGP Contract with the understanding that Proposal costs may change for different term lengths. Proposals with terms longer than twenty-five (25) years, however, may require additional terms and conditions for obligatory capital improvements, replacements, refurbishment and upgrades to the Project to ensure that the Facility can be satisfactorily operated and maintained to respond to Company dispatch and meet required performance metrics and Technical and Operational Requirements for the entire term of the IGP Contract.
- 2.1.8 Proposals must determine and identify their Project Site, interconnection facilities and route of interconnection facilities, Grid Connection Point (“GCP”), and Point(s) of Interconnection (“POI”). Proposers will be required to propose revisions to the IGP Contract to account for multiple POI. Any such revisions shall be subject to Company’s review and agreement in its sole discretion. Proposers are reminded that any proposed Project Site must meet all requirements in this RFP and the applicable IGP Contract regardless of any agreements with any landowner for the Project Site. Proposers should perform their own evaluation of these factors in determining whether a site is suitable for their renewable energy project development.
- 2.1.9 Proposers must locate all Project infrastructure<sup>34</sup> within areas of the proposed Project Site that are:
- outside the 3.2-foot sea level rise exposure area (SLR-XA) as described in the Hawai‘i Sea Level Rise Vulnerability, and Adaptation Report (2017);<sup>35</sup>
  - not located within a Tsunami Evacuation Zone;<sup>36</sup> and
  - not located within the Hawai‘i Department of Land and Natural Resources flood map’s flood zones A, AE, AEF, AH, AO, VE based on the Federal Emergency Management Agency’s Digital Flood Insurance Rate Maps.<sup>37</sup>
- All equipment required for a Proposer’s Project must be sited within the proposed Project Site with no assumptions that any equipment will be sited on Company property, unless specified by the Company.
- 2.1.10 Projects must meet the Resilience Requirements stated in Attachments B and G of the applicable IGP Contract.

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<sup>34</sup> Project infrastructure includes Seller-Owned Interconnection Facilities (“SOIF”) and COIF located at the Project Site but does not include any required line extension between the Project and the GCP.

<sup>35</sup> Hawai‘i Climate Change Mitigation and Adaptation Commission. 2017. Hawai‘i Sea Level Rise Vulnerability and Adaptation Report. Prepared by Tetra Tech, Inc. and the State of Hawai‘i Department of Land and Natural Resources, Office of Conservation and Coastal Lands, under the State of Hawai‘i Department of Land and Natural Resources Contract No: 64064. This report is available at: [https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report\\_Dec2017.pdf](https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf)

<sup>36</sup> See Hawai‘i Sea Level Rise Viewer at <https://www.pacioos.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/#/>. Projects infrastructure must be outside the “Tsunami Evacuation Zone” (but not necessary to be outside the “Extreme Tsunami Evacuation Zone”).

<sup>37</sup> See Hawai‘i Department of Land and Natural Resources Flood Hazard Assessment Tool at <https://fhat.hawaii.gov/>.

- 2.1.11 On O‘ahu, Projects must interconnect to either the Company’s 138 kV transmission system or 46 kV subtransmission system. The Company notes a strong preference for proposed Projects on O‘ahu to interconnect to the transmission system (138 kV). Proposers are encouraged to seek input in deciding whether to interconnect to the 138kV transmission system or the 46 kV subtransmission system where both are options for a particular Proposal. On Hawai‘i Island, Projects must interconnect to the Company’s 69 kV transmission system. Interconnection to the transmission system is further described in Section 2.3. To the extent the Company’s existing land rights for any Company-provided interconnection location are not perpetual, Proposers will remain responsible for securing land rights in the Company’s favor for any such Company-provided interconnection location in accordance with the requirements of the applicable IGP Contract.
- 2.1.12 A Project on O‘ahu must be sized greater than or equal to 5 MW. No single point of failure from a Facility on O‘ahu shall result in a decreased generating capacity or export measured at the Project’s POI greater than 142 MW. A Project on Hawai‘i Island must be sized greater than or equal to 2.5 MW. No single point of failure from a Facility on Hawai‘i Island shall result in a decreased generating capacity or export measured at the Project’s POI greater than 30 MW for the system.

According to the Company’s transmission planning criteria, for any transmission element outage, the aggregate generating capacity on any remaining radial transmission circuit will not exceed the aforementioned single point of failure limit for the System.<sup>38</sup> Additionally, in meeting the single point of failure requirement, if the Project’s generator step-up transformers are operated in parallel, the parallel step-up transformers must be equal in size (MVA) and have the same electrical characteristics and available tap positions. Each generator step-up transformer must have its own POI not in adjacent positions of the same breaker-and-a-half bay into the Company System that can be independently dispatched via the Company’s Energy Management System.

- 2.1.13 Contracts for Projects selected through this RFP must propose the appropriate IGP Contract as described in Section 3.11. Under the RDG PPA and Firm PPA, the Company shall maintain exclusive rights to fully direct dispatch of the Facility, subject to availability of the resource for those Projects using the RDG PPA. Under the Firm PPA, the Company shall maintain the exclusive right to direct any fuel switch for the Facility. Under the ESPA, the Company shall maintain exclusive rights to fully direct the charging and discharging of the Facility. Additionally, due to the critical nature and usage of the Project to support the grid, the ability to control and tune the Facility’s response to certain grid events and conditions is an important aspect that will be required of all facilities.

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<sup>38</sup> This requirement will be evaluated by the Company as it is dependent on the system topology, generating resources currently or planned (e.g., Stage 2 and 3 RFP projects), as well as the selected portfolio of projects procured in this RFP. A preliminary assessment to meet this requirement with only the proposer’s project will be provided in the PIR. An example of complying with this requirement is a Hawai‘i Island project greater than 30 MW interconnecting to a Company substation will require at least three transmission lines (other factors may require additional upgrades) connecting to the interconnection substation. Proposals less than 30 MW interconnecting to lines with an aggregated generation capacity greater than 30 MW may also require additional transmission line termination(s).

2.1.14 The storage component of a Paired Project will be charged from its generation component during periods when full potential export of the generation component is not being dispatched by the Company. Energy in the storage component will be exported to the Company's System subject to Company dispatch. The storage component of a Paired Project must be sized to support the Facility's Net Nameplate Capacity (in MW)<sup>39</sup> for a minimum of four (4) continuous hours throughout the term of the respective RDG PPA and support a minimum of 365 full charging/discharging cycles per year (or 366 full charging/discharging cycles per leap year).

For example, for a paired 10 MW PV or wind facility, the energy storage component must be able to store and discharge at least 40 MWh of energy in a cycle throughout the term of the RDG PPA.

Paired Projects must also be capable of being 100% charged from the grid at the direction of the Company from the GCOD.

2.1.15 The amount of energy discharged from any energy storage component (Paired Project, Co-located Project or Standalone Storage Project) in a year will be limited to the BESS Contract Capacity (in MWh) multiplied by the number of days in that year. An energy storage component may be dispatched more than once per day, subject to such discharge energy limitations.

2.1.16 Co-located Projects and Standalone Storage Projects will be charged from the grid and provide energy to the Company during times that are deemed by the Company to be beneficial to the System. These facilities must be connected to the grid at all times, with the exception of allowed maintenance periods and periods where the Company has requested the Projects to disconnect from the System.

2.1.17 Standalone Storage Projects must be sized to support the Facility's Net Nameplate Capacity (in MW) for a minimum of four (4) continuous hours throughout the term of the ESPA and support a minimum of 365 full charging/discharging cycles per year (or 366 full charging/discharging cycles per leap year).

For example, for a 10 MW facility, the energy storage component must be able to store and discharge at least 40 MWh of energy in a cycle throughout the term of the ESPA.

For Paired Projects, Co-located Projects, and Standalone Storage Projects, the inverter which interfaces between the BESS DC side and AC side must be a grid-forming control type inverter.

2.1.18 Generation Projects or Paired Projects utilizing the RDG PPA must provide a Net Energy Potential ("NEP") RFP Projection for the proposed Facility. The NEP RFP Projection represents the estimated annual net energy potential (in MWh) that could be produced by the Facility and delivered to the POI considering a 10-year period of uncertainty and a probability of exceedance of 95%. The NEP RFP Projection represents the potential renewable energy that could be generated by the Facility from the Renewable Resource

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<sup>39</sup> See the appropriate IGP Contract for the Net Nameplate Capacity definition.

Baseline and delivered to the POI (i.e., the net energy) assuming all energy is directly exported to the POI in the moment it is generated (full dispatch during all production hours) and never in excess of the Contract Capacity with a 95% probability of exceedance. Since the NEP is intended to be representative of the energy delivered to the POI, the Renewable Resource Baseline derived gross energy potential should be reduced by loss factors identified in Attachment U to the RDG PPA to establish a POI P50. An uncertainty analysis is then performed to be applied to the POI P50 to determine the P95 NEP as more fully detailed in Attachment U to the RDG PPA.

The NEP RFP Projection is based upon the potential to convert a natural energy source into electric energy, and therefore, does not include any export from the energy storage component of the Facility. In other words, since only the generation component of a Project *generates* energy, only its contributions should be counted in the NEP, which is intended to represent the potential net generation expected to be made available to the Company from the Project's siting and generating equipment and design and uncertainty analysis. The benefit of the storage component and impact of its Round-Trip Efficiency will be included in the Company's production modeling of the Project dispatch. The Station Service loss factor is expected to consider any standby BESS auxiliary loads, as more fully detailed and defined in the RDG PPA.

The NEP RFP Projection is independent of the actual dispatch of the Facility as dispatch is at the full discretion of the Company. The NEP RFP Projection will be used in the RFP evaluation process and therefore Proposers will be held to their provided value.<sup>40</sup> However, after selection to the Final Award Group and prior to the completion of the NEP IE Estimate, as defined in the RDG PPA, the Company will allow the Proposer a one-time upward adjustment to its NEP RFP Projection of up to five percent (5%) above its original Proposal's NEP RFP Projection along with any proportioned change to its Lump Sum Payment as long as the Project's RDG PPA unit price does not change. A complete package, including the NEP RFP Projection and any related worksheets and supporting documentation prescribed in Section 2.10.9 of Appendix B, is required upon Proposal Submission. Proposers shall show that their submitted NEP RFP Projection is reasonable given the attributes of the project and siting. If the documentation provided does not support the NEP RFP Projection provided, the Company shall have the right to adjust the Lump Sum Payment (downward only) accordingly, keeping the unit price unchanged.

2.1.19 Proposals utilizing the Firm PPA must provide a Contract Firm Capacity, which is the amount of MW of net dependable active power anticipated to be made available to Company from the Facility at the metering point subject to Company dispatch upon

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<sup>40</sup> If a Proposal is selected to the Final Award Group and a RDG 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.

Commercial Operations. Along with the Contract Firm Capacity, Proposers utilizing the Firm PPA should provide an anticipated maintenance schedule and level of reductions expected to the Contract Firm Capacity during maintenance. Proposals must also agree to meet the warranties and guarantees of performance outlined in Section 3.2(B) of the Firm PPA, including, but not limited to, the guaranteed equivalent availability factor of ninety percent (90%), the equivalent forced outage factor of four percent (4%), and no more than three (3) disconnection events per contract year. Additionally, for fast start generation resources no more than two (2) Start-up Failures per contract year. Further, any minimum loads or minimum up-times driven by the technical and operational capabilities of the Facility should also be provided in the Proposal.

- 2.1.20 Paired Project and Standalone Storage Project Proposals must provide their BESS Contract Capacity (MW/MWh), which is the anticipated maximum net instantaneous active power and maximum energy storage capability (MWh stored that represents a 100% State of Charge) for export to the POI upon Commercial Operations. The BESS Contract Capacity (MW) shall not be less than the Net Nameplate Capacity. Proposals must also specify their Allowed Losses (kWh/24-hour period) which will be utilized for purposes of establishing the limit in Section 2.13 of the ESPA.
- 2.1.21 Co-located Project Proposals must provide their BESS Contract Capacity (MW/MWh), which is the anticipated maximum net instantaneous active power and maximum energy storage capability (MWh stored that represents a 100% State of Charge) for export to the POI upon Commercial Operations. The BESS Contract Capacity (MW) of a proposed Co-located Project shall not be less than the MW thresholds established in Section 2.1.12 of this RFP. The BESS Contract Capacity (MWh) of a proposed Co-located Project must be sized to support the BESS Contract Capacity (MW) for at least four (4) continuous hours throughout the term of the IGP Contract and support a minimum of 365 full charging/discharging cycles per year (or 366 full charging/discharging cycles per leap year). Proposed Co-located Projects must also specify their Allowed Losses (kWh/24-hour period), which will be utilized for purposes of establishing the limit in Section 2.13 of the ESPA.
- 2.1.22 Paired Project, Co-located Project, and Standalone Storage Project Proposals must provide a single value Round Trip Efficiency (“RTE”), measured at the POI, that the Facility’s BESS component is required to maintain throughout the term of the RDG PPA or ESPA. This RTE value will be used in the RFP evaluation process and therefore Proposers will be held to this provided value as it will become the RTE Performance Metric in Section 2.11 of the RDG PPA or ESPA. Review the applicable IGP Contract for potential liquidated damages assessed against Seller if the BESS does not maintain the required RTE. The RTE is further specified in Appendix B, Section 2.2.4.
- 2.1.23 Proposals must include a GCOD that is no later than the GCOD deadline specified in Section 2.1.1 of this RFP. A GCOD included in any Proposal shall be the GCOD in any resulting IGP Contract if such Proposal is selected to the Final Award Group. No Proposer shall be permitted to request any change to the GCOD proposed in its Proposal. The Company stresses that, as stated in Section 4.3, Projects must fully demonstrate that there is a reasonable expectation the Project will reach the specified GCOD. Failure to

meet this Threshold Requirement will result in a Proposal not advancing through this RFP. For any Proposal involving an existing project with an existing PPA expiring prior to March 1, 2030, such Proposal (a) must specify a GCOD no later than the date the existing PPA term expires, and (b) must not be contingent on the negotiation and extension of the existing PPA.

- 2.1.24 Proposals interconnecting on O‘ahu’s subtransmission-level must provide a new ring bus switching station to interconnect subtransmission lines and the new generation resource. The switching station must connect to at least two subtransmission lines in a manner that ensures all of the generation resource’s contract capacity is available to the system at all times, even when one subtransmission line is taken offline (i.e., both lines must have the capacity to allow full output of the plant on either line).
- 2.1.25 Part II.D.2 of the Framework requires that the Company include a Contingency Plan section in an RFP that addresses a near-term reliability or statutory need, in the event that the RFP does not adequately address that need. Please see Appendix P for the IGP RFP Contingency Plan.

## **2.2 Technical and Operational Requirements**

Proposals must meet the Technical and Operational Requirements and attributes set forth in Attachment B of the respective IGP Contract. Note that Technical and Operational Requirements may differ between islands and by technology. The applicable IGP Contract sets forth the minimum requirements that all Proposals must satisfy to be eligible for consideration in this RFP. Additional Technical and Operational Requirements may be required based on the results of the IRS. The Technical and Operational Requirements set forth in Attachment B of the applicable IGP Contract are non-negotiable, provided, however, see Section 3.11.6 for potential deviations that may be permitted for existing facilities bidding into this RFP.

- 2.2.1 For Proposals with energy storage components, the functionality and characteristics of the storage must be maintained throughout the term of the IGP Contract since the Company will rely on the capacity the energy storage components provide. To be clear, Proposers may not propose any energy storage degradation for either capacity or efficiency in their Proposals.<sup>41</sup> Energy storage components must comply with the BESS Fire Safety Requirements described in Attachment B of the applicable IGP Contract.
- 2.2.2 Similarly, for Proposals with PV generation components, Proposers must design their PV generation system to not exceed the model RDG PPA Article 2’s degradation factor.
- 2.2.3 Note that selected Projects shall not sell energy to off-takers or third parties. The Company is not seeking proposals for microgrids and will not pay for availability, energy, capacity, or any other service if a project is being operated in a microgrid mode. However, in the event that a landowner requires a project have the capability to provide

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<sup>41</sup> Ensuring that there is no degradation in storage capacity or efficiency over the term of the IGP Contract can be accomplished in a number of ways, including overbuilding or pricing in replacement components. The particular manner in which this requirement is achieved is ultimately up to the Proposer to include in its Proposal.

such services to the landowner, the Company requires such proposals to clearly identify such capabilities and restrictions in the Proposal’s executive summary (Appendix B, Section 2.2.2). A Project with microgrid capability must: (1) operate in a grid-connected mode as its primary function, (2) convert from grid-connected mode to island mode only as permitted by the Company in the Company’s sole discretion, and (3) return from island mode to grid-connected mode as directed by the Company in the Company’s sole discretion.

## **2.3 Transmission System Information**

As specified in Section 2.1.11, projects must interconnect to the Company System at the transmission level (or subtransmission level for O‘ahu only). The Company will provide information on and discuss interconnection location(s) with potential Proposers in accordance with Section 1.6.

Proposers should perform their own evaluation of project locations, and the Company does not guarantee any project output or ability to connect based on information provided prior to the completion of an IRS. Reliance on the PIR Meeting and/or PIR is subject to the disclaimers and limitations of Section 1.6 and pursuant thereto, would be superseded by the IRS. For example, even if not noted in a PIR, an IRS may find that a Project causes an effective grounding issue, requiring additional grounding equipment to mitigate the issue.

- 2.3.1 The Company provides a pre-screened list of interconnection locations identified in Table 1 below. The pre-screened list is a result of the Company’s assessment to provide Proposers with more upfront information about the Company’s existing transmission lines and substations. The Company determined that these locations will likely require less upgrades to accommodate new resource additions as compared to other non-listed locations – with the goal of interconnecting projects as soon as possible. The line and substation locations were selected to this list based on results from Stage 3 RFP evaluation studies, as well as a review of the feasibility for interconnection. Proposers may request a high-level map identifying the pre-screened lines and substations. Requests shall be directed to the RFP Email Address in Section 1.7 after the execution of the NDA.

On O‘ahu, the Company notes a strong preference for proposed Projects to interconnect to the transmission system (138 kV), as well as a preference for such interconnection to be located at CEIP, Hoohana, Kahe, or Koolau substations due to previous studies results indicating the ability to export power from these substations. There are two (2) 46 kV lines that are provided as pre-screened locations, which are all in the Windward side of the island and downstream of the Koolau Substation. These 46 kV lines were identified as potential locations for interconnection in the Company’s Renewable Energy Zone study.<sup>42</sup> Notwithstanding the Company’s disclosure of these potential locations and its

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<sup>42</sup> See Hawaiian Electric Companies’ Grid Needs Assessment Methodology Review Point, Book 2 of 2, Exhibit 2 (Dkt. No. 2018-0165), filed November 5, 2021.

preference noted above, a Proposer remains solely responsible for securing the necessary access and use rights and site control for such interconnection at any of these locations.

On Hawai‘i Island, the Company notes a locational benefit for proposed Projects to be sited on the east side of the island to provide a more geographically balanced (east and west) resource portfolio, adequate voltage supporting resource in the east side of the island, and avoid power transfer limits of the existing transmission system; for these reasons the RFP is requesting at least 20 MW for 6 hours<sup>43</sup> be sited in East Hawai‘i Island . There is also a strong preference for proposed Projects to be sited on the south side of the island to address a future need for generation and voltage support (considering the island’s load growth) upon the retirement of the Apollo Wind farm.

**Table 1  
Pre-Screened List of Interconnection Locations**

<b>Island</b>	<b>Type</b>	<b>Name</b>	<b>Voltage (kV)</b>	<b>BAAH Gen terminations available (within existing substation footprint)<sup>44</sup></b>	<b>Stage 3 Injection Capacity<sup>45</sup> (MW)</b>	<b>Notes</b>
Hawai‘i	Sub	Kanoelehua	69	1	30	Prioritized REZ Zone 1. East Hawai‘i Island
Hawai‘i	Sub	Poopoomino	69	3	30	West Hawai‘i Island
Hawai‘i	Sub	Kamaoa	69	0	n/a	Prioritized REZ Zone 5. South Hawai‘i Island
Hawai‘i	Line	L6100 Kaumana-Kanoelehua	69	n/a	30	Prioritized REZ Zone 1. East Hawai‘i Island
Hawai‘i	Line	L6400 Puna-Kanoelehua	69	n/a	30	Prioritized REZ Zone 1. East Hawai‘i Island

<sup>43</sup> East Hawai‘i Island generation requirement can be met by a combination of resources and will be evaluated during the Detailed Evaluation set forth in Section 4.7 below. The Company seeks to attain resources that have the equivalent of at least 20 MW, which can be sustained for at least 6 hours. The East Hawaii Island locations are specified in Section 2.3, Table 1.

<sup>44</sup> Breaker-and-a-half (“BAAH”) positions available with the addition of substation equipment, provisions available within the current substation footprint. Locations showing 0 denote no positions available and require an expansion of the substation. Column is only applicable to substation interconnections (i.e., line interconnections denoted with “n/a” are not applicable).

<sup>45</sup> While Company has endeavored to provide more information of potential injection capacities from studies performed prior to the Stage 3 RFP, the Proposer must still complete its own due diligence. Locations showing “n/a” were not studied in the Stage 3 RFP analysis. An injection capacity analysis was not performed for the IGP RFP due to the on-going Stage 3 procurement, and the ability to provide results tailored to each project in the PIR. Available capacities are being provided with the intent to convey the relative availability and only reflects the Company’s current understanding. Interconnection of proposed Project capacities will be confirmed in the PIR.

<b>Island</b>	<b>Type</b>	<b>Name</b>	<b>Voltage (kV)</b>	<b>BAAH Gen terminations available (within existing substation footprint)<sup>44</sup></b>	<b>Stage 3 Injection Capacity<sup>45</sup> (MW)</b>	<b>Notes</b>
Hawai'i	Line	L6700 Keahole-Kahaluu	69	n/a	30	REZ Zone 2. West Hawai'i Island
Hawai'i	Line	L6800 Keamuku-Keahole	69	n/a	30	Partially in REZ Zone 2. West Hawai'i Island
Hawai'i	Line	L7100 Anaehoomalu-Poopoomino	69	n/a	30	REZ Zone 2. West Hawai'i Island
Hawai'i	Line	L7300 Waimea-Ouli	69	n/a	30	REZ Zone 4. North Hawai'i Island
Hawai'i	Line	L7400 Pepekeo-Wailuku	69	n/a	17.9	Prioritized REZ Zone 1. East Hawai'i Island
Hawai'i	Line	L7500 Keahole-Kailua	69	n/a	30	REZ Zone 2. West Hawai'i Island.
Hawai'i	Line	L8400 Pepekeo-Puueo	69	n/a	25	Prioritized REZ Zone 1. East Hawai'i Island
Hawai'i	Line	L8200 Mauna Lani-Anaehoomalu	69	n/a	30	REZ Zone 4. North Hawai'i Island.
Hawai'i	Line	L8500 Kaumana-Keamuku	69	n/a	30	Cross island transmission line
Hawai'i	Line	L8600 Kealia-Kahaluu	69	n/a	9.5	REZ Zone 2. West Hawai'i Island.
Hawai'i	Line	L9100 Keahole-Poopoomino	69	n/a	30	REZ Zone 2. West Hawai'i Island.
Hawai'i	Line	L9200 Wailuku-Kaumana	69	n/a	17.9	Prioritized REZ Zone 1. East Hawai'i Island.
Hawai'i	Line	L9300 Keahole-Kailua	69	n/a	30	REZ Zone 2. West Hawai'i Island.
Hawai'i	Line	L9500 Kahaluu-Kailua	69	n/a	30	REZ Zone 2. West Hawai'i Island.
O'ahu	Sub	AES	138	1	90	REZ Zone 3. West O'ahu.
O'ahu	Sub	Ewa Nui	138	2	284	Prioritized REZ Zone 2.

Island	Type	Name	Voltage (kV)	BAAH Gen terminations available (within existing substation footprint) <sup>44</sup>	Stage 3 Injection Capacity <sup>45</sup> (MW)	Notes
O'ahu	Sub	Kahe	138	3	426	REZ Zone 3. West O'ahu.
O'ahu	Sub	Hoohana	138	1	90	Prioritized REZ Zone 2. Central Oahu.
O'ahu	Sub	CEIP	138	1	142	REZ Zone 3. West O'ahu.
O'ahu	Sub	Koolau	138	1	142	Prioritized REZ Zone 6. East O'ahu.
O'ahu	Line	Waiau-Ewa Nui 1	138	n/a	n/a	Partially in Prioritized REZ Zone 2. Waipahu.
O'ahu	Line	Waiau-Ewa Nui 2	138	n/a	n/a	Partially in Prioritized REZ Zone 2. Waipahu.
O'ahu	Line	Waiau-Koolau 1	138	n/a	n/a	Koolau Ridge.
O'ahu	Line	Waiau-Koolau 2	138	n/a	n/a	Koolau Ridge.
O'ahu	Line	Koolau-Pukele 1	138	n/a	n/a	Partially in Prioritized REZ Zone 6.
O'ahu	Line	Koolau-Pukele 2	138	n/a	n/a	Partially in Prioritized REZ Zone 6.
O'ahu	Line	Koolau-Aikahi	46	n/a	15	Partially in Prioritized REZ Zone 6. East O'ahu.
O'ahu	Line	Koolau-Kailua	46	n/a	11	Partially in Prioritized REZ Zone 6. East O'ahu.

2.3.2 The Company reiterates that it provides the pre-screened 138 kV and 46 kV interconnection list for O'ahu and pre-screened 69 kV interconnection list for Hawai'i Island to streamline the process for prospective Proposers, as more upfront information is known and provided as locations were based on a preliminary feasibility assessment. Pre-screened lines identified for interconnection are known to have available MW capacity to allow project interconnections. In contrast, lines not included on the pre-screened list have a high likelihood of requiring reconductoring and/or the addition of new transmission lines to the Proposer's switching station, and/or rebuild or expansion of

existing substations. New transmission lines require new terminations at other transmission substations, which may also trigger rebuild, reconfiguration, and/or expansion to accommodate the new terminations.

- 2.3.3 **Oahu Existing 138 kV lines running in parallel.** Proposers shall provide a new BAAH switching station to interconnect both transmission lines running in parallel and the new generating resource.

138 kV lines meeting this requirement are:

- 1) Ewa Nui 1 & 2, between Ewa Nui substation and Waiau substation;
- 2) Waiau-Koolau 1 & 2, between Waiau substation and Koolau substation; and
- 3) Koolau-Pukele 1 & 2, between Koolau substation and Pukele substation.

Proposers must include the costs for use of the land and site preparation for a new switching station, as specified in Appendix H. The evaluation of these Projects is specified in Section 4.4.

- 2.3.4 Notwithstanding the aforementioned intent behind providing the pre-screened interconnection location list, a detailed IRS, when performed, may reveal other adverse system impacts that may further limit a Project's contract capacity or require interconnection upgrades.

## 2.4 Interconnection to the Company System

- 2.4.1 The Proposer must provide information pertaining to the design, development, and construction of the Interconnection Facilities. Interconnection Facilities include both the SOIF and the COIF.

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

2.4.1.2 Proposals must include COIF cost estimates in a form substantively similar to the template provided as Attachment 1 to Appendix H. This will facilitate the Company's evaluation of whether the Proposal included sufficient COIF costs in its Proposal.

2.4.1.2.1 To assist Proposers in developing costs of potential projects, the Company offers interconnection facilities cost and schedule information in Appendix H. The information provided in Appendix H can be used to approximate the cost for COIF, including substation, telecommunications, security, transmission and distribution lines, and project management. Examples of how to apply the per-unit costs provided in Appendix H are provided in Attachment 2 to Appendix H.

2.4.1.2.2 The Company notes that Appendix H cost information is composed of estimates only and should not be viewed as a commitment to, confirmation of, or cap on, such costs,

which could change significantly based on numerous factors including but not limited to Project equipment, Project location, interconnection route, other specifics of any Project and outside extenuating factors including but not limited to, inflation, supply chain cost increases and equipment availability. Further, Appendix H is not intended to be an exhaustive list of costs that may be applicable to interconnection of any particular Project. Other costs may be identified by the Company or the subsequent IRS performed for the Project.

2.4.1.3 In addition to the Technical and Operational Requirements and findings of the IRS, the design of the COIF, including power rating, POI with the Company's System, and scheme of interconnection, must meet Company's latest standards.

2.4.1.4 To facilitate Proposers receiving additional information on the Company's required specifications and procedures early in the RFP process, the Company will offer its Engineer, Procure, Construct Specifications for Hawaiian Electric Power Lines and Substations ("EPC Specifications")<sup>46</sup> to Proposers who request this via the communication method identified in Section 1.7 and upon the execution of an NDA (if not previously executed) and the execution of a separate Confidentiality, Waiver, and Hold Harmless Agreement with the Company provided as Appendix E, Attachment 1 ("HHA"). These EPC Specifications are intended to illustrate the scope of work typically required to administer and perform the design and construction of a Hawaiian Electric substation and power line.

The most updated and applicable Company standards will also be provided later to Projects that are selected to the Final Award Group and continue through PPA negotiations. At that time, if the EPC Specifications have since been updated, the Company will also make an updated version available upon execution of a new HHA to include such updated EPC Specifications.

2.4.1.5 The Company will also make available PIR Meetings to discuss a prospective Project's interconnection plan. Completing a PIR Meeting is mandatory for all Project proposals submitted for this RFP. See Section 1.6.

2.4.1.6 Information and documents related to the interconnection process may also be found at: <https://www.hawaiianelectric.com/clean-energy-hawaii/selling-power-to-the-utility/competitive-bidding-for-system-resources>. This site provides a detailed overview of the full, three-part interconnection process and reference documents. It includes description of each step in the process, lists of key deliverables, and helpful resources and examples. It also includes a listing of technical documents that may be referenced elsewhere in this RFP.

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<sup>46</sup> The Company's EPC Specifications are currently being updated, but the Company will provide these in draft form. The draft is currently being reviewed to ensure consistency between all documents, but the drafts should provide useful guidance to assist with the Proposal development. The Company will not be responsible for updates made to the EPC Specifications after transmittal to a Proposer, even if such update results in the need for a Proposer to make necessary revisions to its designs and/or plans.

- 2.4.1.7 Past PPAs executed with the Company are filed with the PUC and are publicly available on the PUC’s Case and Document Management System website. Attachment G and Matrix G-1 of recently filed PPAs contain summarized total estimated interconnection cost information of the COIF and the identification of substation responsibilities. In addition, on March 31, 2022, the Company’s Key Performance Metrics Interconnection Experience website went live. The website contains a list of projects and their estimated and actual interconnection costs for the portions of interconnection built by the Company. These resources may also aid Proposers in estimating the costs of their Interconnection Facilities. However, the Company notes that each Project and POI is unique and it is the Proposer’s responsibility to ensure it conducts proper due diligence to determine the proper interconnection requirements for its Project. Proposers should therefore not assume that an interconnection configuration and associated interconnection costs for a prior project is suitable and appropriate for its proposed Project.
- 2.4.1.8 Interconnection Facilities must be designed such that they meet the applicable single-line diagram in Appendix H. Typical substation layouts and COIF Estimating Guidelines can be provided to assist with Proposal estimations and familiarize Proposers with the Company’s engineering expectations for the Proposer’s interconnection facilities. The layouts and design assumptions may not reflect the exact requirements of a Proposer’s Project but should provide useful guidance to assist with their Proposal development.
- 2.4.1.8.1 Transmission and subtransmission level interconnection single-line drawings and notes for O‘ahu are provided in Appendix H as Attachment T2 and S1, respectively. Transmission level interconnection single-line drawings and notes for Hawai‘i Island are provided in Appendix H as Attachment T1.
- 2.4.1.8.2 The Company will also make available substation layouts for each pre-screened substation and its COIF Estimating Guidelines. Upon the execution of an NDA provided as Appendix E, Proposers may submit a request via the communication method identified in Section 1.7 for the substation layouts (referenced in Appendix H) and the COIF Estimating Guidelines.
- 2.4.2 Tariff Rule No. 19 establishes provisions for Interconnection and Transmission Upgrades and can be found at <https://www.hawaiianelectric.com/billing-and-payment/rates-and-regulations>. 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. As stated in the tariff, in the event there is any conflict between the tariff and this RFP, the provisions of this RFP shall prevail. Proposers shall be required to build the COIF, including the switching station and line work, except for any work in the Company’s existing energized facilities and the final tap as described in Appendix H, or work deemed necessary to be performed by the Company during the Project’s Facility Study. Construction of COIF by the Proposer must 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. The Company’s specific construction standards and procedures will be provided upon request. (See Section 2.4.1.4.)

- 2.4.3 The Proposer shall be responsible for all costs required to interconnect a Project to the Company's System, including all SOIF and COIF, regardless of who is responsible for building such facilities. Unless otherwise explicitly stated in this RFP, a Proposer must assume that it is responsible for all interconnection costs and should not assume that any portion of such interconnection costs is for a Company System upgrade allocable to the Company.
- 2.4.4 Proposers are required to include in their pricing Proposal all costs for interconnection and equipment expected to be required between their Facility and their proposed GCP. Appendix H includes information related to COIF and costs that may be helpful to Proposers. Selected Proposers shall be responsible for the actual final costs of all interconnection costs for its Project including SOIF and COIF (see Appendix H), 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.
- 2.4.5 Proposers are required to account for all costs for service connection for Station Service power in their pricing proposal. All proposals that have an energy storage component that is grid chargeable must have a service connection for Station Service power. For paired projects, Station Service shall not receive power from the Point of Interconnection during grid charging of the BESS.
- 2.4.6 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 Section 5.1. Proposals selected to the Final Award Group may 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 or as identified through the Detailed Evaluation process, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed IGP Contract.
- 2.4.7 A Proposer, subject to the disclaimers and limitations specified in Section 1.6, shall use the information provided in the PIR and discussed in the PIR Meeting, along with unit pricing in Appendix H, to incorporate the interconnection and/or include any system upgrade costs in their Proposal. Proposers shall also use this information to assist in determining whether all upgrades identified can be completed within reasonable timelines to achieve Commercial Operations prior to the RFP's established GCOD deadline. Appendix H does not include an exhaustive list of estimates, and Proposers may need to develop their own estimates for work and materials that are not included in Appendix H. Notwithstanding the information obtained from the PIR, the PIR Meeting or Appendix H, Proposers are ultimately responsible for development of their pricing to incorporate Company System upgrades and may submit follow-up questions to the Company as necessary to develop cost estimates for a Proposal.

## **2.5 Potential Sites**

### **2.5.1 Company-Owned Sites**

Consistent with the Framework, the Company may make a Company-owned site available for consideration as a Project Site. Only Company-owned sites specified in this Section 2.5.1 of the RFP shall be available for Proposers' consideration.<sup>47</sup>

No Company-owned site is being offered for this RFP. The Company does not currently have any sites available that would be appropriate, based on size and location, for use as a renewable energy site.<sup>48</sup>

### 2.5.2 Landowner Responses

In early 2023, the Company issued a Land Request for Information ("Land RFI") that extended an open informal invitation to landowners interested in making their land available for siting future utility-scale renewable energy projects. The information gathered through this Land RFI will be made available upon request, subject to the execution of the NDA, by following the instructions at <http://hawaiianelectric.com/landrfi>.

The Land RFI information is provided for prospective Proposers' consideration only. Project proposals submitted in response to this RFP are not required to be sited at a location identified through the Land RFI. Hawaiian Electric also make no representations as to the suitability of the listed sites for renewable energy production with regard to resource quality, interconnection constraints, zoning and permitting issues, community support, or other issues. Proposers should perform their own evaluation of these factors in determining whether a site is suitable for renewable energy project development. After further evaluation, Proposers that are interested in any of the identified sites are invited to engage in further discussions directly with landowners to negotiate any required rights to use the property. If a Proposer seeks interconnection information at a specific proposed Site, the Company will provide information on and discuss interconnection location(s) with potential Proposers in accordance with Section 1.6.

### 2.5.3 Federal Site

On O'ahu, the Department of the Navy ("Navy") has expressed a willingness to make available certain sites at the Marine Corps Base Hawai'i ("MCBH") to support: (1) a 30 MW firm (minimum) renewable energy project; and (2) a PV (with storage) facility at a pre-determined project site (the "MCBH Sites"). Such availability is subject to certain conditions imposed by the Navy, including providing and meeting identified resiliency requirements. In addition to meeting such conditions, Proposers proposing to use the MCBH Sites shall be required to execute a lease or license for the MCBH Sites with the

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<sup>47</sup> The Framework provides that the Hawaiian Electric Development team may use a Company-owned site, provided that the Company offers such Company-owned site to other prospective Proposers. If the Company seeks to not offer such Company-owned site, the Company shall request approval to not offer such Company-owned site no later than the later of sixty (60) days after the appointment of an Independent Observer or the filing of the draft RFP..

<sup>48</sup> Consistent with the requirement in Part III.A.2.d of the Framework, the Company filed a list of Company-owned sites, including a summary of reasons for not offering each site in this RFP with the Commission on July 1, 2024, and subsequently included as Exhibit 11 to the draft IGP RFP filed in Docket No. 2024-0258 on August 26, 2024.

landowner coterminous with the term of the applicable IGP Contract. Proposers are reminded that any proposed Project utilizing the MCBH Sites must still meet all requirements in this RFP and the applicable IGP Contract regardless of any agreements with any landowner. Hawaiian Electric makes no representations as to the suitability of this site for renewable energy production with regard to resource quality, zoning and permitting issues, community support, or other issues. Proposers should perform their own evaluation of these factors and other Navy-imposed conditions in determining whether the MCBH Sites are suitable for their renewable energy project development. If interested in the MCBH Sites, additional information regarding the MCBH Sites is included in Appendix F.

### **Chapter 3: Instructions to Proposers**

#### **3.1 Schedule for the Proposal Process**

Table 2 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 e-mail to all Proposers and posted on the RFP website.

**Table 2  
Proposed RFP Schedule**

<b>Milestone</b>	<b>Schedule Dates</b>
(1) Community Meeting	March 11, 2024
(2) Developer Meeting	March 20, 2024
(3) Draft RFP Filing Date	April 30, 2024
(4) Comments for 4/30/2024 Draft RFP Due Date	May 30, 2024
(5) Docket No. 2024-0258 Opened	August 19, 2024
(6) Docket No. 2024-0258 Draft RFP Filing Date	August 26, 2024
(7) Comments for 8/26/2024 Draft RFP Due Date	September 16, 2024
(8) Draft RFP Filing in response to CA-IR-5	March 12, 2025
(9) Company’s complete response to Order No. 41594	April 3, 2025
(10) Parties SOPs	April 17, 2025
(11) Company’s Reply SOP	May 2, 2025
(12) Order to Issue Final RFP	May 30, 2025 <sup>49</sup>
(13) Issue RFP	June 6, 2025
(14) Technical Conference	To Be Determined
(15) PIR Request Due Date	[5 weeks after RFP issuance]
(16) PIR Meetings Held	[13 - 16 weeks after RFP issuance] September 2 – September 19, 2025
(17) Hawaiian Electric and Affiliate Proposal Due Date	[24 weeks – 1 day after RFP issuance] November 20, 2025 at 2:00 pm HST
(18) IPP Proposal Due Date	[24 weeks after RFP issuance] November 21, 2025 at 2:00 pm HST
(19) Selection of Priority List	March 19, 2026
(20) Hawaiian Electric and Affiliate BAFOs Due	March 26, 2026
(21) IPP BAFOs Due	March 27, 2026
(22) Selection of Final Award Group	July 10, 2026
(23) IRS and Contract Negotiations Begin	July 24, 2026

### **3.2 Company RFP Website and Electronic Procurement Platform**

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

[www.hawaiianelectric.com/IGPRFP](http://www.hawaiianelectric.com/IGPRFP)

The Company will provide general notices, updates, schedules, and other information on the RFP website throughout the procurement process. Proposers should check the website frequently to stay abreast of any new developments.

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<sup>49</sup> This date and all subsequent dates in the proposed schedule are dependent on any further guidance to be set by the PUC.

3.2.2 Wood Mackenzie Supply Chain Intelligence Platform<sup>50</sup> is the Electronic Procurement Platform that the Company has licensed and will utilize for the receipt of Proposals in this RFP. Proposers must submit their Proposals through the Electronic Procurement Platform. See Appendix B and Appendix D for more details.

### **3.3 Information Exchange**

A virtual Community Meeting for this RFP was held on March 11, 2024. Meeting materials, including a draft version of the RFP, were made available on [www.hawaiianelectric.com/competitivebidding](http://www.hawaiianelectric.com/competitivebidding). A Developer Meeting was virtually held on March 20, 2024. The Commission also hosted a series of five public meetings between October 2023 and February 2024 regarding equity issues related to the RFP process, pursuant to Order No. 40290 in Docket No. 2022-0250. Community feedback in response to the posted draft RFP was accepted during the meetings, via e-mail and through the Company's online feedback survey. Comments will continue to be accepted through the Company's RFP Email Address and through Docket No. 2024-0258 until final issuance. Comments received by Company will be filed in the docketed proceeding, with all contact information redacted.

A virtual Technical Status Conference will also be held at a date to be determined. (see Section 3.1 Table 2 above).

Prospective Proposers may submit written questions regarding the RFP and their potential Proposal(s) to the RFP Email Address set forth in Section 1.7. Proposers should copy the Independent Observer when submitting questions to the RFP Email Address. In addition to the Independent Observer, who should be included on all correspondence to the Company, Proposers should also include the Independent Engineer on any questions to the RFP Email Address of a technical nature. The Company will endeavor to address all questions submitted to the RFP Email Address, but does not guarantee a response. Questions related to the Company's system must include information about the proposed Project as responses may require context to specific situations. The Company response will depend on the clarity and accuracy of the information provided by a prospective Proposer, along with the level of specificity and detail offered for the proposed Project. Questions and responses that may be helpful to other prospective Proposers will be shared on a Q&A section on the RFP website. Prospective Proposers should review the RFP website's Q&A section prior to submission of a Proposal. Duplicate questions will not be answered.

As previously discussed, Proposers must also request a PIR and participate in an individual PIR Meeting, as described in Section 1.6 of this RFP.

### **3.4 Preparation of Proposals**

3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments, links, and updates) and for thoroughly investigating and informing itself

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<sup>50</sup> Referred to as PowerAdvocate in prior RFPs, PowerAdvocate became Wood Mackenzie Supply Chain. Any reference to PowerAdvocate in this RFP is referring to the Wood Mackenzie Supply Chain Intelligence Platform.

with respect to all matters pertinent to this RFP, the Proposer's Proposal, and the Proposer's anticipated performance under the applicable IGP Contract. It is the Proposer's responsibility to ensure it understands all requirements of the RFP, to seek clarification if the RFP's requirements or the Company's request is not clear, and to ask for any confirmation of receipt of submission of information. As noted in Section 3.6.5, a Proposer is solely responsible for all errors in its Proposal(s). The Company has no obligation to inform a Proposer of any error in a Proposal, and the Company will not accept any explanation by a Proposer that it was incumbent on the Company to catch any error in a Proposal.

- 3.4.2 Proposers shall rely only on official information provided in writing by the Company, as described in this RFP, when preparing a Proposal. The Company will rely only on the information included in the Proposal, 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. Proposals must clearly state all capabilities, functionality and characteristics of the Project, must clearly detail plans to be performed, must explain applicability of information, and must provide all referenced material if it is to be considered during the Proposal evaluation. Referencing previous RFP submissions or projects for support will not be considered. Proposers should not assume that any previous RFP decisions or preferences will also apply 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) information conference participation; (3) third-party consultant consultation; (4) investigation and research relating to a Proposal and this RFP; and (5) costs associated with the PIR and PIR Meeting process described in Section 1.6. 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 entity name and business address of the Proposer and must be signed by an authorized officer or agent<sup>51</sup> of the Proposer.

### **3.5 Organization of the Proposal**

- 3.5.1 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.
- 3.5.2 The Proposer must contact the Company to request any deviation from the proposal format in Appendix B if the Proposer determines that such format will not allow the pricing, capabilities, functionality or characteristics of the Project to be captured in the Proposal. The Company will consider a request for deviation from the proposal format,

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<sup>51</sup> 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.

provided that the Proposer's request is made with sufficient time for the Company to review and respond to the request.

### **3.6 Proposal Submission Requirements**

- 3.6.1 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.
- 3.6.2 Detailed requirements regarding the form, submission, organization and information for the Proposal are set forth in this Chapter 3 and Appendix B to this RFP.
- 3.6.3 Proposals must not rely on any information that is not contained within the Proposal itself in demonstrating compliance for any requirement in this RFP.
- 3.6.4 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 must provide the Company with its counsel's written certification in the form attached as Attachment 2 to Appendix E certifying in relevant part, that irrespective of any Proposer's direction, waiver, or request to the contrary, the attorney will not share a Proposer's confidential information associated with such Proposer with others, including, but not limited to, such information such as a Proposer's or the Company's negotiating positions. If 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 contract negotiations that he or she has not shared a Proposer's confidential information or the Company's confidential information associated with such Proposer with others, including but not limited to, such information as a Proposer's or the Company's negotiating positions.

- 3.6.5 All Proposals must be submitted via the Electronic Procurement Platform by 2:00 pm HST on the respective Proposal Due Date shown in the RFP Schedule in Section 3.1, Table 2. The Company will not accept a hard copy of any Proposal.

It is the Proposer's sole responsibility to ensure that complete and accurate information has been timely submitted and is consistent with the requirements of this RFP. With this assurance, the Company shall be entitled to rely upon the completeness and accuracy of every Proposal. Any errors identified by the Proposer or the Company after the Proposal Due Date has passed may jeopardize further consideration of the Proposal. If an error or errors are later identified, the Company, in consultation with the Independent Observer, may permit the error(s) to be corrected without further revision to the Proposal, or may

require the Proposer to adhere to terms of the Proposal as submitted without correction. Additionally, and in the Company's sole discretion, if such error(s) would materially affect the Priority List or Final Award Group, the 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 the 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 all Proposals were submitted by the respective Proposal Due Dates shown in Section 3.1, Table 2. The Electronic Procurement Platform automatically closes to further submissions after the IPP Proposal Due Date shown in Section 3.1, Table 2.

### **3.7 Proposal Fee**

- 3.7.1 IPP and Affiliate Proposers are required to tender a non-refundable Proposal Fee of \$10,000.00 for each Proposal submitted.
- 3.7.2 Proposers may submit up to three (3) variations of a Proposal, one of which is the base variation of the Proposal, under a single Proposal Fee.
  - 3.7.2.1 Only variations of GCOD,<sup>52</sup> Facility size, or configuration with/without storage (solar energy must include storage) can be offered as variations within a Proposal. Other changes can be proposed as separate Proposals, with all the supporting information required of a Proposal, and a separate Proposal Fee. 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 pertaining to "(Optional) Minor Proposal Variations".
- 3.7.3 The Proposal Fee must be in the form of a cashier's check from a U.S.-chartered bank made payable to "Hawaiian Electric Company, Inc." and must be delivered and received by the Company by 2:00 pm HST on the respective Proposal Due Date shown in the RFP Schedule in Section 3.1, Table 2. The cashier's check should include a reference to the Proposal(s) for which the Proposal Fee is being provided. In the Proposal Response Package (instructions in Appendix B, Section 1.3.1), a Proposer must identify the delivery method for its Proposal Fee. Proposers are strongly encouraged to utilize a delivery service method that provides proof of delivery to validate delivery date and time of the Proposal Fee.

If the Proposal Fee is delivered by U.S. Postal Service (with registered, certified, receipt verification), the Proposer shall send the Proposal Fee to the following address:

Hawaiian Electric Company, Inc.  
Attn: Renewable Acquisition – RFP  
Attn: IGP RFP Energy Contract Manager  
Mail Code AL12-IU

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<sup>52</sup> All GCODs must comply with the GCOD Eligibility Requirement in Section 4.2.

PO Box 2750  
Honolulu, HI 96840

If the Proposal Fee is delivered by other courier services, the Proposer shall send the Proposal Fee to the following address:

Hawaiian Electric Company, Inc.  
Ward Receiving  
Attn: Renewable Acquisition - RFP  
Attn: IGP RFP Energy Contract Manager  
Mail Code AL12-IU  
799 S. King St.  
Honolulu, HI 96813

In-person delivery of Proposal Fees will not be permitted.

### **3.8 Procedures for any Hawaiian Electric Proposal or Affiliate Proposal**

- 3.8.1 The Company or its Affiliates may submit a Proposal in response to this RFP subject to the requirements of this RFP per the Framework (“Hawaiian Electric Proposal”). Accordingly, the Company must follow certain requirements and procedures designed to safeguard against and address concerns associated with: (1) preferential treatment of the Hawaiian Electric Proposal or members, agents, or consultants of the Company formulating the Hawaiian Electric Development Team; and (2) preferential access to proprietary information by the Hawaiian Electric Development 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 with this RFP and attached as Appendix C. The Code of Conduct will apply to this RFP, regardless of whether the Company submits a Hawaiian Electric Proposal.

The Framework also allows Affiliates of the Company to submit Proposals<sup>53</sup> to RFPs issued by the Company. All Hawaiian Electric 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 IPP Proposals and must be submitted electronically through the Electronic Procurement Platform by the Hawaiian Electric and Affiliate Proposal Due Date in RFP Section 3.1, Table 2.

- 3.8.2 The Company will require that the Hawaiian Electric Proposal(s) and Affiliate Proposals be submitted electronically through the Electronic Procurement Platform. Hawaiian Electric and Affiliate Proposals will be due a minimum of one (1) day before other Proposals are due. A Hawaiian Electric and Affiliate Proposal will be uploaded into the Electronic Procurement Platform in the same manner Proposals from other Proposers are

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<sup>53</sup> A Proposal will also be treated as an Affiliate Proposal if the Affiliate is a partner for the Proposal.

uploaded. The Energy Contract Manager, in consultation with the Independent Observer, will confirm that the Hawaiian Electric and Affiliate Proposals are timestamped by the Hawaiian Electric and Affiliate Proposal Due Date found in the RFP Schedule in Section 3.1, Table 2 of the RFP.

- 3.8.3 Detailed requirements for a Hawaiian Electric Proposal can be found in Appendix G. These requirements are intended to provide a level playing field between Hawaiian Electric Proposals and third-party Proposals. Except where specifically noted, a Hawaiian Electric Proposal must adhere to the same price and non-price Proposal requirements as required of all Proposers, as well as certain IGP Contract requirements, such as milestones and liquidated damages, as described in Appendix G. The non-negotiability of the Technical and Operational Requirements shall apply to any Hawaiian Electric Proposal to the same extent it would for any other Proposal. Notwithstanding the fact that it will not be required to enter into a IGP Contract with the Company, a Hawaiian Electric Proposal will be required to note its exceptions, if any, to the IGP Contract in the same manner required of other Proposers, and will be held to such modified parameters if selected. In addition to its Proposal, the Hawaiian Electric Development Team will be required to submit the Hawaiian Electric Development Team Certification Form provided as Attachment 1 of Appendix G, 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 Hawaiian Electric Development Team over other Proposers responding to this RFP, as well as adherence to IGP Contract terms and milestones required of all Proposers and the Hawaiian Electric Proposal's proposed cost protection measures.

The cost recovery methods between a regulated utility 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 Hawaiian Electric Proposal are its total project capital cost and any associated annual O&M costs. During the RFP's initial pricing evaluation step, these capital costs<sup>54</sup> and O&M costs will be used in a revenue requirement calculation to determine the estimated revenues needed from customers which would allow the Company to recover the total cost of the project. The Hawaiian Electric Proposal revenue requirements are then used to determine a levelized energy price ("LEP" in \$/MWh), which will then be used for comparison to IPP and any Affiliate Proposals (see Section 4.4.1).

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

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<sup>54</sup> Hawaiian Electric 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, interconnection, overhead, and Allowance for Funds Used During Construction.

If the Hawaiian Electric Proposal is not included in any shared savings mechanism for this RFP pre-approved by the PUC, the Hawaiian Electric Proposal 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 Hawaiian Electric Proposal and the actual cost to construct the Project. If the Hawaiian Electric 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 Hawaiian Electric Proposal.

### **3.9 Proposal Limitations**

In submitting a Proposal, Proposers expressly acknowledge and agree that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award any 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 to the Final Award Group, 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 risk elimination of the Proposal from further consideration after 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 received by the respective Proposal Due Date. Other than as provided in this RFP, no Proposer will be allowed to alter a 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 any NDA executed by the Company and a Proposer.

Proposers understand and agree that if a Proposal is selected by the Company to the Final Award Group, such selection shall in no way constitute the Company's confirmation that a Proposer's Project will meet the requirements under this RFP (e.g., that the Project's proposed interconnection is feasible and will meet the Company's requirements). The Proposer is ultimately responsible for ensuring that its Project meets the technical requirements specified in this RFP, and if the Company and Seller execute an IGP Contract, the requirements specified in the IGP Contract.

### 3.10 Proposal Compliance and Bases for Disqualification

A Proposal may be removed from consideration in this RFP for the following reasons including, but not limited to:

- Any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP as described in Section 1.5.10.
- Any illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal Review process.
- The Proposer does not comply with the terms required in Section 3.11.8.
- 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 unacceptable through the fatal flaws analysis described in Section 4.4.2.1.
- The Proposer does not respond to a Company request for additional information to clarify the contents of its Proposal within the timeframe specified by the Company.
- The Proposal contains misrepresentations or errors and wholesale omissions of required information.

### 3.11 IGP Contracts

The IGP Contract for any PV Paired Project, wind Generation Project, or wind Paired Project selected under this RFP will be in the form of the Company's RDG PPA attached as Appendix J.

The IGP Contract for any Firm Project selected under this RFP will be in the form of the Company's Firm PPA attached as Appendix L. The IGP Contract for any Standalone Storage Project selected under this RFP will be in the form of the Company's ESPA, attached as Appendix M.

Any Co-located Project selected under this RFP will be governed by a combination of the IGP Contracts, and as a single contract. In any Proposal for a Co-located Project, a Proposer must submit (a) any proposed modification(s) to both the Firm PPA attached as Appendix L and ESPA attached as Appendix M; or (b) any proposed modification(s) to both the RDG PPA attached as Appendix J and ESPA attached as Appendix M. The generation component of a proposed Co-located Project must meet the requirements of

either the RDG PPA or the Firm PPA; and the energy storage component of a proposed Co-located Project must meet the requirements of the ESPA.

3.11.1 If selected, any Affiliate Proposers will be required to enter into the applicable IGP Contract with the Company.

3.11.2 If selected, a Hawaiian Electric Development Team will not be required to enter into a IGP Contract with the Company. However, the Hawaiian Electric Development Team will be held to the proposed modifications to the applicable IGP Contract, if any, it submits as part of the Hawaiian Electric Proposal in accordance with Section 3.8. Moreover, the Hawaiian Electric Proposal must adhere to the same performance metrics and milestones set forth in the applicable IGP Contract to the same extent as all Proposers, as attested to in the Hawaiian Electric Proposal's Appendix G, Attachment 1, Hawaiian Electric Development Team Certification submittal. If liquidated damages are assessed, such liquidated damages will be paid from shareholder funds and returned to customers through the Purchased Power Adjustment Clause or other appropriate rate adjustment mechanisms.

To retain the benefits of operational flexibility for a Company-owned facility, the Hawaiian Electric Proposal will be permitted to adjust operational requirements and performance metrics with Commission approval. The process for adjustment would be similar to a negotiated amendment to a IGP Contract that requires Commission approval.

3.11.3 In general, under the RDG PPA and ESPA, payment to the Seller consists of a Lump Sum Payment for the availability of the Facility to deliver available capacity in response to Company dispatch. For Firm Projects only, under the Firm PPA, in addition to a Capacity Charge payment for the Facility's availability to deliver available capacity in response to Company dispatch, the Company will allow Proposers to also include an Energy Charge payment component (\$/MWh) to cover fuel costs and variable operations and maintenance costs that cannot be captured within the Capacity Charge payment. Costs not incorporated into and clearly stated in the Lump Sum Payment, Capacity Charge payment, or Energy Charge payment calculations shall not be paid by the Company and shall be borne by the Seller. In return for the payments, the Seller shall guarantee minimum performance and availability metrics to ensure that the Facility is maintained and available for energy, storage (if applicable) and dispatch, as well as provide an indication of the available energy in near real-time for the Company's dispatch. The Company will not pay for test energy generated by the Facility except under the limited circumstances specified in Attachment J of the applicable IGP Contract. Proposers are reminded that grid energy consumed prior to the Project achieving Commercial Operations is subject to Company energy charges and the applicable rate tariffs, and costs thereof will be solely borne by the Seller in accordance with the executed contract.

3.11.4 The Technical and Operational Requirements identified in the applicable IGP Contract and in Section 2.1 establish the minimum requirements a Proposal must satisfy to be eligible for consideration in this RFP. A proposed Facility's ability to meet these Technical and Operational Requirements is both a Threshold Requirement and a non-

price evaluation criterion under Sections 4.3 and 4.4.2, respectively. As such, these Technical and Operational Requirements are non-negotiable by any Proposer. As previously stated, if a Proposal utilizes technology type that is not already represented in any IGP Contract, the terms of the applicable IGP Contract will be modified to address the specific technology and/or component. Proposers must provide documentation to support any requests for contract modifications resulting from the differing technology type at the time of bid submission. For example, for firm generation facilities, recognizing some firm technologies operate significantly differently, necessary modifications required for particular technologies will be permitted if a Proposer provides technical specifications that support the need for such proposed modifications. Proposers may propose modifications to other sections of the IGP Contracts (see Section 3.11.7 below) but are encouraged to accept such terms as drafted in order to expedite the overall RFP process and potential negotiations of the IGP Contracts. As a component of their respective Proposals, all Proposers electing to propose modifications to the IGP Contracts, including the Hawaiian Electric Development Team, shall provide a Microsoft Word red-line version of the relevant IGP Contract identifying specific proposed modifications to the IGP Contract language that the Proposer is agreeable to, as well as a detailed explanation and supporting rationale for each modification.

3.11.4.1 With respect to the IGP Contract redline described in Section 3.11.4 above, general comments, drafting notes and footnotes such as “parties to discuss,” and reservation of rights to propose modifications at a later time, are unacceptable and will be considered non-responsive. Proposed modifications to any IGP Contract 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 electronic versions of the IGP Contracts available on the RFP website and through the Electronic Procurement Platform for the RFP. Any proposed modifications to any IGP Contract will be subject to negotiation between the Company and Proposer selected to the Final Award Group. No proposed modifications should be assumed to have been accepted either as a result of being selected to the Final Award Group or based on any previously executed power purchase agreement, and no adjustments to a Proposal (e.g., pricing or schedule) will be permitted based on any such misplaced assumption that any proposed modifications to the applicable IGP Contract (including, without limitation, proposed modifications to the performance metrics, Technical and Operational Requirements, or liquidated damages provisions) will be accepted. As stated above, the Company will not negotiate provisions simply marked by such general comments, drafting notes, and footnotes since general comments, drafting notes, and footnotes without accompanying specific proposed language modifications are unacceptable and non-responsive.

3.11.4.2 The Company has an interest in maintaining consistency for certain provisions of the IGP Contracts, such as the calculation of availability and payment terms. Therefore, for such provisions, the Company will endeavor to negotiate similar and consistent language across all IGP Contracts for the Final Award Group.

3.11.5 Proposals that do not include specific proposed modifications to the attached IGP Contracts will be deemed to have accepted the IGP Contract in its entirety.

3.11.6 As stated in Section 3.11.5 above, Proposers may propose modifications to sections of the IGP Contracts. However, certain sections specified below in the various IGP Contracts are non-negotiable.

3.11.6.1 For the RDG PPAs, Technical and Operational Requirements set forth in Attachment B to the RDG PPA are non-negotiable. Also, as identified in the Schedule of Defined Terms in the RDG PPAs that contain an energy storage component under “BESS Allocated Portion of the Lump Sum Payment”, the allocated portion of the Lump Sum Payment specified for energy storage for the Facility for determining liquidated damages is 50% and shall be a non-negotiable percentage in the RDG PPA. Further, as stated in Section 3.14.2 below, Proposers shall not propose an amount lower than that set forth in the RDG PPA for Development Period Security and Operating Period Security.

3.11.6.2 For the Firm PPA, Technical and Operational Requirements set forth in Attachment B to Firm PPA are non-negotiable, except as recognized in Section 3.11.4 above, and as stated in Section 3.14 below, Proposers shall not propose an amount lower than that set forth in the Firm PPA for Development Period Security and Operating Period Security.

3.11.6.3 For the ESPA, Technical and Operational Requirements set forth in Attachment B to ESPA are non-negotiable, and, as stated in Section 3.14.2 below, Proposers shall not propose an amount lower than that set forth in the ESPA for Development Period Security and Operating Period Security.

3.11.6.4 Additionally, for the RDG PPA, ESPA, and Firm PPA, the following sections are non-negotiable:

<b>RDG PPA</b>	<b>ESPA</b>	<b>Firm PPA</b>
Article 1 Parallel Operation	Article 1 Parallel Operation	Article 2.1(H) Parallel Operation
Article 3 Facility Owned and/or Operated by Seller	Article 3 Facility Owned and/or Operated by Seller	N/A
Article 4 Company-Owned Interconnection Facilities	Article 4 Company-Owned Interconnection Facilities	Article 3.1(C) Interconnection Facilities
Article 6 Forecasting	Article 6 Monitoring	N/A
Article 8 Company Dispatch	Article 8 Company Dispatch	Article 3.3(A)(1) Routine Dispatch
Article 9 Personnel and System Safety	Article 9 Personnel and System Safety	Article 4.1(A) Safety of Persons and/or Property
Article 11 Governmental Approvals, Land Rights and Compliance with Laws	Article 11 Governmental Approvals, Land Rights and Compliance with Laws	Article 3.2(A)(4) Seller’s Governmental Approvals and Land Rights; Article 3.2(E) Compliance with Laws;

<b>RDG PPA</b>	<b>ESPA</b>	<b>Firm PPA</b>
		Attachment G (Section 9 – Governmental Approvals for Any Company-Owned Interconnection Facilities Constructed by Seller or Company and Section 10 – Land Rights)
Article 19 Transfers, Assignments and Facility Debt	Article 19 Transfers, Assignments and Facility Debt	Article 20 Transfers, Assignments and Financing Debt
Article 20 Sale of Energy to Third Parties	Article 20 Sale of Energy to Third Parties	Article 22 Sale of Energy to Third Parties
Article 26 Equal Employment Opportunity	Article 26 Equal Employment Opportunity	Article 23 Equal Employment Opportunity
Article 28 Dispute Resolution	Article 28 Dispute Resolution	Article 17 Dispute Resolution
Attachment B (Section 1(b)(iii)(I) Resilience Requirements)	Attachment B (Section 1(b)(iii)(H) Resilience Requirements)	Attachment B (Section 1(b)(iii)(I) Resilience Requirements)
Attachment H Form of Bill of Sale and Assignment	Attachment H Form of Bill of Sale and Assignment	Attachment H Form of Bill of Sale and Assignment
Attachment V Summary of Maintenance and Inspection Performed in Prior Calendar Year	Attachment V Summary of Maintenance and Inspection Performed in Prior Calendar Year	Attachment V Summary of Maintenance and Inspection Performed

Notwithstanding the foregoing, the Company may, in its sole discretion, be amenable to deviating from certain Technical and Operational Requirements for existing facilities if requested by a Proposer with specific reasons and justification for such request. The Company emphasizes its preference that existing facilities comply with the Technical and Operational Requirements in this RFP, however, if (1) the IRS or any operational needs for such proposed Project do not require adherence to the specified Technical and Operational Requirements in the applicable Model IGP Contract; (2) such adherence is not, in Company’s sole discretion, necessary for the safe and efficient management of the System Grid; and (3) Proposer demonstrates to Company why its proposed Project should deviate from such requirements, the Company may agree to permit such deviation or other lesser deviation, in its sole discretion.

3.11.7 A Proposer with an existing Project and an existing PPA submitting a Proposal in response to this RFP must clearly state the following in its Proposal: (a) the Proposer's intent to terminate or declare its existing PPA null and void pursuant to the terms of such agreement; and (b) that its Proposal is not contingent on any other resolution to such existing agreement if such existing agreement will not expire, unless otherwise terminated or declared null and void, before the start of the term set forth in the Proposal. The Company's selection of an existing Project does not signify any agreement by the Company to a Proposer's intent regarding its existing PPA with the Company. Such treatment shall be subject to negotiation in conjunction with and concurrently with negotiations between the parties on the applicable IGP Contract. Unless otherwise agreed by the Company, in its sole discretion, resolution of the existing PPA shall be required as a condition to entering into any IGP Contract with a Proposer with an existing PPA with the Company.

3.11.8 Proposers shall be obligated to require all contractors at any tier for a proposed Project, including, but not limited to, the engineering, procurement, and construction contractor ("EPC Contractor"), to execute a project labor agreement, which shall be negotiated with the International Brotherhood of Electrical Workers, Local 1260 ("IBEW 1260"), the Bricklayers & Allied Craftworkers, Local Union 1, the Operating Engineers, Local Union 3, District Council 50 (Local Union 1791, Local Union 1889, Local Union 1926, and Local Union 1944), the Elevator Constructors, Local Union 126, the Heat & Frost Insulators & Allied Workers, Local Union 132, the United Union of Roofers, Waterproofers & Allied Workers, Local Union 221, the International Association of Sheet Metal, Air, Rail & Transportation Workers, Local Union 293, the Laborers International Union of North America, Local Union 368, the Iron Workers, Local Union 625, the International Brotherhood of Boilermakers, Local Union 627, the Operative Plasterers and Cement Masons, Local Union 630, the Plumbers and Fitters, Local Union 675, the Hawaii Teamsters & Allied Workers, Local Union 996, and the International Brotherhood of Electrical Workers, Local Union 1186 ("Covered Entities"). A model form of a project labor agreement is attached as Appendix Q ("Project Labor Agreement"). If selected, the applicable IGP Contract will require that a Proposer provide the Company with a redacted copy of the executed Facility EPC Contractor agreement and general contractor agreements, which shall each include a provision requiring the applicable contractors and their subcontractors to enter into a Project Labor Agreement with the Covered Entities.

Notwithstanding the foregoing, Proposers may reserve the right to: (1) use their own employees for construction work that is limited to such work not covered or included in the Master Agreement(s) of the Covered Entities or their affiliates, that they elect to complete with their own employees, and/or (2) contract with any contractor for work that is not covered or included in the Master Agreement(s) of the Covered Entities or their affiliates, or historically or customarily performed by any of the Covered Entities. For any selected Hawaiian Electric Proposal or Affiliate Proposal, the Company will require its engineering, procurement and construction and/or general contractor to enter into a Project Labor Agreement with the Covered Entities for construction that is not governed by the Company's collective bargaining agreement with IBEW 1260. Company may continue to use its own employees for construction that it elects to complete with its own

employees and/or contract with any contractor for construction work that is not covered or included in the Master Agreement(s) of the Covered Entities or their affiliates, or historically or customarily performed by IBEW 1260 or any of the Covered Entities.

### 3.12 Pricing Requirements

- 3.12.1 Proposers must submit pricing for each variation associated with each Proposal if variations as described in Section 3.7.2 are submitted. Proposers are responsible for understanding the terms of the applicable IGP Contract. Pricing cannot be specified as contingent upon any other factor (e.g., changes to federal tax policy, assuming that all applicable federal tax credits are received, assuming that the Company will accept any proposed change to the applicable IGP Contract, assuming changes to Company's credit rating).
- 3.12.2 Escalation in Lump Sum Payment or Capacity Charge rate over the term of the IGP Contract is prohibited.
- 3.12.3 Pricing information must only be identified within specified sections of the Proposal as instructed by this RFP's Appendix B (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.
- 3.12.4 The Proposer's Response Package must include the following prices for each Proposal (and variation):

For IPP or Affiliate proposals:

- [For PV+BESS, Wind, Wind+BESS, and Standalone Storage Projects]
  - **Lump Sum Payment (\$/year):** Payment amount for full dispatchability of the Facility. Payment will be made in monthly increments.
- [For Firm Projects]
  - **Capacity Charge rate (\$/kW Available Capacity/Month):** Rate used to calculate the Capacity Charge payment for the capacity available to the Company's System from the Facility, including any applicable fixed O&M costs.
  - **Energy Charge (\$/kWh, \$/Service Hour and \$/Start):** Payment for delivery of net energy and service hours from the generation resource(s). As stated in Attachment J of the Firm PPA, the Energy Charge payment consists of two components: a Fuel Component (if applicable) and a Variable O&M Component. The Fuel Component includes the actual cost of fuel. The Variable O&M Component consists of the following components as applicable to the unit:

- A Per kWh Variable Component that includes O&M Costs that vary with the energy output of the generating unit.
- A Per Hour Variable Component that includes O&M costs that are incurred based on a given number of service hours.
- A Per Start Variable Component that includes O&M costs that are incurred based on a given number of starts.

The Variable O&M Component must be guaranteed and not be tied to an index. The Variable O&M Component may include escalations; however, such escalation must be in the form of a guaranteed percentage. Maintenance manuals or other information used to formulate the basis for the Variable O&M costs shall be provided. No Energy Charge will be provided for any energy delivery that is sourced originally from the grid (Company’s System). A Proposal’s Energy Charge must identify the pricing and components assuming both renewable fuel sources and non-renewable fuel sources in Appendix B Attachment 1 Proposal Pricing.

- **Heat Rate Curve (as applicable):** A guaranteed heat rate curve specified as a three-term second-order polynomial describing the heating value (mmbtu) needed to produce a given MW output. The heat rate curve must be valid from the facility generator’s minimum load to maximum load. The efficiency curve(s) will be used in conjunction with the projected fuel cost and heating value, used for modeled and actual dispatch to determine the variable fuel cost for a given MW output.

For Hawaiian Electric Proposals:

- **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.
- [For Hawaiian Electric Firm Project Proposals]
  - **Heat Rate Curve (as applicable):** A guaranteed heat rate curve specified as a three-term second-order polynomial describing the heating value (mmbtu) needed to produce a given MW output. The heat rate curve must be valid from the facility generator’s minimum load to maximum load. The efficiency curve(s) will be used in conjunction with the projected fuel cost

and heating value, used for modeled and actual dispatch to determine the variable fuel cost for a given MW output.

See Appendix G for descriptions and detail on the Total Project Capital Costs, Annual O&M Costs, and ARR for Hawaiian Electric Proposals.

- 3.12.5 To allow Proposers to offer the most competitive pricing while offering protection during times of market volatility, the Company will allow an indexed one-time capped pricing adjustment explained in Section 4.6.3 below.
- 3.12.6 The Company anticipates that one or both of the following will occur by the Construction Financing Closing Milestone: (a) a successful IPP or Affiliate Proposer selected into the Final Award Group will enter into a step-in agreement, or other substantially equivalent assurance in the event of default by Company of its contractual payment obligations under this Agreement (hereinafter, regardless of the form such assurance takes, a (“Step-In Agreement”), with the State of Hawai‘i or an applicable department thereof when a PPA is executed, or as soon as reasonably possible thereafter, in accordance with H.B. 974 and S.B. 1501 from the 2025 Hawai‘i State Legislative Session or a subsequent similar bill (the “IPP Bill”), and/or (b) the Company’s credit rating reaches Investment Grade Status pursuant to the terms of the applicable IGP Contract. Proposal pricing in Section 1.1 of Attachment 1 to Appendix B shall apply in either or both of these circumstances (“Investment Grade Pricing”).<sup>55</sup> All Proposals shall also include pricing in Section 1.2 of Attachment 1 to Appendix B that applies if, by the Construction Financing Closing Milestone: (y) the IPP Bill does not pass and become law or if the IPP Bill becomes law, the State elects not to execute a Step-In Agreement with the IPP or Affiliate Proposer, despite the IPP or Affiliate Proposer’s good faith and best efforts; and (z) the Company’s credit rating does not reach Investment Grade Status (“Non-Investment Grade Pricing”).<sup>56</sup> A Proposal’s Non-Investment Grade Pricing shall be supported by accompanying documentation from the IPP’s or Affiliate Proposer’s anticipated financing parties, including any increased financing costs attributable to the Company’s financial status. Similarly, a Proposal shall identify the assumed financing costs associated with the Investment Grade Pricing and Non-Investment Grade Pricing as stated in Appendix B.

If the Non-Investment Grade Pricing of a Proposal applies, such Proposer will be required to, at any time during the term of the IGP Contract, adjust its Non-Investment Grade Pricing downward to the Proposal’s Investment Grade Pricing, if (1) the IPP or Affiliate Proposer executes a Step-In Agreement with the State under the IPP Bill; or (2) the Company’s credit rating reaches Investment Grade Status. For purposes of sub-part

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<sup>55</sup> The term “Investment Grade Pricing” includes the Investment Grade Lump Sum Payment for PV+BESS, Wind, Wind+BESS, and Standalone Storage Projects and Investment Grade Capacity Charge Rate for Firm Projects from Section 1.1 of Attachment 1 to Appendix B.

<sup>56</sup> The term “Non-Investment Grade Pricing” includes the Non-Investment Grade Lump Sum Payment for PV+BESS, Wind, Wind+BESS, and Standalone Storage Projects and Non-Investment Grade Capacity Charge Rate for Firm Projects from Section 1.2 of Attachment 1 to Appendix B. For Firm Projects, only changes to the Capacity Charge Rate are allowed for Non-Investment Grade Pricing. All other components of a Proposer’s pricing shall be the same as under Investment Grade Pricing.

(1) above, the affected IPP or Affiliate Proposer may not opt out of the Step-In Agreement in order to maintain its Non-Investment Grade Pricing. Additionally, in the event that the Non-Investment Grade Pricing of an IPP or an Affiliate Proposer applies, and if the IPP's or Affiliate Proposer's actual financing costs are lower than assumed in developing the Non-Investment Grade Pricing, such Proposer will be required to adjust its Non-Investment Grade Pricing downward on a pro rata basis to reflect such lower financing costs.

### **3.13 Confidentiality**

- 3.13.1 Each prospective Proposer must submit an executed NDA in the form attached as Appendix E by the date specified in Section 1.6.1 as part of its PIR Request. 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. The Company will not accept NDAs that were executed for prior procurements. 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, to its agents, contractors, or the Independent Observer for the purpose of evaluating the Proposal and facilitating potential IGP Contract negotiations.
- 3.13.2 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. The Proposer shall acknowledge this in the Response Package submitted with its Proposal. Notwithstanding such certification, if the Company observes or receives evidence from a Proposer that appears to place one or more Proposers in violation of this Section 3.13.2, e.g., a representative from one Proposer uses the same information in multiple Proposals submitted by different Proposers (e.g. individual Proposers with different names, joint ventures, etc.), Company will seek additional information and clarification from such Proposer(s) to determine whether such a violation does in fact exist (and, if so, in consultation with the Independent Observer, whether disqualification of one or more Proposals is appropriate).
- 3.13.3 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 Consumer Advocate, 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.

### **3.14 Credit Requirements**

- 3.14.1 Proposers with whom the Company enters into an RDG PPA, Firm PPA or ESPA must post Development Period Security and Operating Period Security in the form of an irrevocable standby letter of credit from a bank doing business in the United States and subject to United States state or federal regulations, with a credit rating of “A-” or better from Standard & Poor’s (“S&P”) or A3 or better from Moody’s as required and set forth in Article 14 of the RDG PPA or ESPA, or Article 7 of the Firm PPA. Cash, a parent guaranty, or other forms of security will not be accepted in lieu of the irrevocable standby letter of credit.
- 3.14.2 The Development Period Security and Operating Period Security identified in the RDG PPA, Firm PPA or the ESPA are minimum requirements. Proposers shall not propose an amount lower than that set forth in the RDG PPA, Firm PPA or the ESPA, provided, however, that for existing projects, the Company, in its sole discretion, may consider a proposal from the Proposer for a lesser amount only for the Development Period Security depending on the expected work to be completed prior to the Guaranteed Commercial Operations Date and the level of perceived risk to the Company during such development period.
- 3.14.3 Each Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company from a bank doing business in the United States and subject to United States state or federal regulations, with a credit rating of “A-“ or better from S&P or A3 or better from Moody’s to guarantee Proposer’s payment of interconnection costs for all COIF in excess of the Total Estimated Interconnection Costs and/or all relocations 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, Firm PPA or the ESPA.
- 3.14.4 Proposers may be required to provide an irrevocable standby letter of credit in favor of the Company from a bank doing business in the United States and subject to United States state or federal regulation, with a credit rating of “A-” or better from S&P or A3 or better from Moody’s in lieu of the required Source Code Escrow in an amount and as required and set forth in Attachment B to the RDG PPA, Firm PPA, or the ESPA.
- 3.14.5 The Company will not provide security (e.g., letter of credit or other guaranty) for the performance of its obligations under the IGP Contracts and will not accept any contract modifications proposed by any Proposer on the basis of the Company’s credit rating.

### **3.15 Pre-selection Community Feedback**

- 3.15.1 Within thirty (30) days after the Proposal Due Date, each Proposer shall hold a public meeting to obtain community feedback on the proposed Project (“Pre-selection Community Feedback”), in accordance with the requirements detailed in Section 1.1.k of Appendix N. Each Proposer shall compile the Pre-selection Community Feedback and

transmit it to the Company, including copies of all comments received in their original, unedited form, via e-mail, in accordance with Sections 1.5, no later than twenty-one (21) days after the public meeting. The Pre-selection Community Feedback will be considered part of the Proposer's Proposal and included in the evaluation of the Community Engagement non-price criterion and for inclusion in the Company's submission to the PUC of its application for a satisfactory PUC Approval Order, if the Project is selected to the Final Award Group.

## **Chapter 4: Evaluation Process and Evaluation Criteria**

### **4.1 Proposal Evaluation and Selection Process**

The Company will employ a multi-step evaluation process. Once Proposals are received, 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.

The evaluation and selection process described in this Chapter 4 for Proposals received in this RFP will be conducted separately by island. The Company will seek a portfolio of O'ahu projects to comprise the Final Award Group for O'ahu, and a separate portfolio of Hawai'i Island projects to comprise the Final Award Group for Hawai'i Island (collectively, the "Final Award Group").

Upon receipt of all Proposals, the Company will review each Proposal submission to determine if it meets the Eligibility Requirements and the Threshold Requirements. The Company, in coordination with the Independent Observer, will determine if it will permit any Proposer to cure any aspect of its Proposal or whether the Proposal should be eliminated based on the failure to meet either Eligibility or Threshold Requirements.<sup>57</sup> If the Company permits a Proposer to cure any aspect of its Proposal in order to meet any Eligibility or Threshold Requirement, the Proposer shall provide a response within three (3) business days from the date of a notification to cure.<sup>58</sup> Proposals that successfully meet all Eligibility and Threshold Requirements will then enter the Initial Evaluation resulting in the development of a Priority List, followed by the opportunity for Priority List Proposals to provide a Best and Final Offer. Thereafter, the Company will conduct a Detailed Evaluation to arrive at the selection of a Final Award Group.

### **4.2 Eligibility Requirements Assessment**

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<sup>57</sup> 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.

<sup>58</sup> The three (3) business day period will apply to the initial opportunity to cure. The Company may, at its discretion and in consultation with the Independent Observer, may allow for additional cure periods, if any, for subsequent inquiries.

Upon receipt of the Proposals, the Company will review each Proposal to ensure that it meets the following Eligibility Requirements:

1. The Proposal, including required uploaded files, must be received by the applicable Proposal Due Date via the Electronic Procurement Platform.
2. The Proposal Fee must be received on or before the Proposal Due Date.<sup>59</sup>
3. The Proposal must not contain material omissions.
4. The Proposal must include an Authorization Letter signed and certified by an officer or other authorized person of the Proposer.
5. The Proposer must fully execute the NDA and any other document required pursuant to this RFP.
6. The Proposer must provide a Certificate of Vendor Compliance from the Hawai‘i Compliance Express with their Proposal that is current (dated and issued no earlier than sixty (60) days of the date of Proposal submission) and shows a status of “Compliant”. The Certificate of Vendor Compliance must show the Proposer is “Compliant” with the Hawai‘i Department of Taxation, Internal Revenue Service, and Hawai‘i Department of Commerce & Consumer Affairs (“DCCA”). A Certificate of Good Standing from DCCA (dated and issued no earlier than sixty (60) days of the date of Proposal submission) and also federal and Hawai‘i state tax clearance certificates for the Proposer may be substituted for the Certificate of Vendor Compliance.
7. The Proposal must not be contingent upon changes (or absence of changes) to existing county, state, or federal laws or regulations.
- 7.8. The Proposer must agree to require all contractors at any tier for a proposed Project, including, but not limited to, the engineering, procurement, and construction contractor, to enter into a Project Labor Agreement with the Covered Entities consistent with Section 3.11.8.
- 8.9. Proposals must specify a GCOD consistent with Section 2.1.1.
- 9.10. The proposed Project must be located as specified in Section 2.1.6.
- 10.11. The proposed Project must locate all Project infrastructure as specified in Section 2.1.9.
- 11.12. The proposed Project must interconnect to the Company System as specified in Section 2.1.11.
- 12.13. Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.14.

### 4.3 Threshold Requirement Assessment

The Company will review all Proposals that meet all Eligibility Requirements to ensure compliance with all 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.

Proposals must provide explanations and contain supporting information demonstrating how and why the proposed Project meets each of the Threshold Requirements. Proposals

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<sup>59</sup> A Proposal Fee will not be required for any Hawaiian Electric 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:

1. **Site Control:** The Proposal must demonstrate that the Proposer has Site Control, as defined below, 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, with the exception of right-of-way or easements for the interconnection route, 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.

For a Proposal to meet this Site Control requirement, Proposers must do one of the following:

- a) 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 IGP Contract (“Site Control”) as specified in the Proposal (taking into account the timelines set forth in this RFP for selection, negotiation, and execution of a IGP Contract and PUC approval as applicable); 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
- b) 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 landowner (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 Proposals provide a binding commitment for the same Site, the documents granting the binding commitment for each Proposal must not prevent the Company from choosing the Proposal that otherwise would have been selected.
- c) **Government/Public Lands Only:** Where government or publicly-owned lands are part of a Site or are required for successful implementation of a Proposal, the requirements in a) and b) above may not be feasible. In such a case, at 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 IGP Contract should the Proposal be selected to the Final Award Group.

While documentation confirming the Proposer's acquisition of land rights for the interconnection route is not required at the time of submission of the Proposal, (1) the Proposal must thoroughly describe the interconnection route as set forth in Attachment B, Section 2.5.4; and (2) the Proposer must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary land rights for the interconnection route. If a Proposal is selected to the Final Award Group, and if the Proposer and Company execute an IGP Contract, Proposer will be solely responsible for obtaining all required land rights within the timeframes set forth in the IGP Contract. The Proposer must also provide a credible and viable plan for obtaining such rights-of-way or easement(s), including the proposed timeline, the identification of all steps necessary to obtain such right-of-way or easement(s), and evidence of any steps taken to date. 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 a Proposal meets the Site Control threshold.

2. **Technical and Operational Requirements:** The proposed Facility must meet the performance attributes identified in the Technical and Operational Requirements of the applicable IGP Contract. The Company will review the Proposal information received, including design documents, equipment manuals and capabilities, and operating procedures materials provided in the Proposal, and evaluate whether the Project, as designed, is able to meet the Technical and Operational Requirements of the applicable IGP Contract. At minimum, in addition to meeting the Technical and Operational Requirements, Proposals shall include acceptable documentation, provided in an organized manner, to adequately support the stated claim that the Facility will be able to meet the Technical and Operational Requirements. The Proposal shall include information required to make such a determination in an organized manner to ensure this evaluation can be completed within the evaluation review period.
3. **Proven Technology:** The Company will only consider Proposals utilizing technologies that have successfully reached Commercial Operations in commercial applications (for example, by demonstrating evidence of an executed PPA) at the scale proposed. The Proposal should include any supporting information for the Company to assess the commercial and financial maturity of the proposed technology. This requirement shall apply to the generation technology, storage technology (if applicable), fuel supply and infrastructure, or any other aspect of the project. The use of any emergent technology should be discussed and explained in Section 2.12 of Appendix B.
4. **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 and/or standalone storage project that has reached Commercial Operations, including all components of the project (i.e., paired energy storage or other attributes), similar in size, scope, technology, and structure to the proposed Project. If a 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, the Company will consider this Threshold Requirement met: financing, designing, constructing, interconnecting, owning, operating, and maintaining projects similar in size and scope to the Project being proposed. Existing facilities must have, at minimum, a proven history of successful operations, and in lieu of constructing and interconnecting, at least one member of the Proposer's team (identified in the Proposal) that has experience in completing, or demonstrating substantial completion of, a repowering of an existing facility similar to what is being proposed. Existing facilities with no change to its technology or scope may, upon evaluation and approval by the Company, request to be exempt from the designing, constructing, and interconnecting criteria.

5. **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 IGP Contract being a Variable Interest Entity 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 contract negotiations.
6. **Community Engagement:** A comprehensive community engagement and communications plan ("Community Engagement Plan") is an essential roadmap that guides a Proposer to work with various communities and stakeholders to gain community support for a Project. Proposers must include a Community Engagement Plan, to be submitted as a standalone document, 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.<sup>60</sup> A Proposer must also submit a plan detailing the amount of funds that the Proposer will commit on an annual basis for community benefits, along with other intended community benefits (“Community Benefits Program”).

Please see Appendix N for complete instructions, details, and minimum requirements for the Community Engagement Plan and Community Benefits Program. Hawaiian Electric will carefully review the Community Engagement Plans and Community Benefits Programs to ensure that outreach to residents, area elected officials, and known community leaders and organizations is documented and that the plan is tailored by community and includes the outreach schedule, communication plans and required project information that will be shared in each engagement.

7. **Cultural Resource Impacts:** Proposers must be mindful of a proposed Project’s potential impacts to historical and cultural resources. At a minimum, Proposers must have already contracted with a consultant with expertise in this field to begin a cultural assessment for the Project prior to the Proposal Due Date. The scope of the cultural assessment is described in the Cultural Resource Impacts in Section 4.4.2.1 below.

Also, at minimum, Proposers must conduct and provide at least an initial Archaeological Literature Review of existing cultural documentation filed with the State Historic Preservation Division and a Field Inspection Report which identifies any known archaeological and/or historical sites within the project area. If sites are found, Proposers must provide a plan for mitigation from an archaeologist licensed in the State of Hawaii.

8. **Preliminary Interconnection Report Review:** Proposals will be reviewed in alignment with the Preliminary Interconnection Report. The minimum project characteristics that must be consistent between the PIR Request<sup>61</sup> and the Proposal are as follows:

Section 2: Technology:

- (a) Project Contract Capacity (MW)
- (b) Interconnection voltage (kV)
- (c) Generation technology
- (d) Storage technology (if applicable) and MWh Capacity

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<sup>60</sup> Existing facilities are held to the same RFP requirements as newly proposed projects, which includes all requirements for Community Engagement and Cultural Resource Impacts. If assessments required by this RFP have been conducted for an existing facility in the past, and those assessments are still applicable to the project as proposed for this RFP (e.g., contract term) and otherwise comply with the RFP’s requirements, they can be submitted as part of the Proposer’s Proposal. Please note, however, any assessment submitted will still be subject to and evaluated against the RFP’s requirements and scored accordingly. The age of any assessment will also be evaluated especially with respect to whether requirements have since been revised or updated since the date of the prior assessment.

<sup>61</sup> See Appendix O to the RFP.

- (e) Fuel type (if applicable)

Section 3: Site Information:

- (f) Grid Connection Point (GCP)
- (g) Approximate location of the proposed Point of Interconnection (POI)

The Company will also allow Proposals to deviate from the PIR Request only as specified in Section 1.6.9 above.

9. **Technical Model:** Developing an accurate and functional facility technical model is imperative to commencing the Interconnection Requirement Study phase of the process. The Proposal must include the requisite models pursuant to Appendix B, Attachment 4, as well as documentation for the data requests and evidence that the Proposer tested the Project models under all scenarios prescribed in Appendix B, Attachment 3.<sup>62</sup> Proposers and their modeling team (including the Proposer Original Equipment Manufacturer representative and Proposer engineering/model representative) shall take notice of the rigor of the data requests and required simulations in Appendix B, Attachment 3.
10. **Project Development and Schedule:** Each Project must fully demonstrate (1) a reasonable expectation the Project will reach the specified GCOD; and (2) the costs are sufficient to build the COIF. The Proposer must provide a critical path schedule that is supported by all critical path elements. The Project schedule must account for both the Proposer's Facility and interconnection work, as well as identify risks and schedule assumptions. Proposers must also demonstrate there is a reasonable expectation that the COIF costs, including Proposer-build costs, are sufficient.

To meet the requirement described above, the Proposal shall include:

- Gantt chart that clearly illustrates the overall integrated schedule and Commercial Operations by the specified GCOD. The Gantt chart shall include realistic task durations, accurate dependencies, tasks that will be fast tracked, as well as slack time and contingencies. The Gantt chart must also include the milestones identified in Appendix H, Section 3 and reflect the appropriate durations associated with such milestones. The Proposal must consider permitting and scheduling issues for any system upgrades.
- The Proposal shall identify all permits and permit dependencies necessary for the Project and provide realistic durations to obtain such permits. The

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<sup>62</sup> An existing facility must submit electrical models as part of its Proposal in response to this RFP. The RFP requires that any existing project's Proposal meet all of the terms of this RFP, including submission of the models that support the Interconnection Requirements Study and as required in Section 2.11 of Appendix B to the RFP. The expectation is that all Proposers, even those with existing facilities, meet all the model requirements in this RFP. As such, models previously provided to the Company will not be sufficient for meeting the requirements under this RFP. Proposers of an existing Project should contact the Company via the communication method identified in Section 1.7 to clarify any concerns they have about meeting all the model requirements in this RFP.

Proposal shall also provide the current status of the permits (e.g., permit application identified, permit application submitted, permit received).

- The Proposal shall provide a breakdown of high-level Project costs consistent with Appendix H and its estimated Proposer-built COIF costs. A Proposal must also include COIF costs in the template provided in Appendix H, Attachment 1.
- A Proposal's GCOD and cost estimates therein must comply with Section 1.6 of this RFP.

11. **Environmental Compliance and Permitting Plan:** Each Proposal shall include an Environmental Compliance and Permitting Plan. This criterion will evaluate a Proposer's awareness and due diligence of the Project's potential environmental impacts and mitigation plans, current site conditions, zoning, permit requirements, and schedule. The required information and plans the Company requires is specified in Section 2.6 of Appendix B. If the Proposal (1) addresses each item in Section 2.6 of Appendix B; (2) clearly explains how the Proposer intends to mitigate risks and other impacts to avoid delays in the Project; and (3) provides reasonable timeframes for completion of any necessary investigations and studies and obtaining all permits and approvals, the Company will consider this Threshold Requirement met. Failure to provide any of the above in either the environmental compliance plan or the permitting plan will result in a failure of this Threshold Requirement.

12. **Financial Strength and Financing Plan:** This criterion addresses the comprehensiveness and reasonableness of the financial plan for the Project and assesses the financial strength and capability of the Proposer to develop the Project. The Proposer must provide a complete financial plan that addresses the following issues: (1) Project ownership; (2) capital cost and capital structure; (3) sources of debt and equity; (4) and evidence that credit-worthy entities are interested in financing the Project. The Proposal must demonstrate the financial strength of the Proposer or its credit support providers by providing all information required in Section 2.3.4 of Appendix B to this RFP.

#### 4.4 Initial Evaluation – Price Analysis, Non-Price Analysis, and Additional Criteria

Proposals that meet both the Eligibility and Threshold Requirements are Proposals that will be subject to a price and non-price assessment. The Company will establish two teams to conduct the Proposal evaluation process: a Price Evaluation Team and Non-Price Evaluation Team. The results of the price and non-price analyses will be a relative ranking and scoring of all eligible Proposals. Price-related criteria will account for fifty percent (50%) of the total score and non-price-related criteria will account for fifty percent (50%) of the total score. The initial evaluation of the price-related criteria is explained in Section 4.4.1 and the non-price criteria and methodology for applying the criteria are explained in Section 4.4.2. Additional criteria will then be evaluated, with points awarded to or deducted from the total score. The evaluation of the additional criteria considered is explained in Section 4.4.3.

The Company will employ a closed-bidding process for this solicitation pursuant to Section 1.3.1.

#### 4.4.1 Initial Evaluation of the Price Related Criteria

For the initial price analysis, the Company will complete a levelized price calculation (“LEP”) for each Project based on the contracted energy output (e.g., NEP) and/or capacity (e.g., MW, Contract Firm Capacity) using the fixed and variable pricing (as applicable pursuant to the IGP Contract type). For the initial price analysis, the Proposal will be evaluated on the Investment Grade Pricing if, as of the Proposal Due Date, either one or both of the following occur: (a) the IPP Bill passes and becomes law, and/or (b) the Company’s credit rating reaches Investment Grade Status. Otherwise, the initial price analysis will be based on the Non-Investment Grade Pricing provided with the Proposal.

In order to fairly evaluate Proposals with different technologies and characteristics, the Company will group Proposals into technology-based and storage-based evaluation categories,<sup>63</sup> dependent on the types and quantities of Proposals received in this RFP. For example: (1) Wind generation (MWh) only; (2) Wind generation (MWh) and Energy storage; (3) Solar generation (MWh) and Energy storage; (4) Standalone Energy Storage (MW/MWh); (5) Firm synchronous generation (MW).<sup>64</sup>

The eligible Proposal with the lowest LEP in each evaluation category will receive 500 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. Scores will be limited to a minimum floor of zero (0) points. 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 450 points (that is, 500 points less 10%). The result of this assessment will be a ranking and scoring of each Proposal within each evaluation category.

In instances where a Proposal variation is submitted for the same resource type in the same electrical location (i.e., POI), only the highest scoring variation for that location and technology type will be considered for the Priority List.

#### 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 in Section 4.4.2.1 below. The non-price score accumulated after evaluation of such criteria is subject to reduction based on the Previous Performance evaluation described in Section 4.4.3.1 below.

##### 4.4.2.1 Non-Price Criteria and Scoring

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<sup>63</sup> If Proposals with various storage sizes are received in the RFP, different categories based on storage size will be established during the Initial Evaluation to enable the benefits of the Projects’ storage to be assessed.

<sup>64</sup> There may be other technologies that are offered in this RFP. This list is illustrative of how technology-based evaluation categories will be established for the Initial Evaluation. The categorizing of Proposals will depend on the types and quantities of Proposals received in this RFP.

The non-price criteria are as follows and further described below:

1. Community Engagement
2. Project Development and Schedule
3. Technical and Operational Requirements
4. Experience and Qualifications
5. Proposed Contract Modifications
6. Carbon Emissions
7. Cultural Resource Impacts
8. Community Benefits Program

As described more fully below, a Proposal can receive up to ten (10) points for each of the first three criteria – Community Engagement, Project Development and Schedule, Technical and Operational Requirements – to reflect the impact of these criteria the successful completion of a Project. The remaining non-price criteria will receive numerical scores on a scale of 1 to 5.

1. Community Engagement will be scored on a scale of 1 to 10.
2. Project Development and Schedule receive the total of two sub-scores:
  - a. Schedule: Scored on a scale of 1 to 5.
  - b. Cost: Scored on a scale of 1 to 5.
3. Technical and Operational Requirements will be scored on a scale of 1 to 5 and will be double-weighted (e.g., if a Proposal receives a score of 5, it will receive 10 points for this criterion).

The Company's evaluation of the non-price criteria will be based on the materials in a Proposal. Selection of any Proposal to the Final Award Group shall not be assumed or construed to be an endorsement or approval that the materials provided by the 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 Proposals are accurate and in compliance with all laws.

The non-price criteria are:

1. **Community Engagement** – Gaining community support is an important part of a Project's viability and success. An effective Community Engagement Plan will call for early meaningful communications with stakeholders – that include area residents, elected officials and community leaders – and will reflect a deep understanding and respect for the community's desire for information and provide opportunities that enable them to make informed decisions about future projects in their communities. Therefore, a Proposal will be evaluated on the quality of the Community Engagement Plan to inform the Project's impacted communities.

The Proposal must include a Community Engagement Plan, as set forth in Appendix N, 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 Proposal will be scored based on the robustness of the Community Engagement Plan and commitments defined therein, as well as any Pre-selection Community Feedback received on the Proposal, as specified in Section 3.15.1 of this RFP and Section 1.1.k of Appendix N to this RFP, and how the feedback was addressed as needed by the Proposer. The Community Engagement Plan should also include the area elected officials, community leaders, organizations, boards or associations, and other stakeholders engaged by Proposers in the community scoping process, along with the respective feedback collected and how the information is being used to inform the plan and project proposal.

2. **Project Development and Schedule** – Projects that are further along in development generally have lower project execution risk and a greater probability of being successfully placed into service prior to the GCOD specified in each Proposal. At minimum, the Proposal should clearly demonstrate how a Proposer plans to reach the proposed GCOD, including identification of risks and schedule assumptions, while capturing applicable tax benefits. The Project schedule must be created consistent with the instructions in Section 2.14 of Appendix B to this RFP. The Project schedule must identify an IRS completion date and PUC approval dates assumed. The Proposal must also include a detailed critical path schedule that integrates both Proposer’s Facility and interconnection work, as evidence that the Project will be able to reach Commercial Operations as specified. This is particularly important for renewable firm capacity projects, as the need-by date in the RFP is critical to meet. Proposals shall include a Gantt chart that clearly illustrates the overall schedule and demonstrates achievement of Commercial Operations by the proposed GCOD. The Gantt chart shall include task durations and dependencies, identify tasks that will be fast tracked, and identify slack time and contingencies. The Gantt chart must also include the milestones identified in Section 3 of Appendix H and reflect the appropriate durations associated with such milestones.

This criterion will examine whether a Proposal includes the breakdown of high-level Project costs set forth in Section 2.3.2.2 of Appendix B in the Proposal. The Proposal must also clearly demonstrate that the costs identified are sufficient to build the COIF. The Company will specifically look to see if the Proposal includes all cost line items from Appendix H applicable to the Project type for COIF. As required in Sections 2.4.1.2 and 4.3(10), the Proposal must include COIF costs in the template provided in Attachment 1 to Appendix H. The Company reserves the right to discuss any cost and financial information with a Proposer to ensure the information provided is accurate and correct. The Proposer shall be responsible for the final determination of interconnection costs regardless of whether it is higher than the costs in its Proposal. A Proposal’s schedule and cost estimate information must be consistent with the information submitted to the Company pursuant to Section 1.6 of this RFP.

The Project Development and Schedule scoring will be the sum of the schedule sub-score and the cost sub-score.

3. **Technical and Operational Requirements** – The proposed Facility must meet the performance attributes including, but not limited to, Technological and Operational Requirements identified in the applicable IGP Contract. The Company will review the Proposal information received, including design documents, equipment manuals and capabilities, and operating procedures materials provided to evaluate whether the Project is able to meet the Technical and Operational Requirements identified in the applicable IGP Contract and in this RFP. At minimum, in addition to meeting the Technical and Operational Requirements, the Proposal should include sufficient documentation, provided in an organized manner, to support the stated claim that the Facility will be able to meet the Technical and Operational Requirements. 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 given to Proposals whose facilities offer additional capabilities over and above the required performance attributes.
4. **Experience and Qualifications** – The Proposal 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. The Proposal must demonstrate in the table format specified in Section 2.13 of Appendix B that at least one (1) project team member has specific experience in each of the following categories: financing, designing, constructing, interconnecting, owning, operating, and maintaining at least one electricity generation or standalone storage project that has reached Commercial Operations including all components of the project similar to the proposed Project. Proposals that require the repowering an existing facility must demonstrate in the table format specified in Section 2.13 of Appendix B that at least one (1) project team member has specific experience in each of the following categories: financing, designing, completing a repowering of an existing facility, owning, operating, and maintaining at least one electricity generation project similar to the proposed Project. Preference will be given to Proposers with experience in successfully developing multiple projects that are similar to the proposed Project and/or that have prior experience successfully developing and interconnecting a utility-scale project to the Company’s System within five (5) years of the Proposal Due Date of this RFP. Existing facilities currently in operation that propose utilizing the same interconnection, the same Facility technology, and utilizing the same operating team, do not present the same construction risks of a new project and will be scored more favorably.
5. **Proposed Contract Modifications** – Proposers are encouraged to accept the contract terms identified in the applicable IGP Contract in their entirety to expedite the overall RFP process and potential contract negotiations. Proposers

that accept the IGP Contract without modifications will receive the highest score for this non-price evaluation criterion. 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 that elect to propose modifications<sup>65</sup> to the IGP Contract shall provide a Microsoft Word red-line version of the applicable document identifying specific proposed modifications to the IGP Contract 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 IGP Contracts at a later time are unacceptable, will be considered unresponsive, and will result in a lower score for this criterion.<sup>66</sup>

6. **Carbon Emissions** – The Proposal shall provide responses to the Carbon Criteria Questions provided in Section 2.15 of Appendix B, which will be used to score each Project depending on Project-specific design, siting, procurement, construction and O&M information likely to impact the Project's lifecycle GHG emissions. In line with carbon neutral goals set forth by Hawaiian Electric<sup>67</sup> and the State of Hawai'i,<sup>68</sup> preference will be given to Proposers expected to have lower lifecycle GHG emissions based on the responses to the Carbon Criteria Questions.
7. **Cultural Resource Impacts** – Proposers must be mindful of the Project's potential impacts to historical and cultural resources. Proposals must include a cultural assessment which 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 any identified cultural, historical, or natural resources in the area in question, and the reasonable protection of traditional and customary native Hawaiian rights in the affected area.

The Proposal will be evaluated on the Proposer's plan and commitment to addressing cultural resource impacts on the Project, if any. Therefore, the Proposal should, at minimum, include the following documentation, as applicable: (1) Proposer's or its consultant's experience with cultural resource impacts on past projects; and (2) the status of the Proposer's cultural assessment plan. Should the Proposal cite a previously completed cultural assessment of the area, a copy of the assessment document should be included in the Proposal. The Proposal will be evaluated on the extent to which the Proposal's cultural

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<sup>65</sup> See Section 3.11.7 for all non-negotiable sections of the IGP Contracts.

<sup>66</sup> See also Section 3.11.

<sup>67</sup> See <https://www.hawaiianelectric.com/about-us/our-vision-and-commitment/climate-change-action>.

<sup>68</sup> See HRS § 225P-5.

assessment plan has been developed, and preference will be given to Proposals that are further along in the assessment process, including but not limited to, whether a mitigation/action plan has been provided that addresses any identified cultural resource issues, or a date for when such a plan will be available has been identified, or any portions of such plan have been completed.

The cultural assessment, Archaeological Literature Review, and Field Inspection Report should ideally be submitted at the appropriate Proposal Due Date in Table 2. However, if they are not submitted with the Proposal, the cultural assessment, Archaeological Literature Review, and Field Inspection Report must be submitted three (3) weeks before the Selection of Priority List date in Section 3.1, Table 2. If a Proposer is unable to deliver the required cultural documentation within the allocated timeframe due to access and right of entry issues, the Company will work with such Proposer to deliver a documented Field Inspection Report prior to the execution of any negotiated IGP Contract.

8. **Community Benefits Program** – The Proposal must, in conjunction with other Community Engagement efforts, include a documented plan for a Community Benefits Program highlighting the amount and distribution of funds that the Proposer will commit on an annual basis to providing as community benefits, along with other intended community benefits. Please see Appendix N to this RFP for specific program requirements. The Proposal will be evaluated on the extent to which the Community Benefits Program is developed, and preference will be given to Proposals accordingly.

The sum of the scores for each individual non-price criteria will make up the non-price score. 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 500 points, and all other Proposals will receive points equal to the Proposal's score divided by the top score, multiplied by 500.

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

#### 4.4.3 Evaluation of Additional Criteria

In this RFP, the Company will evaluate certain additional criteria that may inform the likelihood of a Project's success or encourage the incorporation of community feedback

in the development process. Points will be awarded to or deducted from the Proposer's total score for these additional criteria.

#### 4.4.3.1 Previous Performance Evaluation

This RFP will include a Previous Performance scoring criterion. Based on any underperformance experienced within the past five (5) years of the issue date of this RFP from any Proposer, its parent company, or an affiliate<sup>69</sup> of such Proposer, the Company will deduct points from the Proposer's total score, based on the infraction and unless otherwise stated below. The total point deductions may range from zero (0) to two hundred (200) points. If a Proposer or its affiliate(s) have not been awarded a project by the Company or does not have an existing or past contract with the Company within the past five (5) years, no points will be deducted.

The Company will evaluate Proposers for any past infractions listed below. For purposes of the Previous Performance scoring criterion, a Proposer will include the Proposer, its parent company, and any affiliate of the Proposer. For each of the following infractions identified for any of the Proposer's existing or past projects, up to a maximum of one hundred (100) points will be deducted from the Proposer's total score in this RFP. Any infraction caused by force majeure, as defined in the IGP Contracts, will not be counted toward the deductions.

1. Proposer declined a Priority List or Final Award Group invitation. [10 point deduction]
2. Proposer withdrew an awarded project after accepting a Final Award Group invitation. [20 point deduction]
3. Proposer either terminated an executed contract, except for a termination due to an event of default by Company, or declared an executed contract null and void, except for a null and void declaration due to an unfavorable PUC order, and, in either case, the executed contract was not reinstated or otherwise superseded by a subsequent contract. [20 point deduction]
4. Termination of an executed contract by Company due to an event of default by Proposer, or its parent company or affiliate, unless such default was cured by the contracting Proposer, parent company, or affiliate, as applicable, in an expeditious manner to the satisfaction of the Company. [20 point deduction]
5. Proposer breached any representations and warranties under a PPA. [5 point deduction]
6. Proposer made material changes or additions to the Facility from what was submitted in its Proposal during the timeframe between Final Award Group acceptance and PPA execution, without the Proposer first having obtained prior written consent from the Company. [10 point deduction]

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<sup>69</sup> For purposes of the Previous Performance criteria, a Proposer's "affiliate" is defined as an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Proposer, with the term "control" (including the terms "controlled by" and "under common control with") referring to the power to direct or cause the direction of the management and policies of the applicable entity, whether through the ownership of voting securities, by contract, or otherwise.

In addition to the above-referenced infractions, one hundred (100) points shall be deducted from any Proposal's non-price score in the event the Proposer, its parent company, or an affiliate of the Proposer is involved in any pending litigation in which the Proposer, parent company, or affiliate has made claims against the Company or in which the Company has made claims against the Proposer, parent company, or affiliate, which is not subject of a settlement agreement that is currently in effect. This one-hundred-point deduction for involvement in pending litigation is not subject to the maximum of one hundred (100) points that may be deducted for the other Previous Performance criteria described above. As such, a total of up to two hundred (200) points may be deducted from a Proposal's total score for infractions of Previous Performance criteria.

Proposers shall disclose their parent company and affiliates as described in Appendix B, Section 2.16. During the non-price criteria evaluation, should the Company identify any Previous Performance infractions, including the identification of pending litigation, the Company will notify Proposers of any potential deductions and provide them with the opportunity to respond with a written explanation within five (5) business days. The Company, in consultation with the Independent Observer, will review the explanations and determine whether there were instances outside of the Proposer's control or otherwise excusable. The Company will finalize deductions with the objective of determining the risk of future under/non-performance based on past experiences.

#### 4.4.3.2 Community Co-Creation

Preference will be given to Proposers who commit to piloting the concept of community co-creation by identifying and working with organizations and leaders in host communities to engage in project development, including community benefits. Up to an additional eighty (80) points may be awarded to a Proposal demonstrating community co-creation efforts described below.

As part of the community co-creation concept, Proposers would identify influential community leaders and organizations in host communities through the scoping process, who are willing to help shape proposed projects and a community benefits program. This would help Proposers better understand the challenges, opportunities, assets, and demographics of the host community. Proposers are also strongly encouraged to review resources such as the Hawai'i State Energy Office's community engagement strategy, called Energize Kākou, and the participatory budgeting framework set forth by the Ulupono Initiative.<sup>70</sup> Through these co-creation and community decision-making efforts, community members will have an opportunity to provide feedback and voice concerns earlier in the planning process. This information from the community can be used by Proposers to improve their overall project, operations, inform strategy, and match

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<sup>70</sup> Energize Kākou website is available at <https://energy.hawaii.gov/get-engaged/energize-kakou/>. The Playbook of community engagement best practices is available at [https://energy.hawaii.gov/wp-content/uploads/2022/10/Energize-Kakou-Playbook\\_FINAL.pdf](https://energy.hawaii.gov/wp-content/uploads/2022/10/Energize-Kakou-Playbook_FINAL.pdf). Ulupono Initiative's Participatory Budget Project report, "Let Communities Decide: Using Participatory Budgeting for Renewable Energy Community Benefits Packages", is available at <https://www.ulupono.com/media/4c1phrv0/pb-for-community-benefits-packages-jan-2023.pdf>.

community challenges and opportunities with local and organizational assets and advocacy efforts. In recognition of demonstrated co-creation efforts, a maximum of eighty (80) points may be added to the Proposal’s total score. For further details of community co-creation plan requirements, please see Section 1.1.1 of Appendix N.

#### 4.4.3.3 Project Siting

Recognizing that limited land is available for renewable projects, up to an additional eighty (80) points may be awarded to a Proposal for a Project sited in a preferred area and that shows efforts to minimize the impacts of development on the environment. These points are split into three areas: (1) Renewable Energy Zones, (2) Land Use and Impervious Cover, and (3) Wildfire Risk Areas.

##### 4.4.3.3.1 Renewable Energy Zones

The Company partnered with the National Renewable Energy Laboratory to conduct a preliminary study to identify potential areas on O‘ahu, Hawai‘i island and Maui that may be suitable for future renewable energy projects. This partnership resulted in data-driven maps showing potential “Renewable Energy Zones” (“REZ”) representing where future clean energy projects could potentially be located.

Hawaiian Electric has established prioritized REZ in this RFP based on community feedback and geographic preference.

- As part of the IGP and REZ development process, the Company undertook community engagement efforts and invited members of the community to provide feedback on areas of the island that the community is or is not amenable to use for renewable energy projects and to provide other feedback that would be helpful in siting renewable energy projects. This information is available at [hawaiipowered.com/rez](http://hawaiipowered.com/rez).
- Additionally, the strong prevalence of generation on the west side of both O‘ahu and Hawai‘i island has been recognized previously in Sections 2.1.1 and 2.3.1 of the RFP. This RFP seeks to promote a more even distribution of resources by incentivizing development in the central and east REZ of O‘ahu and the east and south REZ of Hawai‘i island. In addition, resources added to the east and south of Hawai‘i Island may address future system upgrades due to resource reductions.

Accordingly, a Proposal for a Project sited, either completely or partially, within the following list of prioritized REZ zones will be awarded an additional ten (10) points to the Proposal’s total price/non-price score:

O‘ahu – Central O‘ahu (Zones<sup>71</sup> 1, 2, and 4), Ko‘olaupoko (Zone 6), and East Honolulu (Zone 7)

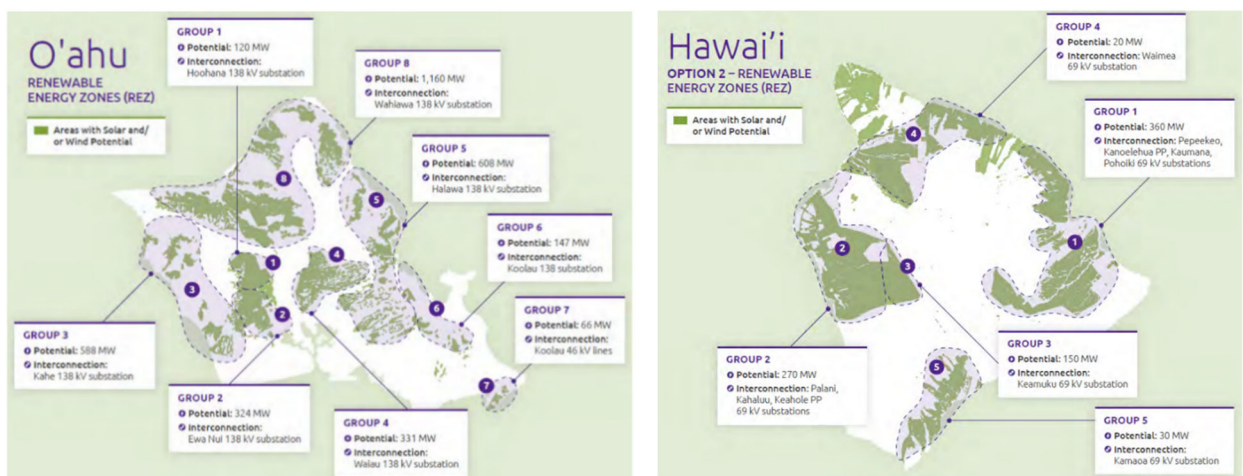
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<sup>71</sup> For purposes of this section, Groups and Zones are used interchangeably.

## Hawai‘i – East Hawai‘i (Zone 1) and South Hawai‘i (Zone 5)

For any proposed Project that interconnects to a preferred location identified in [Table 1](#) of [Section 2.3.1](#) of this RFP, an additional ten (10) points will be awarded to the Proposal’s total price/non-price score. For proposed Projects interconnecting to a pre-screened line, the GCP must be within the bounds of prioritized REZ zones. The total amount of points available to award for REZ inclusion is twenty (20) points.

Proposers may request a set of Shapefiles illustrating the REZ boundaries and which allow for visual comparison and analysis in mapping tools. Requests shall be directed to the RFP Email Address in [Section 1.7](#).



### 4.4.3.3.2 Land Use and Impervious Cover

Land conversion and construction practices across Hawai‘i have a significant impact on the environment, including water quality, air quality and soil erosion. Mitigating the effects of these impacts can conversely create more livable communities and generate a healthier, better quality of life. The Company encourages Proposers to site Projects on developed lands and to preserve open spaces and agricultural lands:

- Land with greater existing impervious cover;
- Land zoned industrial or industrial mixed use, commercial or business mixed use, or apartment or apartment mixed use, based on county zoning designations, with a preference in that order; or
- Land deemed as reclaimed, such as brownfield.

A Proposal for a Project that minimizes the net increase of impervious cover of the Project site and optimizes the use of limited land resources will be awarded up to an additional ten (10) points respectively, for a total of twenty (20) points.

#### 4.4.3.3.3 Wildfire Risk Areas

Further to the Company's wildfire mitigation resilience efforts, the Company would like to recognize Projects that promote grid resiliency by being sited outside of medium- and high-risk wildfire areas. These areas are identified in the high-level maps mentioned in Section 2.3.1 that also identify the pre-screened lines and substations. Prospective proposers may request this map via the RFP Email Address after execution of the NDA. Prospective proposers may also request a set of Shapefiles illustrating the medium- and high-risk wildfire areas. Requests shall be directed to the RFP Email Address in Section 1.7.

A Proposal for a Project sited completely outside both high *and* medium risk wildfire areas will be awarded an additional twenty (20) points to the Proposal's total price/non-price score. A Proposal for a Project sited completely outside of high-risk wildfire areas, but at least partially within medium-risk wildfire areas, will be awarded an additional ten (10) points. A Proposal for a Project sited at least partially in a high-risk wildfire area will not receive any points under this section.

A Proposal that includes new line extension(s)<sup>72</sup> that are all sited completely outside both high *and* medium risk wildfire areas will be awarded an additional twenty (20) points to the Proposal's total price/non-price score. A Proposal that includes new line extension(s) that are all sited completely outside of high-risk wildfire areas, but at least partially within medium-risk wildfire areas, will be awarded an additional ten (10) points. A Proposal that includes any new line extension(s) sited at least partially in a high-risk wildfire area will not receive any points under this section.

Altogether, forty (40) total points are available to award for siting outside of high- and medium-risk wildfire areas.

## 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 50% price-related criteria / 50% 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.

Following the price and non-price scoring, an initial pool of top scoring Proposals for each technology-based category will be determined, with consideration for electrical location of each resource. The Company may consider using a computer model to optimize the pool of resources by technology category in order to select Proposals in each technology-based category to advance to the Priority List.

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<sup>72</sup> For purposes of this section, a “new line extension” is considered to extend between the Project and the GCP, up to and including the GCP.

The collective export of portfolios will be reviewed against the existing transmission available MW capacity.

The selection to the Priority List does not assure an eligible Proposal's inclusion in the selection of the Final Award Group.

Proposers will not be able to update their Proposals based on any feedback provided by the Company after Proposal submission. Pricing components, as explained in Section 3.12.4, will not be allowed to change, except as allowed at the Best and Final Offer stage noted in Section 4.6.

#### 4.5.1 Generation Facility Technical Model Requirements and Review Process

Proposers whose Proposals are selected to the Priority List are required to submit a payment of \$22,000<sup>73</sup> to commence with a Generation Facility Technical Model Requirements and Review Process, as prescribed in Section 3 of Attachment 3 to Appendix B. The \$22,000 payment shall be submitted in a manner consistent with the requirements applicable to the Proposal Fee, as set forth in Section 3.7.3. The \$22,000 payment will be used to offset the costs to perform one (1) cycle of model reviews by the Company and its consultants related to the Generation Facility Technical Model Review Process. Any feedback provided to Proposers is expected to be actioned and resolved by the Proposer prior to the commencement of the IRS.

In order to minimize the cost and advance the schedule for all Proposers, as well as study the impacts of the portfolio of projects, portions of the System Impact Study will be performed as a group study, requiring all Proposer models to be accurate, functional, and deemed suitable by the Company prior to commencement of the study. The IRS process described in Section 5.1 includes a 120-business day Model Checkout timeframe for all model reviews to be completed prior to commencement of the group study. If a Proposer's models are not acceptable at the start of the group study, the Company, in consultation with the Independent Observer and Independent Engineer, may remove Proposal(s) from the Final Award Group, or may terminate contract negotiations or executed IGP Contracts.

#### 4.5.2 Community Engagement Plan and Cultural Resource Impacts

Within thirty (30) days of notifying a Proposer of the selection of its Proposal(s) to the Priority List (which is after the Initial Evaluation where Proposals are scored), the Company will provide feedback to such Proposer on the following portions of their Proposal(s): (1) Community Engagement Plan, (2) Community Benefits Program, and (3)

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<sup>73</sup> The \$12,000 payment is for review of one variation. If a Proposal has multiple variations that advance to the Priority List, only one variation will be required to perform a model review if all variations utilize the same equipment. Otherwise, additional reviews (and payments) may be required for the variations with different equipment. The feedback provided for the one variation selected can be utilized to assist the Proposer in preparing its models for other Priority List variation(s). The Proposer may request the Company perform a cycle of model reviews on other variations, but each variation request will require a \$12,000 payment.

Cultural Resource Impacts. Please see Section 2 of Appendix N for further details and requirements.

#### **4.6 Best and Final Offer (BAFO)**

4.6.1 The Company will solicit a Best and Final Offer from each Proposer whose Proposal(s) are selected to a Priority List in a technology-based evaluation category. Each Proposer whose Proposal(s) are selected to the Priority List, including any Hawaiian Electric Proposals,<sup>74</sup> will have the opportunity to update (downward only)<sup>75</sup> the pricing elements in their Proposal (e.g., Investment Grade Pricing and Non-Investment Grade Pricing) in order to improve the competitiveness of the Proposal prior to further assessment in the Detailed Evaluation phase. At the time of its solicitation, the Company may request specific circumstances and/or parameters to be considered and incorporated into the Best and Final Offer. For example, the Company may request a Best and Final Offer that includes a downward price adjustment if one or more future milestones is reached. At this point in the process, updates may only be made to the following pricing elements:

- [For PV+BESS, Wind, Wind+BESS, Standalone Storage Projects] Lump Sum Payment (\$/year) amount.
- [For Firm Projects]
  - Capacity Charge payment (\$/kW Available Capacity/Month may be adjusted only to the extent that there are adjustments to the Capacity Charge rate (\$/kW/month) and/or Fixed O&M Component Rate (\$/kW/month) subcomponents, and
  - Energy Charge payment (\$/kWh) amount and subcomponents.
- [For Hawaiian Electric Proposals] Total Project Capital Costs (\$/year), Annual O&M Costs (\$/year), ARR (\$/year).

Proposers will not be allowed to increase the price in their Proposals<sup>76</sup> but may elect to maintain the same pricing submitted in their original Proposals. Proposers will not be allowed to make any other changes to their Proposals during the Best and Final Offer.

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<sup>74</sup> Similar to the Proposal Due Date, if any Hawaiian Electric Proposals or Affiliate Proposals are selected to the Priority List, the Company will require that the Hawaiian Electric Proposal(s) and Affiliate Proposals be submitted a minimum of one (1) day before other Proposals are due.

<sup>75</sup> 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, Contract Firm Capacity, GCOD, etc.)

<sup>76</sup> 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.

- 4.6.2 If a Proposer does not propose improvements to the pricing elements in its Proposal during the Best and Final Offer solicitation, the original Proposal pricing elements will be deemed its Best and Final Offer.<sup>77</sup>
- 4.6.3 In an effort to balance competitive pricing with a measure of protection during these times of market volatility, the Company will allow all Proposals that are selected into the Final Award Group a one-time pricing adjustment of their BAFO-defined Lump Sum Payment amounts for PV and wind Projects and Standalone Storage Projects, and Capacity Charge rate for Firm PPA Projects (or Total Project Capital Costs for the Hawaiian Electric Proposal) proportional to the percent change in the Gross Domestic Producer Price Index between the BAFO submission date and the Commission approval date of the IGP Contract. The price adjustment will be capped at no greater than a ten percent (10%) adjustment. If there is no inflation during the time period or the index decreases, pricing will remain as bid in the BAFO.

#### **4.7 Detailed Evaluation**

The Best and Final Offers of the Priority List Proposals from this RFP will be further assessed in the Detailed Evaluation to determine the Proposals selected to the Final Award Group.

Similar to the Initial Evaluation, for the Detailed Evaluation, Proposals will be evaluated on the BAFO Investment Grade Pricing if, as of the BAFO Due Date, either one or both of the following occur: a) the IPP Bill passes and becomes law, and/or (b) the Company's credit rating reaches Investment Grade Status. Otherwise, the Detailed Evaluation will be based on the BAFO Non-Investment Grade Pricing provided with the Best and Final Offer.

Computer modeling will evaluate integrating the portfolio onto the Company's System using the latest inputs and assumptions in the Integrated Grid Planning proceeding (Docket No. 2018-0165), described further below.

All Proposals from the Priority List will be input into the computer model using the Proposal's performance data (i.e., NEP, Contract Firm Capacity, BESS Contract Capacity), and Proposal costs (i.e., Lump Sum Payments, Capacity Charge payments, Energy Charge payments, etc.). An optimal, least-cost resource portfolio will be selected by the computer model, RESOLVE. RESOLVE will be used to determine the optimal type and quantity of resource additions based on a range of constraints such as pricing, GCOD, reliability, operational characteristics and services offered. Depending on the number of Proposals on the Priority List, multiple iterations of the computer model may be needed. Additional modeling scenarios or portfolios may also be completed in consultation with the Independent Observer. The evaluation will be based on the costs and benefits to the Company of integrating the combination of Priority List Proposals onto the Company's System which includes:

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<sup>77</sup> The Company reserves the right, in consultation with the Independent Observer, to adjust the parameters of the BAFO, in the event that Company needs have evolved in a way that the Proposals received do not fully address.

1. The cost to dispatch the Project or 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, where applicable) resulting from the displacement of generation by the Priority List Proposals, including consideration of round-trip efficiencies for Facilities with storage;
3. The estimated increase (or decrease) in operating cost, if any, incurred by the Company to maintain System reliability; and
4. The cost of imputed debt, if applicable.

The Company may complete additional analyses of the portfolio in consultation with the Independent Observer to verify other operating requirements are met.

The Company may 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 is 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 Projects or combinations of Projects introduce line constraints that will factor into the selection process. This is to address the possibility that even though sufficient available MW capacity may be identified for an individual Project, Projects that are in close proximity with each other could introduce additional line constraints. The Company reserves the right, in consultation with the Independent Observer, to allow minor modifications and/or downsize the project in a Proposal to avoid such additional constraints, or the Proposer can choose to perform interconnection upgrades to eliminate the 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 the price in any Proposal as a result of such minor modification.

In the Detailed Evaluation, other factors will also 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, flexibility and latitude of operation control of the

Projects, system stability,<sup>78</sup> localized requirements,<sup>79</sup> and any development risks associated with new Projects as compared to existing 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 to begin contract negotiations. The Company intends to select Proposals that meet the targeted needs and provide customer benefits. The Company will notify all Proposers whose Proposals are selected to the Priority List whether their Proposals are selected to the Final Award Group.

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

Up to the announcement of the Final Award Group, should any new legislation for renewable energy be enacted that would offer Proposers further tax credits, the Company reserves the right to require Proposers to provide a downward pricing adjustment to their Proposals reflective of such savings for the benefit of the Company's customers.

Further, if at any time it is discovered that a Proposal contains incorrect or misrepresented information that has 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 IGP Contract to the PUC for approval ("IGP Contract Application"), in consultation with the Independent Observer, to disqualify the Proposal from the RFP. If discovery of the incorrect or misrepresented information is made after the Company has filed the IGP Contract Application, the Company will disclose the incorrect or misrepresented information to the PUC for evaluation and decision as to whether such Proposal should be disqualified and the IGP Contract 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 IGP Contract, 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, may review the Priority List to determine (1) if another Proposal should be

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<sup>78</sup> Prior studies indicated system stability was achieved with the addition of 350 MW of grid-forming inverter-based resources on Oahu and 115 MW of grid-forming inverted-based resources on Hawai'i Island. The exact number of MWs needed to achieve system stability will be evaluated based on a portfolio of projects as different resources provide different contributions to the stability of the system. The criteria that will be used to evaluate stability and power flow are located in Appendix F of the Companies' Grid Needs Assessment & Solution Evaluation Methodology (November 2021): <https://www.hawaiianelectric.com/a/9995>.

<sup>79</sup> One example of localized requirements is the need for generation resources in East and South Hawai'i Island, which could address the need for additional system upgrades due to resource reductions.

added to the Final Award Group; or (2) if the remaining Proposals in the Final Award Group should remain unchanged.

## **Chapter 5: Post Evaluation Process**

### **5.1 Project Interconnection Process**

#### **At Proposal Submission**

The models required are set forth in Appendix B, Attachment 4. All required models shall be configured to represent all of the Facility's functional equipment with settings in place to comply with the Company's IGP Contract performance requirements. The models must adhere to the model guidelines provided by the Company and be checked for functionality by the Proposer or its vendors and consultants prior to submission to the Company (see Appendix B, Attachment 3).

Development of accurate and functional facility technical models is imperative to the successful completion of the IRS, the accuracy of study results, and, by extension, the reliability of the System. Models must be accurate representations of the Facility and its operation. The Company validates the quality of the models and acceptability for the IRS through a model checkout process. Proposers should have developed, executed, tested, and documented results of their models prior to submitting a Proposal. Proposers and their modeling team (including the Proposer Original Equipment Manufacturer representative and any Proposer engineering/modeling representative) shall take notice of the rigor of the data requests and required simulations in Appendix B, Attachment 3.

A complete package of Project Interconnection Requirement Data Request worksheets, Project single-line diagrams, models (see Appendix B, Attachment 4), and documentation prescribed in Appendix B, Attachment 3, including a report with completed checklists, tables, and supporting test plots is required upon Proposal Submission. Proposers shall show they have self-tested their models and they are able to successfully meet the required performance for all the relevant simulation scenarios in Appendix B, Attachment 3. See Section 2.11 of Appendix B.

#### **Post Selection to Final Award Group**

Upon notification of selection to the Final Award Group, the Company will provide an IRS Letter 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 Proposal, (b) any considerations that are specific to a particular Proposal and location, and (c) System impact analyses of the Proposal. Interconnection cost and schedule, including cost of any required System upgrades, will be determined in a subsequent Facility Study.

Within twenty (20) business days after selection of the Final Award Group, Proposers shall execute the IRS Letter Agreements and provide the required deposits, so that the expert subject matter work can be provided by the Company's IRS consultant(s).

Within this same twenty (20) business day period following selection of the Final Award Group, Proposers and their modeling team (inclusive of the Proposer modelling/engineering representative(s) and Proposer Original Equipment Manufacturer representative(s)) shall meet with the Company and its IRS consultant(s) to hold a technical discussion of the modeling feedback provided to the Proposer after selection to the Priority List.

A formal, technical Model Checkout process will then commence. Proposers will have twenty (20) business days to submit a complete model package submission for the Project data and modeling submittals described above, resolving all deficiencies, incorporating any updates, and including any additional information or drawings as required. No incomplete or partial submissions will be acceptable.

The Company and its IRS consultant(s) will have twenty (20) business days, following the model submission, to perform the necessary review of the models and model data. Company will provide the feedback, noting any deficiencies, to Proposers.

The cycle will then repeat. Proposers will have twenty (20) business days to address the deficiencies and return the updated models to the Company. During the Proposer's twenty (20) business day period, Proposers and their modeling team (inclusive of the Proposer modeling/engineering representative(s) and Proposer Original Equipment Manufacturer representative(s)) shall meet with the Company and its IRS consultant(s) to hold a technical discussion of the modeling feedback provided to the Proposer.

The technical Model Checkout will be limited to three (3) cycles for a total limit of one hundred twenty (120) business day allotted to the Model Checkout process.

For any missed milestones, the Company, in consultation with the Independent Observer and Independent Engineer, may remove Proposal(s) from the Final Award Group, or may terminate contract negotiations or executed IGP Contracts.

Should a Proposer's model(s) not be ready by the end of the Model Checkout period, the Company, in consultation with the Independent Observer and Independent Engineer, may remove Proposal(s) from the Final Award Group, or may terminate contract negotiations or executed IGP Contracts.

Following the Model Checkout process, the System Impact Study will commence. In order to minimize the cost and advance the schedule for all Proposers, as well as study the impacts of the portfolio of Projects, portions of the System Impact Study are performed as a group study, therefore requiring all Proposers' models to be accurate, functional, and deemed suitable by the Company prior to commencement of the study. Should a Proposal withdraw from the Final Award Group after the System Impact Study has commenced, the Proposer shall pay a penalty of up to \$200,000 to cover any cost burden that would otherwise be borne by the remaining Proposals in the study group for rework.

Proposers should assume, at a minimum, a 17-month to 19-month process for the completion of the IRS, and the execution and filing of the IGP Contract for approval.

Such assumption is dependent on, among other factors, working and finalized models being timely provided for study by Proposers in accordance with the requirements of this Section 5.1.

Proposers shall be responsible for the cost of the IRS under the IRS Letter Agreement. The Company will not begin the IRS process until the IRS Letter Agreement is returned fully executed and the Proposer has made the IRS payments noted in the IRS Letter Agreement. 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 SOIF and COIF. Upon reviewing the results of the IRS, Proposers will have the opportunity to not move forward with the Project and therefore not complete execution of the IGP Contract in the event that the estimated interconnection costs and schedule for the Project are higher than what was estimated in the Project Proposal.

## **5.2 Contract Negotiation Process**

Within five (5) business days of being notified by the Company of its intent to enter into contract negotiations, each Proposer whose Proposal is selected for the Final Award Group will be required to indicate, in writing to the Company's primary contact for this RFP, whether the Proposer intends to proceed with its Proposal. Each Proposer who elects for its Proposal to remain in the Final Award Group will be required to keep the Proposal valid through the award period.

Within fifteen (15) days after selection of the Final Award Group, each Proposer whose Proposal is selected for the Final Award Group will be required to provide the name of its Project Entity for the Project. The Project Entity will be the party that is legally and financially responsible for all agreements with the Company (e.g., IRS Letter Agreement, GHG Letter Agreement, PPA) regarding the Project. Additionally, a bank account in the name of the Project Entity must be established for financial transaction purposes.

As described in Section 5.1 above, a draft IRS Letter Agreement will be provided upon notification of selection to the Final Award Group. The IRS process will commence upon payment of the deposit and execution of the IRS Letter Agreement. Contract negotiations will commence in parallel with the IRS process. The IGP Contract will not be executed until completion of the IRS, and any impacts from the IRS will be folded into the IGP Contract. The submission of an executed IGP Contract for PUC approval will take place thereafter. In the event that the IRS process is delayed, for whatever reason, and the proposed GCODs of Projects negotiating a IGP Contract is jeopardized by the delayed IRS Process, the Company may propose to the Proposer to execute the IGP Contract prior to completion of the IRS process. If the Parties agree, the Parties may further agree to require the Company to submit the completed IGP Contract to the PUC for approval with the IRS to be completed as soon as possible thereafter. After the IRS is completed and any necessary amendments to the technical terms of the IGP Contract are

completed, the Company will submit such amendment to the PUC as a notice filing for further action as the PUC may direct.

### **5.3 Community Engagement**

The public meeting and comment solicitation process described in Section 3.15 above and this section, as well as Section 29.21 of the RDG PPA and ESPA or Section 12.1(L) of the Firm PPA (Community Engagement Plan) and Appendix N of the RFP do not represent the only community engagement activities that can or should be performed by a Proposer.

The Company will publicly announce the Final Award Group no later than six (6) business days after the notification is given to Proposers whose Proposals are selected to the Final Award Group. Selected Proposers shall not disclose their selection to the public before the Company publicly announces the Final Award Group selection.

Each Proposer whose Proposal is selected shall, at a minimum, fulfill the post-award community engagement requirements specified in Section 5 (Post-Award Requirements) of Appendix N of this RFP, including a post-award community meeting and project website that includes an updated Community Engagement Plan and Community Benefits Program information.

### **5.4 Greenhouse Gas Emissions Analysis**

Unless the PUC grants a waiver for any project from the requirements for a greenhouse gas (“GHG”) emissions assessment,<sup>80</sup> a Proposer selected to the Final Award Group shall cooperate with and promptly provide to the Company and/or Company’s consultant(s) all information necessary upon request, in the Company’s sole and exclusive discretion, for such consultant(s) to prepare a GHG emissions assessment and report in support of a IGP Contract Application (the “GHG Review”). Each Proposer shall be responsible for the full cost of the GHG Review associated with its Project pursuant to a GHG Letter Agreement between the Proposer and the Company. Based on prior project experience, this GHG Review can range between \$90,000 to \$120,000 based on the scope of the project, but actual costs may be higher or lower than estimated. The GHG Review is anticipated to address whether the GHG emissions that would result from approval of the IGP Contract and the 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 IGP Contract is reasonable in light of the potential for GHG emissions, and whether the terms of the IGP

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<sup>80</sup> See HRS § 269-6(b) (providing that “the [PUC] may waive the requirement for a lifecycle greenhouse gas emissions assessment for energy projects that do not involve combustion.”); see also Order No. 41041, *Granting the Hawaiian Electric Companies’ Request for Waiver of Greenhouse Gas Emissions Assessments for Energy Projects that Do Not Involve Combustion Pursuant to Act 54 and Addressing Related Motions to Intervene*, issued in Docket No. 2014-0217 on September 18, 2024, at 59-60 (granting the Company’s waiver request for PV plus BESS projects selected to the Stage 3 procurement’s final award group).

Contract are prudent and in the public interest in light of its potential hidden and long-term consequences.

## **5.5 Early Engineering**

The purpose of early engineering is to start the engineering design ahead of completing the IRS phase utilizing the preliminary Facility Study. This includes internal engineering for COIF by the Company and review of the Proposer's drawings for the COIF that would be affected by SOIF (typically up to 60%). This helps to achieve the proposed GCOD. All Projects selected to the Final Award Group that include new COIF or significant changes to existing COIF shall be required to perform early engineering. The commitment to perform early engineering will be included in the written intent to proceed with Proposals. Early engineering will be conducted concurrently with the IRS to provide up to 60% design engineering of COIF. Early engineering will be performed at the Proposer's cost and will begin after acceptance of the preliminary Facility Study (roughly three (3) months after execution of the IRS Letter Agreement). An initial payment of \$500,000 on average will be required for early engineering. Final costs will be determined based on the required scope of work.

## **5.6 PUC Approval**

Any signed IGP Contract resulting from this RFP is subject to PUC approval as described in the applicable IGP Contract. Any ancillary PUC approvals required for a Project in addition to the IGP Contract are subject to the PUC approval process described in the applicable IGP Contract. Transmission projects require additional approvals from the PUC as described below:

Pursuant to HRS § 269-27.5, when a new 46kV or greater transmission line is constructed through any residential area, a public hearing will be required prior to approval.

Pursuant to HRS § 269-27.6, the PUC shall determine whether 46kV or greater transmission lines shall be overhead or underground.

The Company intends to seek PUC approval of the applicable IGP Contract and any applicable transmission through a single application after completion of the IRS, any other applicable studies, and execution of the applicable IGP Contract.

## **5.7 Facility In-Service**

To facilitate timely commissioning of Projects selected through this RFP, 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 the Proposer is required. Drawings must be approved by the Company prior to testing and 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 Proposer 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 may lose its place in the queue, with the Company retaining the flexibility to adjust scheduling as it sees fit. 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 Proposer will be allowed to cure if successful testing is completed within the allotted scheduled time. No adjustments will be made to IGP Contract milestones if tests are not completed within the original allotted time. Daily delay damages for missed milestones will be assessed pursuant to the IGP Contract.

## **5.8 Archaeological Literature Review and Field Inspection Report**

Each Proposer whose Proposal is selected to a Final Award Group must, within twelve (12) months of selection, complete and submit to the Company a plan for mitigation from an archaeologist licensed in the State of Hawai'i for any archaeological and/or historical sites identified in the completed Archaeological Literature Review and Field Inspection Report (LRFI) of existing cultural documentation filed with the State Historic Preservation Division.

Any results available at the time of the Community Engagement meeting required prior to IGP Contract execution discussed in Section 5.3 must be presented at that time, along with an update regarding the Proposer's cultural impact plan.

**DRAFT**  
**REQUEST FOR PROPOSALS**  
**FOR**  
**RENEWABLE DISPATCHABLE GENERATION**  
**AND**  
**ENERGY STORAGE**

June 6, 2025

*Appendix B – Proposer’s Response Package / Project  
Interconnection Data Request*



**Hawaiian  
Electric**

## **1.0 GENERAL INSTRUCTIONS TO PROPOSERS**

Wood Mackenzie Supply Chain Platform<sup>1</sup> is the Electronic Procurement Platform that the Company has licensed and will utilize for the RFP process. All Proposals and Proposal supporting information must be submitted via the Electronic Procurement Platform, in the manner described in this 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 through 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 RFP Section 3.13 Confidentiality.

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”<sup>2</sup> on the Wood Mackenzie Supply Chain Intelligence Platform. One Proposal may be submitted with each Supplier registration. Minor variations, as defined in RFP Section 3.7.2 and 3.7.2.1 may be submitted along with the Proposal under the same registration.

If a Proposer is already registered on the Wood Mackenzie Supply Chain Intelligence Platform, the Proposer may use their current login information to submit their first Proposal. Up to three (3) variations of a Proposal, one of which is the base variation of the Proposal, may be submitted together as a Proposal by following the instructions outlined in this Appendix (see Appendix B Section 3 and 4 below). If the Proposer chooses to submit more than one Proposal, the Proposer must register as a new “Supplier” 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 the Company name and Proposal number (ex: CompanyNameP1). Proposers may use shorthand or clear abbreviations. The unique Email address used to create the Wood Mackenzie Supply Chain account does not necessarily have to match the Email address specified in this Appendix B Section 2.2.1 below. For example, if

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<sup>1</sup> Also referred to as PowerAdvocate in prior RFPs, PowerAdvocate became Wood Mackenzie Supply Chain. Any reference to PowerAdvocate in this RFP is referring to the Wood Mackenzie Supply Chain Intelligence Platform.

<sup>2</sup> “Supplier” is a term used by Sourcing Intelligence and refer to the RFP's Proposer.

the Proposer is submitting multiple Proposals, all of the Proposer's Proposals could specify the same primary point of contact Email address if that is what the Proposer requests contact through for all their proposals.

There are no license fees, costs, or usage fees to Proposers for the use of the Electronic Procurement Platform. See Appendix D –for more user information on the Electronic Procurement Platform.

## 1.2 PROPOSAL SUBMISSION PROCEDURES

An Email notification will be sent to all registered Proposers 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 along with several tabs, including the following:

- **“1. Download Documents:”** RFP documents made available for Proposers' use and information will be stored under this tab. Documents can be downloaded and/or printed, as required.
- **“2. Upload Documents:”** Proposal submission documents requested in this Appendix B must be uploaded using this tab.
- Note that “3. Commercial Data:”, “4. Technical Data:”, and “5. Pricing Data:” tabs are NOT USED for this RFP.

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 respective Proposal Due Date (RFP Section 3.1, Table 2).
2. Submit (upload) files representing your Proposal via the “2. Upload Documents” tab. Generally, one main consolidated PDF file is submitted (referred to as the “Proposal PDF” below), along with supporting files in their native file formats. That Proposal PDF must abide by the format specified in this Appendix B. A Microsoft Word 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 the following for its Proposal PDF:  
CompanyName\_Proposal#.pdf. (example: AceEnergy\_P1.pdf)
3. Supporting Proposal information that cannot be easily consolidated into the Proposal PDF described in Step 2 (such as large-scale drawing files) or files that must remain separate from the Proposal PDF in native file format (such as Appendix B Attachment 1 Proposal Pricing file, all IRS computer model files, Microsoft Excel spreadsheets, Microsoft Word redlined Model IGP Contracts, etc.) shall be **uploaded separately but must be referenced from within the Proposal PDF** (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 (if any variations are being submitted), Appendix B section number, and a file descriptor, as shown in the example file name below:

AceEnergyP1V2\_2.5\_SiteControlMap.kmz

Proposers may use abbreviations if they are clear and easy to follow.

- b. As specified in the RFP, it is the Proposer's responsibility to ensure the Proposal information is submitted and contained within the defined proposal sections as specified in Appendix B and provided in an organized manner to support the Proposal's evaluation.
  - c. **All pricing information for a Proposal must only be contained in a separate Proposal Pricing file that is included in the Proposal upload, but separate from the Proposal PDF or other Proposal files.**
4. Upload files using the "**2. Upload Documents**" tab on the Electronic Procurement Platform.
    - a. Select "Choose File..." Navigate to and choose the corresponding file from your computer.
    - b. For all documents identify the "Document Type" as "Technical Information." (Do not identify any documents as "Commercial and Administrative" or "Pricing.")
    - c. "Reference ID" may be left blank.

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.

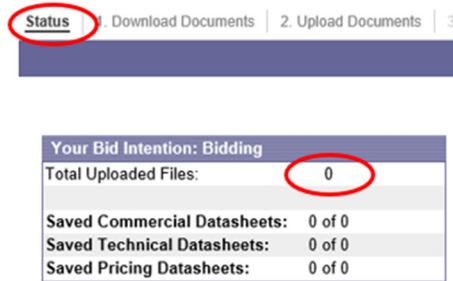
If a file with the same name is uploaded twice, the Platform will provide notification of the duplication and automatically append a unique numerical extension to the Document Name. To delete a file that has been previously uploaded, click on the "X" button in the "Actions" column. Do not upload any 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 Wood Mackenzie Supply Chain 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 Electronic Procurement Platform's website, both by phone (857-453-5800) and by Email (support@poweradvocate.com).
6. Proposers are **strongly encouraged to start uploading early** and avoid waiting until the deadline to upload their Proposals and 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. It is the Proposer's responsibility to ensure a complete Proposal is uploaded into the Electronic Procurement Platform before the Proposal Due Date. At the precise time (typically 2:00pm HST) and date specified for the Proposal Due Date, the Electronic Procurement Platform will automatically close and no files will be accepted by the platform. Proposers are also responsible for following instructions and uploading documents into their appropriate locations in the Electronic Procurement Platform. Documents uploaded in the wrong tab will not be considered by the Company.

7. Any questions or concerns regarding the RFP may be submitted via the RFP Email address provided in RFP Section 1.7. Per RFP Section 1.4.2, the Independent Observer will monitor communication within the bid event. Proposers should always include the Independent Observer when submitting questions to the RFP Email Address.

### 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:



As stated above in Appendix B Section 1.2, nothing should be uploaded to the Commercial, Technical or Pricing Datasheet tabs. Documents uploaded there will not be included in your Proposal submission.

### 2.0 PROPOSAL SUMMARY TABLE (2.0 BASE VARIATION, 3.0 VARIATION A, 4.0 VARIATION B, AS APPLICABLE)

Summary tables for each Proposal variation. If proposal variations are submitted, summary information for such variations must be identified in similar tables placed in Appendix B Section 3 and Section 4, as applicable.

To be filled out in its entirety by all Proposers:

1	<b>Proposer Name (Company Name)</b>	
2	<b>Parent Company/Owner/Sponsor/Business Affiliation/etc.</b>	
3	<b>Project Name</b>	
4	<b>Net Nameplate Capacity (MW)<sup>3</sup></b>	
4a	<b>Installed Nameplate Capacity:</b> the aggregate sum of the net nameplate active power capabilities of all generator and converter equipment (i.e. storage) installed.	
5	<b>Proposed Facility Location,</b> Street Address if available, or what City/Area on the island is it near	
6	<b>TMK(s) of Facility Location</b> (use 9 digits TMK format) <sup>4</sup>	

<sup>3</sup> A Project’s Net Nameplate Capacity is as defined in the applicable IGP Contract.

<sup>4</sup> Island Number (1 digit); Zone Number (1 digit); Section Number (1 digit); Plat Number (3 digits, add leading zeros if less than 3 digits); Parcel Number (3 digits, add leading zeros if less than 3 digits)

7	<b>Point of Interconnection’s Circuit or Substation Name</b>	
7a	<b>Coordinates for Point(s) of Interconnection and Grid Connection Point(s)</b> , if GCP different from POI (use decimal degrees) <sup>5</sup>	
8	<b>Proposal Contract Term (Years)</b>	
9	<b>Proposal Guaranteed Commercial Operations Date (MM/DD/YYYY)</b>	
10	<b>Identify the Project’s Generation Technology (N/A if none)</b> [Firm Projects] <b>Indicate if Bulk Energy Generating Resource or a Fast Start Generating Resource</b>	
10a	[PV+BESS, Wind+BESS Projects] <b>Net Energy Potential (NEP) RFP Projection for the Facility (MWh)</b> [Firm Projects] <b>Capacity of the Facility (MW)</b>	
10b	[Firm Projects] <b>Renewable Fuel Source for Generation</b>	
10c	[Firm Projects] <b>Fossil Fuel Source for Generation</b>	
11	<b>Identify the Project’s Energy Storage Technology (N/A if none)</b>	
11a	<b>Energy Storage Capability for the Facility (MW and MWh)</b>	
11b	<b>Is the Project capable of being 100% charged from the grid from the GCOD? (Yes/No)</b>	
12	<b>Does the Proposal include any federal tax credits in its pricing? (Yes/No)</b>	
12a	If the response to #12 is “Yes,” <b>identify each included federal tax credit and assumed value.</b>	
13	<b>Does the Project have grid-forming capabilities? (Yes/No)</b>	
14	<b>Does the Project have black start capability? (Yes/No)</b>	
15	<b>The Proposer hereby certifies that the Project meets all technical and operational requirements identified in the respective IGP Contract (as specified in RFP Section 2.2)? (Yes/No)</b>	
15a	If the response to #15 is “No”, <b>specify the requirements of the IGP Contract that the Proposal cannot meet and explain in this Appendix B Section 2.10.5 the reasons it cannot.</b>	
16	<b>Does the Project have any operational constraints that limit its capabilities? (Yes/No)</b>	
16a	If the response to #16 is “Yes”, <b>list all operational constraints, and in Appendix B Section 2.2.4 explain and detail every constraints.</b>	
17	<b>The Proposer hereby certifies that no single point of failure from the Facility shall result in a decrease of active power measured at the Facility point of interconnection greater than what is specified in RFP Section 2.1.12? (Yes/No)</b>	
18	<b>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 or certain IGP Contract modifications being accepted. (Yes/No)</b>	

<sup>5</sup> Decimal degrees (YY.YYYYYY, -XXX.XXXXXX) latitude and longitude coordinates of the Point of Interconnection for the project. If there is more than one interconnection point, specify each.

19	<b>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)</b>	
20	<b>The Proposer hereby acknowledges that the Company reserves the right to select more or less than the full amount of generation solicited in this RFP in the event that specific Hawaiian Electric system needs are revised during the course of the RFP process. (Yes/No)</b>	
21	<b>Does the Proposer accept the contract terms identified in the applicable Model IGP Contract in its entirety? (Yes/No)</b>	
21a	<b>If the response to #21 is “No”, specify the name of the Microsoft Word redline file that identifies the proposed modifications to the agreement, provided, however, that such proposed modifications shall be limited to targeted revisions to, and not deletions or waivers of, the agreement’s terms, conditions, covenants, requirements or representations.</b>	
21b	<b>If the response to #21 is “No”, confirm that the proposed modifications in the file identified in 21a above are consistent with the information in the Proposal? (Yes/No)</b>	
22	<b>The Proposer hereby agrees to provide Development Period Security and Operating Period Security as set forth in the applicable model IGP Contract for this Project. (Yes/No)</b>	
23	<b>The Proposer hereby certifies that the Proposer, its parent company, or any affiliate of the Proposer: (1) has <u>not</u> defaulted on a current contract with the Company, unless such default was cured by the contracting Proposer, parent company, or affiliate in an expeditious manner to the satisfaction of the Company; (2) has not had a contract terminated by the Company, which was not reinstated or otherwise superseded by a subsequent contract; or (3) has <u>no</u> pending litigation in which the Proposer, parent company, or affiliate has made claims against the Company which is not subject of a settlement agreement that is currently in effect? (Yes/No)</b>	
23a	<b>If the response to #23 is “No”, specify what part or parts of #23 prevents the Proposer from stating Yes.</b>	
<u>24</u>	<b><u>The Proposer hereby agrees to require all contractors at any tier for a proposed Project, including, but not limited to its engineering, procurement, and construction contractor, enter into a project labor agreement with the Hawaii Building and Construction Trades Council, AFL-CIO and the Hawaii Construction Alliance as required by Section 4.2 of the RFP. (Yes/No)</u></b>	
<u>2425</u>	<b>Is the Proposer (or any partner of the Proposer) an Affiliate of the Company? (Yes/No)</b>	
<u>2526</u>	<b>The Proposer hereby certifies under penalties of perjury that it has not shared this Proposal, or any part thereof, with any other Proposer of a Proposal responsive to this RFP. (Yes/No)</b>	
<u>2627</u>	<b>Has the Proposer received a PIR for this Project and completed a PIR Meeting for this Project? (Yes/No) A copy of the report or the PIR Meeting summary is required in this Appendix B Section 2.1.1.</b>	

<u>26a27a</u>	<b>Identify the date and time of the PIR Meeting attended by the Proposer.</b>	
<u>2728</u>	<b>Identify the Proposal Fee submission information – Date Sent, Delivery Service Used, Tracking Number, U.S.-chartered cashier’s check bank name, and check number.</b>	

## 2.1 REQUIRED FILES ACCOMPANYING PROPOSAL PDF

The following files must accompany each Proposal PDF. All files must be uploaded via the “2. Upload Documents” tab.

2.1.1 These documents can either be merged into the Proposal PDF as part of Section 2.1.1 or they can be submitted as separate files with appropriate pointers to the filenames of the separate files.

- Document signed by an officer or other Proposer representative **authorizing the submission** of the Proposal.
- Fully executed IGP **NDA** (Appendix E to the RFP).
- **Certificate of Vendor Compliance** for the Proposer.
  - In lieu of the Certificate of Vendor Compliance, a **Certificate of Good Standing** for the Proposer and **Federal and State tax clearance certificates** for the Proposer may be provided.
- **Certification of Counsel for Proposer**, if applicable. (See Appendix B Attachment 1.)
- Copy of the **PIR**, or **PIR Meeting written meeting summary** from the Company verifying the project’s ability to interconnect at the POI (e.g., capacity available) and/or system upgrades required for the interconnection of the Project.
- [For Hawaiian Electric Proposals Only] **Hawaiian Electric Proposal Team Certification** form. See Appendix G Attachment 1.

2.1.2 These documents must be submitted as separate files with appropriate pointers to the filenames of the separate files within each respective Proposal PDF section. These documents which are a necessary part of the Proposal submission must be uploaded along with the Proposal PDF before the Proposal Due Date.

- **Proposal Pricing** file (Appendix B Section 2.2.3 below).
- **All IRS files** specified in Appendix B Section 2.11.1 below.
- Microsoft Word document of **redlines to respective model IGP Contract** (Appendix B Section 2.4.2 below).
- **Community Engagement Plan**, including any community co-creation (See Appendix N).
- **Community Benefits Package** (See Appendix N).
- [For Hawaiian Electric Proposals Only] **Revenue Requirements Worksheets** that support the annual revenue requirements estimates shall be submitted. A starter revenue requirements template file can be requested by the Hawaiian Electric Proposal Team via email to the RFP Email Address once the RFP event opens. The revenue requirements worksheets submitted will be customized by the Hawaiian Electric Proposal Team to reflect the details of the Project’s Proposal. All assumptions used will be reflected in an assumptions input tab.
- **Pro Forma Cashflow** for each variation (Appendix B Section 2.3.2.2 below).

## 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 – this will be the official communication address used during the RFP process

2.2.2 **Executive Summary of Proposal.** The executive summary must include an approach and description of the important elements of the Proposal, including variation descriptions if variations to the base variation are being submitted. Refer to RFP Section 3.7.2 and 3.7.2.1 for an explanation of minor variations allowed.

If variations to the base variation are proposed, a **table summarizing the differences between all variations** shall be created and included in this section.

RFP Section 2.2.3 states the Company is not seeking proposals for microgrid. However, if a Project includes microgrid capabilities, as stated in RFP Section 2.2.3 the Proposer shall identify the capabilities and restrictions in this section.

2.2.3 **Pricing information. Proposal pricing information must only be provided in the Proposal Pricing file that is kept as a separate file from the Proposal PDF. (Appendix B Attachment 1)** If variations to the base variation are proposed, each variation’s pricing summary must also only be identified in the Proposal Pricing file within the respective worksheet section for the variation as applicable. Proposers must provide pricing information only in the Proposal Pricing file – do not embed pricing information in any other portion of the Proposal. Cost information is allowed in the pro forma cashflow for the Project required with each Proposal. **[For Hawaiian Electric Proposals Only]** Cost information is allowed in the Revenue Requirements Worksheet file that supports the annual revenue requirements estimates.

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

- Installed Nameplate Capacity ( $MW_{AC}$  and  $MW_{DC}$ )
- Net Nameplate Capacity of the Facility at the Point(s) of Interconnection ( $MW_{AC}$ )
- Identified available MW capacity at the Point(s) of interconnection ( $MW_{AC}$ ).
  - Identify the communication from where the POI has the capacity to interconnect the project (e.g., Company’s response to Proposer’s inquiry on X date/time).
- Identify all System upgrades the Proposal includes to allow Project to interconnect to System above the identified available MW capacity.
  - Identify the communication from where the System upgrade information was acquired (e.g., Company’s response to Proposer’s inquiry on X date/time).
- For existing projects, the Proposal must identify and state in this section any changes required to meet the requirements of this RFP and/or applicable IGP Contract.

Projects that include a generation component must specify:

- Technology Type of Generation
- Number of Generators
- Rated Output of each Generator
- Generator Facility Design Characteristics
- Fuel Source for Generation (both Renewable Fuel and Fossil Fuel)

- Provide all applicable operational constraints known such as, but not limited to, those for environmental and/or permit compliance. (e.g. hot/cold start times to full output, start-up fuel requirements, start-up and shut-down sequence, limitation on number of start-ups/shutdowns per day, operational constraints due to noise restrictions, minimum/maximum run hour requirements, minimum up time, minimum down time, etc.)

For RDG Facilities, provide the following items related to the NEP RFP Projection<sup>6</sup>:

- Projected **hourly annual energy potential production profile of the Facility (24 hours x 365 days, 8760 generation profile, POI P50)**
- Preliminary design of the facility
- Typical meteorological year file used to estimate the Renewable Resource Baseline,
- Explanation of the methodology and underlying information used to derive the Project’s NEP RFP Projection. Including, but not limited to:
  - Preliminary design of the Facility and the typical meteorological year file used to estimate the Renewable Resource Baseline, as required in the model RDG Contract.
  - Long-term resource data used, gross and net generation (MWh), and assumptions (loss factors, uncertainty values, any grid or project constraints)

Generation projects that include a storage component or stand-alone storage projects must specify:

- Technology Type of Storage (e.g., lithium ion battery)
- Interconnection type (AC or DC)
- BESS Contract Capacity (MW / MWh), as defined in the applicable contract
- Operational Limitations, such as, but not limited to: grid charging limits (with respect to ITC), energy throughput limits (daily, monthly, annually), Stage of Charge (“SOC”) restrictions (min/max SOC while at rest (not charging/discharging)), etc. Proposed Operational Limits cannot be in conflict with the energy discharge requirement in the RFP’s Section 2.1 Scope of the RFP. If such a conflict is identified, the Proposal may be disqualified.
- Round Trip Efficiency (“RTE”). Specify a single value (percentage) that the Facility is required to maintain throughout the term of the applicable contract. The RTE must consider and reflect:
  - the technical requirements of the Facility (as further set forth in the applicable contract);
  - that the measurement location of charging and discharging energy is at the Point of Interconnection;
  - electrical losses associated with the point of interconnection measurement location;
  - any auxiliary and station loads that need to be served by BESS energy during charge and discharge that may not be done at BESS Contract Capacity or over a fixed duration; and
  - See Attachment W to the applicable RDG PPA or ESPA for details of how the RTE will be operationally validated
- Number of charge/discharge cycles per year the storage component is capable of
- Allowed Losses (kWh/24-hour period)

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<sup>6</sup> See RFP Section 2.1.18 and Attachment U to the RDG PPA.

- Describe any augmentation plans for the storage component to maintain the functionality and characteristics of the storage during the term of the applicable contract. Include any expected interval of augmentation (months/years).
- Estimated useful life of the storage component (including augmentation if used) (years)
- For generation coupled with energy storage, described the Allowed Percentage of Storage Component's charging that can come from the System Grid, if any, and any conditions of charging (when, percentage of annual total energy input, etc.)

Firm generation projects that operate on fuel must provide the following information for both its primary biofuel and its alternate fossil fuel:

- Specify if the Proposer agrees to commit to provide the fuel for the entire proposed term of the Firm PPA? (yes/no)
- Provide a guaranteed heat rate curve for the Facility must be provided with your Proposal. The guaranteed heat rate curve must be specified as a three-term second-order polynomial.
- Specify and describe any minimum monthly/quarterly/annual fuel purchases required in your fuel contract, or specify if no minimum fuel purchase is required.
- Specify and describe any minimum loads or minimum up-times that are driven by the technical and operational capabilities of your Facility, or specify if there is no minimum.
- Describe their preliminary plan to ensure an Adequate Fuel Supply required for the operation and maintenance of the facility as described in Attachment Y, Section 14 of the Model Firm PPA.
- For all projects other than biofuel, provide evidence that the fuel will be secured for the duration of the Firm PPA term. For biofuel source Projects, provide evidence of a fuel supply for at least the first 3 years of the Firm PPA term.
- Provide an approximate number of days per year of planned maintenance.
- For Biofuel source Projects, describe:
  - Operational requirements for switching between biofuel and fossil fuel such as:
    - Will all equipment needed to perform a fuel switch be held at the Facility
    - Time to perform a switch, notification period required before a fuel switch, and whether a Facility will be unavailable during the switch
    - Whether operation on fossil fuel will impact financing, land lease agreements, or result in additional permits/permit revisions
  - Operational requirements for operating on a blend of biofuel and fossil fuel, if able, such as:
    - Minimum blend of biofuel that the equipment may run on without modification
    - Time required to adjust blend, notification period required before adjustment of blend, and whether the Facility will be unavailable during the adjustment
    - Whether operation on a fossil fuel blend will impact financing, land lease agreements, or result in additional permits/permit revisions
- For Biofuel source Projects provide a biofuel, fossil fuel, or, if applicable, blend price forecast or formula with your Proposal.

## 2.3 FINANCIAL BACKGROUND

Provide the following financial information identified below. As specified in the General Instructions in Appendix B Section 1.0 above, all information (including attachments) must be provided in English, be provided in U.S. Dollars and use U. S. credit ratings.

### 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] Proposers must identify all **estimated development and capital costs** for the Proposal. Provide a **pro forma cashflow** sheet for each proposal variation (base and optional variations). A separate pro forma cashflow sheet shall be provided for both Investment Grade Pricing and Non-Investment Grade Pricing versions of each variation. Should any conflict arise between the information provided in the Pro Forma Cashflow sheet or the Proposal PDF, the Proposal PDF shall take precedence. The pro forma cashflow should resemble the format provided in Appendix B Attachment 5. A template can be downloaded from the "1. Download Documents" tab in the Electronic Procurement Platform. The template is labelled as IGP RFP Appx B - Att 5 Pro Forma. In addition to the pro forma cashflow for each variation, descriptions of the following costs and breakdowns must be provided:

- Equipment
  - Identify the manufacturer and model number for all major equipment
- Construction
  - Identify and breakdown what is included in this category and any assumptions made
- Engineering
- Seller-Owned Interconnection Facilities
  - Identify and breakdown what is included in this category and any assumptions made
- Company-Owned Interconnection Facilities
  - Identify and breakdown what is included in this category and any assumptions made, including:
    - Company costs per Appendix H
    - Proposer's estimated costs for Proposer-Built COIF
  - Provide the cost breakdown and assumptions using the template provided in Appendix H, Attachment 1
- System upgrades necessary to interconnect Project to existing transmission line/substation

- Identify and breakdown what is included in this category and any assumptions made, including:
      - Proposer’s estimated costs for all System upgrades identified in Company’s feedback of upgrades required for Project interconnection.
      - Proposer’s estimated costs for all System upgrades beyond what was identified in Company’s feedback.
    - Provide the cost breakdown and assumptions using the template provided in Appendix H, Attachment 1
- Land
- Financing Costs
- Annual O&M
- (For Projects that include a storage component) Specify a percentage of the total project cost that is estimated to be attributed to the storage functionality of the Facility. As the storage functionality is treated as a lease, the Company will use the percentage for its preliminary calculation of the lease liability only. This percentage requested for the Company’s accounting purposes does not affect nor alter the liquidated damage provisions of the PPA, as those provisions reflect the benefit the Company seeks from the Project’s storage functionality.

[For Hawaiian Electric Proposers Only] Proposer must identify all **estimated development and capital costs** for the Proposal. At a minimum, the following costs and breakdowns must be provided:

- Facility (including any generation and storage components)
- Outside Services
- Interconnection
  - Seller-Owned Interconnection Facilities
    - Identify and breakdown what is included in this category and any assumptions made
  - Company-Owned Interconnection Facilities
    - Identify and breakdown what is included in this category and any assumptions made, including:
      - Company costs per Appendix H
      - Proposer’s estimated costs for Proposer-Built COIF
    - Provide the cost breakdown and assumptions using the template provided in Appendix H, Attachment 1
- Overhead Costs
- Allowance for Funds Used During Construction
- Annual O&M
- Specify the percentage of the total cost associated with the storage component of the Facility
- (For Projects that include a storage component) Specify a percentage of the total project cost that is estimated to be attributed to the storage functionality of the Facility. As the storage functionality is treated as a lease, the Company will use the percentage for its preliminary calculation of the lease liability only. This percentage requested for the Company’s accounting purposes does not affect nor alter the liquidated damage provisions of the PPA, as those provisions reflect the benefit the Company seeks from the Project’s storage functionality.

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 IGP Contract or any other applicable project agreements and State of Hawaii Public Utilities Commission approval of the IGP Contract 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
  - Three (3) most recent fiscal years
  - Quarterly report for the most recent quarter ended
- Parent Company
  - Three (3) most recent fiscal years
  - 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 evidence that **credit-worthy entities are interested in financing the Project**, such as, but not limited to:

- Letters of Interest or Intent from banks or investors
- Formal Commitment Letters from financial institutions
- Written commitments from equity participants
- Proof of access to lines of credit
- Bank references or credit ratings

2.3.4.5 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.

2.3.7 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 ASC 810. **Provide supporting information** to allow the Company to verify such conclusion.

## 2.4 PROPOSED CONTRACT MODIFICATIONS

2.4.1 **State whether the Proposer accepts the contract terms identified in the model IGP Contract** in its entirety or if modifications to the model agreements are proposed. For the RDG PPA, Proposers should additionally review and mark for deletion any technology-specific provisions that are not applicable to the proposed project (e.g., wind provisions, if proposing a PV project). Such information is denoted with brackets within the model contracts.

2.4.2 If Proposers elect to propose modifications to the applicable IGP Contract, **identify the name of the Microsoft Word red-line file** in the proposal submission that offers the proposed modifications to the model language that the Proposer is agreeable to. Proposers electing to propose modifications must **provide a Microsoft Word red-line version of the applicable IGP Contract** 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 IGP Contract with their Proposal submission will be deemed to have accepted the Model IGP Contract in its entirety. If no modifications are proposed, please state in this section “no modifications to the Model IGP Contract”.

As set forth in RFP Section 3.11.5.1, proposed modifications to the IGP Contract will be subject to negotiation between the Company and the Final Award Group and should not be assumed to have been accepted either as a result of being selected to the Final Award Group or based on any previously executed PPA.

## 2.5 SITE INFORMATION

2.5.1 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, with the exception of right-of-way or easements for the interconnection route, for which the Proposer is responsible. In addition to the information required below, Proposals must identify in this section any developmental requirements and restrictions such as zoning of the Site, whether the Site is within a special management area or within conservation district lands, and the status of all required easements. **Proposer must provide documentation set forth in RFP Section 4.3 to prove Site Control.**

2.5.2 Provide a **map of the Project site** that clearly identifies:

- Location of the parcel on which the site is located
- Tax map key number (9-digit format: Island Number (1 digit), Zone Number (1 digit), Section Number (1 digit), Plat Number (3 digits, add leading zeros if less than 3 digits), Parcel Number (3 digits, add leading zeros if less than 3 digits)
- Site boundaries (if the site does not cover the entire parcel)
- Total acreage of the site
- Point(s) of Interconnection
- Grid Connection Point(s)
- Relationship of the site to other local infrastructure
- Existing easements encumbering the parcel on which the site is located

2.5.3 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

2.5.4 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.

2.5.5 Identify **any rights-of-way or easements** that are required for access to the site or for interconnection route:

- Describe the status of rights-of-way or easement acquisition.
- Describe the detailed plan for securing the necessary rights-of-way or easement, including the proposed timeline and any evidence of any steps taken to date. Proposers must provide a credible and viable plan for obtaining such rights-of-way or easement(s), including the proposed timeline, the identification of all steps necessary to obtain such right-of-way or easement(s), and evidence of any steps taken to date.

2.5.6 Provide the following information related to **land use and impervious cover**<sup>7</sup> of the proposed Project:

- **Land use map** including current zoning of the proposed Project site and adjacent properties; indicate percentage of the proposed Project site for each zoning type identified.
- **Hawaii Land Study Bureau map** identifying the overall productivity rating class(es) for all lands located within the boundaries of the proposed Project site.
- **Map depicting existing impervious cover** of the proposed Project site; must include the current percentage of impervious cover of the utilized area for the proposed Project.
- **Map depicting final impervious cover** of the proposed Project site; must include the proposed percentage of impervious cover of the utilized area for the proposed Project.
  - In calculations, Proposer must use a consistent area as the base (denominator) between percentages for existing and final impervious cover.
- If the proposed Project is on reclaimed land, such as brownfield,<sup>8</sup> included a **complete description of the reclaimed land and any current land use restrictions**.

## 2.6 ENVIRONMENTAL COMPLIANCE AND PERMITTING PLAN

Proposals must address each item listed below and provide evidence of analysis of environmental impacts associated with the Project, regulatory requirements, and mitigation efforts. Each proposal must incorporate the list below as an outline, together with complete and thorough responses to each item.

2.6.1 Proposers must identify and disclose all significant permits, approvals, appurtenances, and entitlements (including applicable access, rights of way and/or easements, environmental permits, and other determinations) (collectively, the "permits") required and have a plan and schedule for securing such permits. The Proposer must 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 conditions without discretionary approval conditions. In all cases, the Proposer must provide a credible and viable plan to secure all necessary and appropriate permits for the Project. 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 meet its designated GCOD. For example, suppose the Project is located within an agricultural

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<sup>7</sup> As defined by the EPA ([8 Tools of Watershed Protection in Developing Areas | Watershed Academy Web | US EPA](#)), impervious cover is “the sum total of all hard surfaces within a watershed including rooftops, parking lots, streets, sidewalks, driveways, and surfaces that are impermeable to infiltration of rainfall into underlying soils/groundwater.” For purposes of evaluation, PV panels shall be considered impervious.

<sup>8</sup> As defined by the EPA ([Overview of EPA's Brownfields Program | US EPA](#)), brownfield is “a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

district. In that case, the Proposer shall provide evidence of the 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.

2.6.1.1 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. Your proposal must include:

- Explanation of the conceptual plans for siting
- Studies/assessments completed and still required
- All permits and approvals for the project site, including those for the interconnection route.
- The Gantt format schedule identifies the sequencing of the permit application, approval activities, and critical path. (schedule must be in MM/DD/YY format.)

2.6.1.2 Discuss the **city zoning, state land use classification, and Federal land use**:

- 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 sites and interconnection routes.
- If changes in the above are required for the proposed Project, provide a plan and timeline to secure the necessary approvals.

2.6.1.3 Identify all required discretionary and non-discretionary **land use, environmental and construction permits, and approvals** as are necessary for the 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, including input from regulators
- Explain any situation where a permit or license for one aspect of the Project may influence the timing or permit of another element (e.g., a case where one permit is contingent upon completion of another permit or license), if applicable.
- Explain your plans to secure all permits and approvals required for the Project.
- Air Permits: Firm projects with combustion sources must address the following items.
  - Identify the type of permit required (Prevention of Significant Deterioration (PSD), Covered Source Permit (CSP), Noncovered Source Permit (NSP))
  - Identify if the Project has an existing air permit or requires a new source permit or a modification to an existing air permit.
  - Identify amounts and types of pollutants and permit thresholds or provide a statement if not applicable to the proposed source.
  - Identify the best available control technology anticipated to be used.

- If responder is bidding using an existing plants, please submit max capacity factor and a permit for allowed capacity factor.

2.6.2 Provide a **preliminary environmental assessment of the site** (including any environmental and/or biological reports and identifying future additional studies needed). The evaluation should include potential short- and long-term **impacts** associated with, or resulting from, the proposed Project – including direct, indirect, and cumulative effects associated with the proposed Project's development, construction, operation, and maintenance in every area identified below. Discuss if alternatives have been or will be considered. Potential impacts should be determined based on each resource area's proposed actions area of potential effect (APE). The assessment shall also include Proposer's short- and long-term plans to mitigate such impacts and if they impact the overall Project timeline, and an explanation of the mitigation strategies for, but not limited to, each of the significant environmental areas as presented below:

- Natural Environment
  - Air quality
    - For all fuels that may be used, discuss estimated emissions and greenhouse gas calculations (including biogenic emissions), their potential impacts, and mitigation related to air quality
    - Include short-term impacts and mitigation measures for the construction phase (dust control, etc.)
  - Natural Resources
    - At a minimum, Proposer will include preliminary information on existing habitat(s), critical habitats, avian protection, wetlands, wildlife refuges, flora and fauna, essential fish habitats, and threatened and/or endangered species.
    - Include existing or planned mitigation and comprehensive surveys/studies.
  - Climate:
    - Discuss any impacts to climate and any potential effects that climate change (sea-level rise etc.) may have on the Project over the course of the Project term.
  - Geology and Soils
    - Describe the applicable proposed sites' topography, soil classification, underlying geology, and volcanic/seismic activity
    - Discuss any impacts and mitigation efforts for soils and topography erosion, changes to impervious cover before and after development, run-off concerns etc.)
    - Discuss any potential effects of volcanic/seismic activity on the Project
    - If applicable, discuss bathymetry and seasonal sea states
- Land Regulation
  - Land Uses, including any land use restrictions and/or pre-existing environmental conditions/contamination
    - At a minimum, Proposer will include information on past use of the property, any previous Phase I and/or Phase II Environmental Site Assessments (ESAs), information on any known releases to the environment and/or contamination, any State of Hawaii Department of Health (DOH) Environmental Hazard Management Plans (EHMPs), or environmental covenants.
    - Discuss any additional planned Phase I and/or Phase II ESAs
  - Flood and tsunami hazards (including the site's flood zone based on the Hawaii Department of Land and Natural Resources flood map)
  - Discuss current uses (i.e., recreational, agricultural, fishing, hunting, boating, gathering, views [parks, scenic overlooks, scenic drives, others], etc.) of the property and any potential impacts and mitigations to those uses
  - Noise
    - Discuss any potential short- and long-term noise impacts on the surrounding community

- Discuss any mitigation measures for potential noise impacts
- Solid Waste & Utilities
  - Discuss any solid waste streams that will be generated during construction and throughout the life of the Project. Define any disposal plans for such waste streams and discuss potential impacts and mitigations
  - Discuss the impacts on community utilities (water use, sewer, etc.)
- Hazardous Materials and Wastes
  - Discuss any hazardous materials to be utilized or hazardous wastes generated and define disposal plans (if applicable)
- Socioeconomics
  - Describe the socioeconomics of the proposed site location
  - Discuss potential socioeconomic impacts such as food security and mitigations
- Transportation
  - Discuss any potential impacts on transportation infrastructure use and traffic patters (i.e., availability and use of deep draft harbors, airports, airspace, roads, sea space, etc.). Also, discuss potential mitigations.
- Water Resources
  - Discuss any impacts to water quality and demonstrate that the Project complies with the Federal Clean Water Act and any applicable State and County regulations related to water quality.
  - Discuss dewatering Best Management Practices (BMPs), Stormwater Pollution Prevention Plans, and National Pollutant Discharge System (NPDES) (if applicable)
  - Describe the aquifer, water availability, and amounts of water to be used over the stages of the Project with potential impacts and mitigations
- Public Safety Services (Police, Fire, Emergency Medical Services)
  - Describe any potential Project impacts to Public Safety Services
  - Fire mitigation plans (including a description of fire suppression systems), site emergency response plans, security plans, and coordination with local Public Safety Services should be discussed.
- Potential Cumulative and Secondary Impacts

2.6.3 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 **proposal to ensure cultural sites are identified and carefully protected** as part of a cultural impact plan as it pertains to the Project Site and interconnection route. This proposal must include at a minimum:

- A high-level plan to complete, within the timeline set forth in RFP Section 4.4.2.1 , a **cultural assessment** that identifies:
  - 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 any identified cultural, historical, or natural resources in the area in question, and the reasonable protection of traditional and customary native Hawaiian rights in the affected area.
- Proposer’s **experience with cultural resource impacts** on past projects
  - Consultant’s experience with cultural resource impacts on past projects (name, firm, relevant experience, and a signed letter as proof that Proposer has contracted with a Consultant prior to the Proposal Due Date)
  - **Status of the cultural impact plan** (including, but not limited to: Cultural Impact Assessment, Cultural Landscape Study, Cultural Resource Management Plan, Ethnographic Survey, Consultation on Section 106 Process, and/or Traditional Cultural Property Studies)

2.7.2 **Archaeological Literature Review** of existing cultural documentation filed with the State Historic Preservation Division and a **Field Inspection Report** which identifies any known archaeological and/or historical sites within the project area. If sites are found, Proposers must provide a plan for mitigation from an archaeologist licensed in the State of Hawaii.

## 2.8 COMMUNITY ENGAGEMENT

Detailed instructions and requirements related to community outreach and engagement are identified in the RFP’s **Appendix N (Community Engagement Requirements)**, including the requirements to submit the Project’s **Community Engagement Plan**, any referenced material that is to be considered when evaluating the Community Engagement Plan, and the **Project’s Community Benefits Program** with your Proposal submission.

The Proposer’s Community Engagement Plan (including any **Community co-creation plan**, if applicable) and Community Benefits Program shall be submitted as standalone documents. As instructed in step 3 of Appendix B Section 1.2 above, pointers to those standalone document files must be specified identifying the file names of those standalone documents.

2.8.1 Identify the Community Engagement Plan filename.

2.8.2 Identify the Community Benefits Program filename.

## 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.

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 TECHNICAL AND OPERATIONAL REQUIREMENTS

Please also see the Technical and Operational Requirements evaluation criteria (Threshold Requirement in RFP Section 4.3. and Non-Price in RFP Section 4.4.2.1) to better understand the desired contents of the Proposal and how they will be evaluated.

2.10.1 Provide a preliminary **description of the Facility and its design** in accordance with the applicable IGP Contract. Proposals shall provide at a minimum the items listed below:

- Site Plan and General Facility Arrangement Layout
- Details of the major equipment as indicated in Section 5 of Attachment A (Equipment) of the applicable IGP contract. Proposers response should include documentation of the detailed equipment specifications, characteristics, and performance to prove satisfaction of the technical and operational requirements. A completed version of Section 5 (Equipment) Attachment A (Equipment) of the applicable IGP contract is to also be included.
- Drawings, Diagrams, Lists, Settings, and As-Builts
  - 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:
    - A single-line diagram, relay list, trip scheme and settings of the generating facility, which identifies the Point of Interconnection, demarcation between Seller-Owned and

Company-Owned Interconnection Facilities, circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes.

- Overview of the **Facility Control Systems** – descriptions of central control and inverter- or resource-level control; including the philosophy of control.

2.10.2 Provide the **sample rate of critical telemetry** (i.e. local frequency and voltage) used for Plant responses as inputs to the Facility and equipment control systems. Further, provide the expected control cycle time for each Facility Control System.

2.10.3 **[For Facilities that include BESS inverters]** Provide a description of the Facility's **grid-forming mode**.

2.10.4 Provide a description of the Facility's **self-energization and black start capabilities** as further distinguished and described in Section 3 (technical and operational requirements) of Attachment B (Facility owned by Seller) of the applicable IGP contract.

2.10.5 **Capability of meeting Technical and Operational Requirements.** The proposed Facility must meet the performance attributes identified in Attachment B, Section 3 (technical and operational requirements) of the applicable IGP Contract. Proposers **must provide confirmation that the proposed Facility meets the requirements identified in the model IGP Contract** or provide clarification or comments about the Facility's ability to meet the technical and operational requirements. Proposals should include sufficient documentation to support the stated claim that the Facility will be able to meet each technical and operational requirement set forth in Section 3 of Attachment B of the applicable IGP Contract. 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. For each technical and operational requirement, relevant sections of equipment documentation that indicate the requirement can be met should be extracted into the Proposer's response for each requirement, as well as appropriate reference to the documentation for where the information was extracted from. Examples of documentation to prove certain capabilities include but are not limited to:

- Reactive vs. Active power capability curves
- Absolute equipment limit capability curves or data showing expected performance through the continuous operating and ride-through regions
- Control System design documents
- Active power dispatch constraints (i.e. permit limits and/or equipment limits)

2.10.6 **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.

2.10.7 **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.

2.10.8 **Energy Storage Technology Specific Requirements:** For stand-alone storage projects or generation projects that include a storage component, provide information and documentation to support the ability to meet the requirement in Section 9(d) Battery Energy Storage System of Attachment B, including any additional limitations not already specified.

## 2.11 IRS SUBMITTAL INFORMATION

2.11.1 Provide the appropriate completed **Project Interconnection Data Request worksheets** for the proposed technology with the Proposal submission. (The worksheets can be found in the Electronic Procurement Platform’s “1. Download Documents” tab as IGP RFP Appx B - Att 2a Data Request (PV Gen) 240409.xls, IGP RFP Appx B - Att 2b Data Request (Wind Gen) 240409.xls or IGP RFP Appx B - Att 2c Data Request (Synch Gen) 240409.xls Microsoft Excel files.) Standalone Storage Projects will use the IGP RFP Appx B - Att 2a Data Request (PV Gen) 240409.xls worksheet and omit the PV sections.

2.11.2 Also provide all **project single line diagram(s)** with the Proposal submission.

2.11.3 **Models for equipment and controls** (see Appendix B Attachment 4), **complete documentation and user manuals for all technical models** (for inverters and power plant controller), **generation unit manufacturer datasheet(s)**, **generation unit reactive power capability curve(s)**, **overlaid generation facility technical model output data for three-phase fault and single-phase fault**, and a **report, with plots, documenting that Proposers have tested their models under all scenarios prescribed** shall be submitted within the timeframes specified in RFP Section 5.1. Proposers may also download the **Hawaiian Electric Generation Facility Technical Model Requirements and Review Process** documentation labelled as IGP RFP Appx B - Att 3 Tech Model Reqmts Review Process.pdf from the “1. Download Documents” tab.

2.11.4 See Appendix B Attachment 4 for a summary of the model requirements and IRS task scope.

## 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 in commercial applications (for example, by demonstrating evidence of an executed 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 a hierarchical **organizational/management chart** for the Project that lists all key personnel and project participants dedicated to the Project and identifies the management structure and responsibilities. In addition to the chart, Proposers must provide biographies/resumes of the key personnel, including position, years of relevant experience and similar project experience. Proposers must provide specifics on each participants' area of expertise in renewable energy projects. Identify architects and engineers or provision to provide same that are licensed to practice in the State of Hawai'i. Proposers must also provide a completed table:

- 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 individual 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.

	<b>EXPERIENCE:</b>						
	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. Do not list projects that did not reach commercial operations.						
<b>Participant Name:</b>	<b>Financing</b>	<b>Designing</b>	<b>Constructing</b>	<b>Interconnecting</b>	<b>Owning</b>	<b>Operating</b>	<b>Maintaining</b>
1.							
2.							
3.							
...							

2.13.2 Identify those **members of the team** the Proposer is submitting in the Experience Table above to meet the experience and qualifications requirement, included in the Threshold Requirement. Identify those **members of the team with the experience and qualifications**, including affiliates, and their principal personnel who will be involved in the project. If the Proposer consists of multiple parties, such as joint ventures or partnerships, demonstrate each member(s) firm commitment to provide services to the project (e.g., letter of intent); 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.

2.13.3 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:

<b>Project Name</b>	<b>Location (City, State)</b>	<b>Technology (wind, PV, hydro, plus storage, etc.)</b>	<b>Size (MW/ MWh)</b>	<b>Commercial Operation Date</b>	<b>Offtaker (if applicable)</b>	<b>Role &amp; Responsibilities</b>
1.						
2.						

3.						
...						

## 2.14 PROJECT DEVELOPMENT AND 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 through Commercial Operations.

- The **schedule** must include:
  - Interconnection Requirement Study (IRS) assumptions
  - Anticipated contract negotiation period assumptions
  - Regulatory assumptions (including PPA/PUC filings and assumed durations)
  - Anticipated submittal and approval dates for permitting (including but not limited to environmental and archaeological compliance)
  - Siting and land acquisition
  - Cultural Resource implications and mitigation activities
  - Community outreach and engagement activities
  - Energy resource assessment
  - Financing
  - Engineering
  - Procurement (include current lead times for long lead equipment)
  - Facility construction including construction management events
  - Applicable reporting milestone events specified in the Model IGP Contract
  - Testing
  - Interconnection (including engineering, procurement, and construction)
  - Commercial Operations Date (COD)
  - All other important elements outside of the direct construction of the Project
  - For existing projects, any changes required to meet the terms of this RFP and/or applicable IGP Contract
  - Durations should be consistent with appendix H, when applicable
- The project schedule must be created in Microsoft Project and submitted in both a .mpp file format and in .pdf file format.
- 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 IGP Contract and/or other agreements.
- Appropriate mitigation or contingency plans should be included with any risk of achieving the proposed COD.

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

- Identification of contracting/subcontracting plans
- Modular construction

- Safety plans<sup>9</sup>
- 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 Provide a description of any **project activities that have been performed to date**.

2.14.4 If applicable, explain any planned actions to reach safe harbor milestones or other schedule-affecting tax credit activities and guaranteed commercial operations, including durations and dependencies which support this achievement.

## 2.15 CARBON EMISSION QUESTIONNAIRE

2.15.1 Answer the following Carbon Criteria questions. Please provide conservative answers where answers are unknown or uncertain. Guidance for providing conservative answers has been provided for each question. If a Category or Question is not applicable to the Project, please leave blank (e.g., if the Project generation technology does not include solar, leave questions in Category “3e. Procurement – Solar” blank).

Category	#	Question	Answer Choices
1. Siting	1	Please provide the Project's expected developed Site area in units of m <sup>2</sup> .  <i>If the answer to this question is unknown or uncertain, please conservatively provide the largest expected developed Site area in units of m<sup>2</sup>.</i>	<i>Numerical write in</i>
	2	What is the expected distance from the Project's generation/storage location to the point of interconnection?  <i>If the answer to this question is unknown or if there are multiple possibilities, please conservatively provide the furthest expected distance from the Project's generation/storage location to the point of interconnection</i>	<i>Numerical write in</i>
	3	What fraction of the Project's Site is a “greenfield”, e.g., has not been previously developed?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected “greenfield” fraction.</i>	<i>Numerical write in</i>
	4	What fraction of the Project's Site requires grading?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected fraction.</i>	<i>Numerical write in</i>

<sup>9</sup> 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.

	5	<p>What is the expected fraction (in terms of CAPEX) of infrastructure being reused (includes roads, buildings, trenches, pads) for the Project?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
<b>2. Procurement</b>	6	<p>What fraction of concrete, fencing, gravel and other roadway materials used for the Project will be locally sourced on island?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	7	<p>What fraction of roadway materials and gravel used for the Project will be made from recycled materials?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
<b>3a. Procurement – Biofuels</b>	8a	<p>Please provide the Project’s expected annual and lifetime production in units of MWh.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i></p>	<i>Numerical write in</i>
	9a	<p>What fraction of the biofuel feedstock used for the Project is a waste product or grown specifically for fuel usage?</p> <p><i>Please provide the answer as a ratio between "Waste for fuel" vs. "Grow for fuel". If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	10a	<p>Please define the primary and alternative biofuel types for this Project, and provide carbon footprints for major components and feedstock as well as manufacturer-specific supporting documentation such as locations and processing pathways, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	11a	<p>What fraction of the harvested biofuel feedstock used for the Project will be replaced and regrown within one year of harvesting?</p>	<i>Numerical write in</i>
		<i>please answer only if the project includes biofuels-based generation</i>	

		<i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum fraction.</i>	
	12a	How much hydrogen will be used in the biofuel production process for hydroprocessing (kg hydrogen/kg biofuel produced)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected amount in units of kg hydrogen/kg biofuel produced.</i>	<i>Numerical write in</i>
	13a	What is the expected overall efficiency of the Project (electricity generated by the Project divided by the energy in the biofuels combusted)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency.</i>	<i>Numerical write in</i>
	14a	Please define the fossil fuel type(s) that can be used by this Project to generate electricity. For any fossil fuel type(s) that can be used, please provide carbon footprints and source location information for these fossil fuels, if available.  Please provide the carbon footprint in units of kg CO <sub>2</sub> e/MMBtu energy content for feedstock.  <i>If this information is unavailable, please answer “Not available at this time”.</i>	<i>Numerical write in</i>
	15a	What is the expected overall efficiency of the Project if running fossil fuels (electricity generated by the Project divided by the energy in the fossil combusted)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency</i>	<i>Numerical write in</i>
<b>3b. Procurement – Biomass</b>  <i>please answer only if the project includes biomass-based generation</i>	8b	Please provide the Project’s expected annual and lifetime production in units of MWh.  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i>	<i>Numerical write in</i>
	9b	What is the expected overall efficiency of the Project’s biomass conversion to electricity (electricity generated by the Project divided by the energy in the biomass combusted)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency.</i>	<i>Numerical write in</i>
	10b	What is the expected biomass combustion efficiency of the biomass used for the Project (actual heat produced by	<i>Numerical write in</i>

		<p>combustion divided by the total heat potential of the biomass combusted)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected biomass combustion efficiency.</i></p>	
	11b	<p>Please define the primary and alternative biomass types for this Project, and provide carbon footprints for major components and feedstock as well as manufacturer-specific supporting documentation such as locations and processing pathways, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components, such as a biomass combustor, and in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	12b	<p>What fraction of the harvested biomass feedstock used for the Project will be replaced and regrown within one year of harvesting?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum fraction.</i></p>	<i>Numerical write in</i>
	13b	<p>Please define the fossil fuel type(s) that can be used by this Project to generate electricity. For any fossil fuel type(s) that can be used, please provide carbon footprints and source location information for these fossil fuels, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	14b	<p>What is the expected overall efficiency of the Project if running fossil fuels (electricity generated by the Project divided by the energy in the fossil combusted)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency</i></p>	<i>Numerical write in</i>
<p><b>3c. Procurement – Energy Storage</b></p> <p><i>please answer only if the project includes energy storage</i></p>	8c	<p>Please provide the Project’s expected annual energy delivered by the system in units of MWh.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual energy delivery in units of MWh.</i></p>	<i>Numerical write in</i>

	9c	<p>What is the expected return efficiency of the Project’s energy storage system (MWh returned to the grid/MWh stored)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected return efficiency.</i></p>	<i>Numerical write in</i>
	10c	<p>How many cycles will the batteries used for the Project’s energy storage system undergo annually?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected number of cycles.</i></p>	<i>Numerical write in</i>
	11c	<p>Please provide carbon footprints for major components and feedstock as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components, such as a battery.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	12c	<p>What is the expected battery lifetime before degradation of the Project’s energy storage efficiency below 80%?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected lifetime.</i></p>	<i>Numerical write in</i>
<b>3d. Procurement – Geothermal</b>  <i>please answer only if the project includes geothermal generation</i>	8d	<p>Please provide the Project’s expected annual and lifetime production in units of MWh.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i></p>	<i>Text write in</i>
	9d	<p>Will the Project’s geothermal process be an enhanced geothermal system (EGS), flash/dry steam, or binary steam power plant?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “Not known at this time”.</i></p>	<i>Text write in</i>
	10d	<p>Will the Project’s geothermal process be closed loop?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “No”.</i></p>	<i>Yes / No</i>
	11d	<p>What percentage of mass of fluid will be cascaded compared to total extracted fluid mass?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected percentage.</i></p>	<i>Numerical write in</i>

	12d	<p>Please provide carbon footprints for major components as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	13d	<p>Will new geothermal wells need to be drilled for the Project?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “Yes”.</i></p>	<i>Yes / No</i>
<p><b>3e. Procurement – Solar</b></p> <p><i>please answer only if the project includes solar generation</i></p>	8e	<p>Please provide the Project’s expected annual and lifetime production in units of MWh.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i></p>	<i>Numerical write in</i>
	9e	<p>What is the expected solar irradiance for the Project (kW/m<sup>2</sup>)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “Not known at this time”.</i></p>	<i>Numerical write in</i>
	10e	<p>Which type of solar panels will be installed for the Project?</p> <p>a. Cadmium Telluride b. Single Crystalline Silicon c. Multi Crystalline Silicon d. Other, if yes, please provide details regarding solar panel technology type.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “Not known at this time”.</i></p>	<i>Text write in; If "Other", include write-in</i>
	11e	<p>What is the solar conversion efficiency of the solar panels (solar kW/m<sup>2</sup> / kW/m<sup>2</sup> produced) used for the Project?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum solar conversion efficiency.</i></p>	<i>Numerical write in</i>
	12e	<p>Please provide carbon footprints for major components as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components, such as solar panels.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
<p><b>3f. Procurement - Waste-to-Energy</b></p>	8f	<p>Please provide the Project’s expected annual and lifetime production in units of MWh.</p>	<i>Numerical write in</i>

<b><i>please answer only if the project includes waste-to-energy generation</i></b>		<i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i>	
	9f	<p>What fraction of the waste feedstock used for the Project will be organic waste (food, waste paper, green/compostable waste, etc.)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	10f	<p>What fraction of the fleet used to transport the waste feedstock to the Facility will consume renewable diesel or be electric?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	11f	<p>If the Waste-to-Energy process used for the Project will emit greenhouse gases, what fraction of the greenhouse gases will be captured?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	12f	<p>What is the expected overall electrical efficiency of the Project (electricity generated by the Project divided by the energy in the waste feedstock combusted)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum overall electrical efficiency expected.</i></p>	<i>Numerical write in</i>
	13f	<p>Please provide carbon footprints for major components and feedstock as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components and in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>
	14f	<p>Please define the fossil fuel type(s) that can be used by this Project to generate electricity. For any fossil fuel type(s) that can be used, please provide carbon footprints and source location information for these fossil fuels, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p>	<i>Numerical write in</i>

		<i>If this information is unavailable, please answer “Not available at this time”.</i>	
	15f	<p>What is the expected overall efficiency of the Project if running fossil fuels (electricity generated by the Project divided by the energy in the fossil combusted)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency</i></p>	<i>Numerical write in</i>
<b>3g. Procurement – Wind</b>  <i>please answer only if the project includes wind generation</i>	8g	<p>Please provide the Project’s expected annual and lifetime production in units of MWh.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i></p>	<i>Numerical write in</i>
	9g	<p>What fraction of the rotors used for the Project will be made from recycled materials?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	10g	<p>Please provide the average wind speed for the Project location, in units of mph or m/s.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected wind energy availability.</i></p>	<i>Numerical write in</i>
	11g	<p>Please provide the expected power generation rate (i.e., capacity factor) of the Project.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected power generation ratio.</i></p>	<i>Numerical write in</i>
	12g	<p>What percentage by weight of the turbine tower will be steel?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected percentage.</i></p>	<i>Numerical write in</i>
	13g	<p>Please provide carbon footprints for major components as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components, such as wind turbines.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Numerical write in</i>

<b>3h. Procurement – Hydrogen</b>  <i>please answer only if the project includes hydrogen generation</i>	8h	Please provide annual and lifetime production in units of MWh.  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i>	<i>Numerical write in</i>
	9h	What is the expected overall efficiency of the Project (electricity generated by the Project divided by the fuel energy in the H <sub>2</sub> consumed/combusted)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency.</i>	<i>Numerical write in</i>
	10h	Please briefly describe the feedstock of the hydrogen and the hydrogen production process (e.g., natural gas, steam methane reforming, water electrolysis).  <i>If hydrogen is from multiple feedstock sources, please provide a percentage from each feedstock/source.</i>	<i>Text write in</i>
	11h	Please provide the carbon intensity in units of kg CO <sub>2</sub> e/MMBtu energy content for hydrogen.  <i>If this information is unavailable, please answer “Not available at this time”.</i>	<i>Numerical write in</i>
	12h	Please specify whether the power generation technology involves combustion (e.g., combined-cycle gas turbine) or not (e.g., fuel cell power generation).	<i>Text write in</i>
	13h	Please define the fossil fuel type(s) that can be used by this Project to generate electricity. For any fossil fuel type(s) that can be used, please provide carbon footprints and source location information for these fossil fuels, if available.  Please provide the carbon footprint in units of kg CO <sub>2</sub> e/MMBtu energy content for feedstock.  <i>If this information is unavailable, please answer “Not available at this time”.</i>	<i>Numerical write in</i>
	14h	What is the expected overall efficiency of the Project if running fossil fuels (electricity generated by the Project divided by the energy in the fossil combusted)?  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency</i>	<i>Numerical write in</i>
<b>3i. Procurement – Hydropower</b>	8i	Please provide the Project’s expected annual and lifetime production in units of MWh.	<i>Numerical write in</i>

<b>please answer only if the project includes hydropower generation</b>		<i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i>	
	9i	What is the type of hydropower plant of the Project?  <i>Please specify whether the Project is an impoundment, run-of-river, or pumped storage hydropower plant.</i>	<i>Text write in</i>
	10i	Does the Project require construction of a new dam; if so, what is the material of the dam?  <i>Please specify whether the Project would require new construction or significant expansion of a dam or reservoir.</i>	<i>Text write in</i>
	11i	Does the project have other combustion or fugitive GHG emissions (e.g., backup generator during downtime, or fugitive CH <sub>4</sub> emissions from the reservoir).  <i>Please briefly describe the type of emission source(s) if answered "Yes".</i>	<i>Text write in</i>
	12i	Please provide carbon footprints for major components as well as manufacturer-specific supporting documentation, if available.  Please provide the carbon footprint in units of kg CO <sub>2</sub> e/kWh for power generating components, such as the hydropower turbines.  <i>If this information is unavailable, please answer "Not available at this time".</i>	<i>Text write in</i>
<b>3j. Procurement – Other</b> <i>please answer only if the project is NOT a generation/storage project listed in 3a through 3i</i>	8j	Please provide the Project's expected annual and lifetime production in units of MWh.  <i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected annual production capacity in units of MWh.</i>	<i>Numerical write in</i>
	9j	Briefly describe the power generating mechanism. Be sure to include fuel type, key equipment, whether combustion is involved, and other materials that have high emissions or GWP (e.g., HFCs & CFCs).  <i>If this information is unavailable, please answer "Not available at this time".</i>	<i>Text write in</i>
	10j	What are the feedstock and production process of fuel?  <i>If the answer to this question is unknown or uncertain, please conservatively provide all potential feedstock and production process</i>	<i>Text write in</i>

	11j	<p>What is the expected overall efficiency of the Project (electricity generated by the Project divided by the energy input)?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected overall efficiency.</i></p>	<i>Numerical write in</i>
	12j	<p>Please provide carbon footprints for major components and feedstock as well as manufacturer-specific supporting documentation, if available.</p> <p>Please provide the carbon footprint in units of kg CO<sub>2</sub>e/kWh for power generating components, and/or in units of kg CO<sub>2</sub>e/MMBtu energy content for feedstock.</p> <p><i>If this information is unavailable, please answer “Not available at this time”.</i></p>	<i>Text write in</i>
<b>4. Construction</b>	16	<p>What fraction of the equipment used during the construction phase of the Project will consume renewable fuel?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
	17	<p>Will the Site have an anti-idle policy for the equipment used during the construction phase of the Project?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively answer “No”.</i></p>	<i>Yes / No</i>
	18	<p>How many hours of helicopter use will be required for construction phase of the Project?</p> <p><i>If helicopter is not used, please answer “0”. If the answer to this question is unknown or uncertain, please conservatively estimate the hours needed.</i></p>	<i>Numerical write in</i>
	19	<p>What fraction of construction workers traveling to the Site during the construction phase of the Project will be local to the Project Island?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum fraction of construction workers traveling to the Site during the construction phase of the Project may be local to Hawai‘i.</i></p>	<i>Numerical write in</i>
<b>5. Operations &amp; Maintenance</b>	20	<p>What fraction of Project equipment and materials will need to be replaced during the Project’s proposed Contract Term (e.g., Project lifetime) as a percentage of capital cost?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the maximum expected fraction of Project equipment and materials may need to be</i></p>	<i>Numerical write in</i>

		<i>replaced during the Project's proposed Contract Term by using an above-average scenario for number of equipment failures and wear-and-tear on project materials.</i>	
	21	<p>Will any equipment containing high global warming potential gases (such as sulfur hexafluoride (SF<sub>6</sub>) or hydrofluorocarbons (HFCs)) be installed or used during operation? If yes, please provide the type of equipment and high global warming potential greenhouse gas and approximate quantity (kg) leaked per year.</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively assume "Yes" and provide a maximum expected quantity (kg) leaked per year.</i></p>	<i>Yes / No If "Yes", include numerical write in</i>
	22	<p>What is the on-site electricity demand to maintain normal operation as a percentage of annual electricity production over the Project's proposed Contract Term?</p> <p><i>Please provide the response as a percentage of Project's total electricity production. Be sure to include both parasitic electricity demand from on-site generation and from the grid. Provide the response as a percentage of Project's total electricity production.</i></p>	<i>Numerical write in</i>
	23	<p>What fraction of the equipment used for the Operations &amp; Maintenance of the Project will consume renewable fuel or be electric?</p> <p><i>If the answer to this question is unknown or uncertain, please conservatively provide the minimum expected fraction.</i></p>	<i>Numerical write in</i>
<b>6. General</b>	24	<p>Please provide any additional information that is currently available on the Project's lifecycle greenhouse gas emissions and/or actions, such as carbon capture, utilization and storage (CCUS), that will be taken to reduce the Project's impacts throughout the Project lifecycle (i.e., including raw materials and extraction, transportation, construction, operations &amp; maintenance, and decommissioning &amp; disposal).</p> <p><i>Please state if no actions are intended at this time.</i></p>	<i>Text write in</i>

## 2.16 PREVIOUS PERFORMANCE

2.16.1 Proposers shall identify all affiliates (as defined in the RFP) which have been a party to a renewable energy contract with the Company within the past five (5) years.

## **(OPTIONAL) MINOR PROPOSAL VARIATIONS**

Proposers submitting minor variations to their base variation (as allowed in RFP Section 3.7.2.1) must provide the **details of each variation in the below section(s)**. In the proposal variation section below, Proposers must (1) provide a completed Proposal Summary Table identical to Appendix B Section 2.0 in any Section 3 and Section 4 (if applicable). The information in these tables must specifically reflect the information for the variation being proposed. Additionally, Proposers must (2) identify all changes to the information provided in response to Appendix B Sections 2.2.4 through 2.14 for the Proposal variation. If differences from any section in Sections 2.2.4 through 2.14 are not identified, the Company will assume that the information contained in the base variation (Sections 2.2.4 through 2.14) also applies to the Proposal variation.

**Note: Appendix B Section 2.2.2 above requires the inclusion of a table summarizing the differences among the variations, if variations are proposed.**

(AS NECESSARY)

- 3.1 RESERVED**
- 3.2 VARIATION A SUMMARY**
- 3.3 VARIATION A FINANCIAL BACKGROUND**
- 3.4 VARIATION A PROPOSED CONTRACT MODIFICATIONS**
- 3.5 VARIATION A SITE INFORMATION**
- 3.6 VARIATION A ENVIRONMENTAL COMPLIANCE AND PERMITTING PLAN**
- 3.7 VARIATION A CULTURAL RESOURCE IMPACTS**
- 3.8 VARIATION A COMMUNITY ENGAGEMENT**
- 3.9 VARIATION A O&M**
- 3.10 VARIATION A TECHNICAL AND OPERATIONAL REQUIREMENTS**
- 3.11 VARIATION A IRS SUBMITTAL INFORMATION**
- 3.12 VARIATION A PROVEN TECHNOLOGY**
- 3.13 VARIATION A EXPERIENCE AND QUALIFICATIONS**
- 3.14 VARIATION A PROJECT DEVELOPMENT AND SCHEDULE**
- 3.15 VARIATION A CARBON EMISSION QUESTIONNAIRE**

(AS NECESSARY)

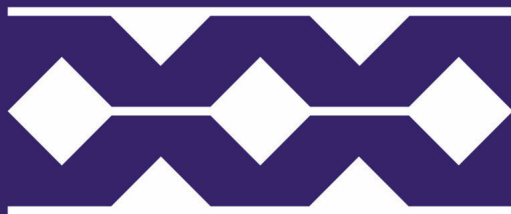
- 4.1 RESERVED**
- 4.2 VARIATION B SUMMARY**
- 4.3 VARIATION B FINANCIAL BACKGROUND**
- 4.4 VARIATION B PROPOSED CONTRACT MODIFICATIONS**
- 4.5 VARIATION B SITE INFORMATION**
- 4.6 VARIATION B ENVIRONMENTAL COMPLIANCE AND PERMITTING PLAN**
- 4.7 VARIATION B CULTURAL RESOURCE IMPACTS**

- 4.8 VARIATION B COMMUNITY ENGAGEMENT**
- 4.9 VARIATION B O&M**
- 4.10 VARIATION B TECHNICAL AND OPERATIONAL REQUIREMENTS**
- 4.11 VARIATION B IRS SUBMITTAL INFORMATION**
- 4.12 VARIATION B PROVEN TECHNOLOGY**
- 4.13 VARIATION B EXPERIENCE AND QUALIFICATIONS**
- 4.14 VARIATION B PROJECT DEVELOPMENT AND SCHEDULE**
- 4.15 VARIATION B CARBON EMISSION QUESTIONNAIRE**

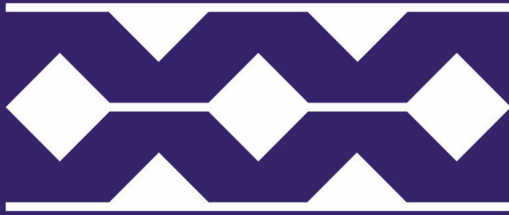
**REQUEST FOR PROPOSALS**  
**FOR**  
**RENEWABLE DISPATCHABLE GENERATION**  
**AND**  
**ENERGY STORAGE**  
**ALL ISLANDS**

~~May 2~~June 6, 2025

*Appendix J – Model RDG PPA*



**Hawaiian  
Electric**



**Hawaiian  
Electric**

*Power Purchase Agreement  
For  
Renewable Dispatchable Generation  
[Wind or PV + BESS]  
All Islands*

*Project Type: [Wind or PV + BESS]*

*Contract Capacity: \_\_\_\_\_ MW of Generation*

*BESS Contract Capacity: \_\_\_\_\_ / \_\_\_\_\_ MW/MWh of Storage*

*Are the PV System/WTGs and the BESS DC-Coupled? No  Yes*

*Facility Location: \_\_\_\_\_*

*Execution Date: \_\_\_\_\_*

~~April 3~~ June 6, 2025 Version

## PREFATORY NOTES

- This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of renewable dispatchable generation to be executed by Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc. or Maui Electric Company, Limited. The terms and conditions that may be offered by Hawaiian Electric Company, Inc., Maui Electric Company, Limited or Hawai'i Electric Light Company, Inc. in a renewable dispatchable generation power purchase agreement may be modified to reflect factors such as different renewable technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such power purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions.
- The documents evidencing the complete contract for this Facility consist of (1) this Power Purchase Agreement For Renewable Dispatchable Generation, and all Attachments, Exhibits and related documents attached to this document, (2) the IRS Letter Agreement, (3) the GHG Letter Agreement and (4) any confidentiality or non-disclosure agreements entered into by the Parties during the process of contract negotiations and/or discussions of the specifications of the Facility.
- This document 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 from the documents evidencing the complete contract for such project proposal.

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

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POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION

THIS POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Execution Date"), by and between [Hawaiian Electric Company, Inc.,] [Maui Electric Company, Limited,] [Hawai'i Electric Light Company, Inc.,] a Hawai'i corporation (hereinafter called the "Company") and \_\_\_\_\_ (hereinafter called the "Seller").

WHEREAS, Company is an operating electric public utility on the island where the Facility is located, 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" or "Commission"); 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 is a developer of renewable energy systems and intends to hire a properly licensed general contractor to construct, and, thereafter, Seller intends to 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) [**together with a safe, reliable and operationally flexible battery energy storage system ("BESS")**] so as to provide the Company System with those benefits and services associated with renewable energy generation [**and energy storage services**], as defined herein; and

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

WHEREAS, Facility will be located at the location identified on the cover page of this Agreement, and is more fully described in Attachment A (Description of Generation,

Conversion and Storage Facility) and Attachment B (Facility Owned by Seller); 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.
- 2.2 [RESERVED]
- 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) 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 or any portion of the Facility is 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 or any portion of the Facility available for Company Dispatch, as more fully set forth in Section 3(d) 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. In order to provide Company with reasonable assurance that the Facility's Net Energy Potential and Contract Capacity will be available for Company Dispatch: (i) the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric shall be used to evaluate the availability of the [PV System or WTG(s)] for dispatch by Company; (ii) the [GPR or GPI] Performance Metric shall be used to evaluate the efficiency of the [PV System or WTG(s)]; (iii) the BESS Capacity Performance Metric shall be used to confirm the capability of the BESS to discharge continuously for four (4) hours at BESS Contract Capacity (MW) or to discharge continuously for a total energy (MWh) equal to the BESS Contract Capacity (MWh) if the test is conducted at less than BESS Contract Capacity (MW); (iv) the BESS EAF Performance Metric shall be used to determine whether the BESS is meeting its expected availability; (v) the BESS EFOF Performance Metric shall be used to evaluate whether the BESS is experiencing excessive unplanned outages; and (vi) the RTE Performance Metric shall be used to evaluate the storage efficiency of the BESS. Whenever the [PV System or WTG(s)] potential output is in excess of the Company Dispatch, the excess energy from the [PV System or WTG(s)] 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 ([PV System Equivalent or Modified Pooled OMC Equipment]) Availability Factor;

Liquidated Damages; Termination Rights) through Section 2.11 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights) of this Agreement shall be interpreted consistent with the North American Electric Reliability Corporation Generating Availability Data System ("NERC GADS") Data Reporting Instructions. In the event of a conflict between NERC GADS and the terms of this Agreement, the terms of this Agreement will control.

(b) [RESERVED]

2.5 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor; Liquidated Damages; Termination Rights.

(a) [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages. Following the close of each [PV System EAF or MPXEEAF] Assessment Period, a [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor shall be calculated as provided in accordance with Attachment Q (Calculation of Certain Metrics) to this Agreement. In the event the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor is less than [98% or 97% in the case of MPXEEAF as Wind does not get the benefit of RSH at night] (the "[PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric") for any [PV System EAF or MPXEEAF] Assessment Period, Seller shall be subject to liquidated damages as set forth in this Section 2.5(a) ([PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages). For avoidance of doubt, because calculation of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor requires twelve (12) calendar months of data, the first month for which such liquidated damages could be assessed would be the concluding calendar month of the initial Contract Year. If the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor for a [PV System EAF or MPXEEAF] Assessment Period is less than the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric, Seller shall pay, in accordance with Section 2.12 (Payment of

Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for Seller's failure to achieve the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric for such LD Period, an amount calculated in accordance with the following formula:

<u>[PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
--	--

<p><b>[97.9%</b> and below in the case of PV]</p> <p><b>[96.9%</b> and below in the case of MPXEEAF]</p>	<p>For each one-tenth of one percent (0.001) by which the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor for such [PV System EAF or MPXEEAF] Assessment Period falls below the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric, an amount equal to 0.001917 of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period.</p>
--	--

For purposes of determining liquidated damages under the preceding formula, the amount by which the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor for the [PV System EAF or MPXEEAF] Assessment 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric for a [PV System EAF or MPXEEAF] Assessment 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 [PV System Equivalent Availability Factor Performance Metric or Modified Pooled OMC Equipment Availability Factor Performance Metric] and is included for illustrative purposes only. Assume the monthly Lump Sum Payment is \$1,000,000 and the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor is [for PV 96.6% or Pooled OMC 97.9%] as calculated in the example in Section 1 (Calculation of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor) of Attachment Q (Calculation of Certain Metrics).

The liquidated damages would be calculated as follows:

Applicable Period Lump Sum Payment = \$1,000,000

$\$1,000,000 \times .001917 = \$1,917$

$98.0\% - 96.6\% = 1.4\%$

$1.4\%/0.1\% = 14$

$\$1,917 \times 14 = \$26,838$

- (b) [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.5(a) ([PV System Equivalent or 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric for a [PV System EAF or MPXEEAF] 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.5(a) ([PV System Equivalent or Modified

Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages) for those [PV System EAF or MPXEEAF] Assessment Periods during which the Seller failed to achieve the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric, the failure of the Facility to achieve a [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor of not less than **84%** for each of thirty-six (36) consecutive monthly [PV System EAF or MPXEEAF] Assessment Periods 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). For avoidance of doubt, because the rolling forward of the [PV System EAF or MPXEEAF] Assessment Period creates a new [PV System EAF or MPXEEAF] Assessment Period following the close of every calendar month, as provided in Section 1 (Calculation of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement, failing to achieve the 84% benchmark for each of thirty-six (36) consecutive monthly [PV System EAF or MPXEEAF] Assessment Periods constitutes a failure extending over three consecutive years.

2.6 Measured Performance Ratio or Performance Index; Liquidated Damages; Termination Rights.

- (a) [GPR or GPI] Performance Metric and Liquidated Damages. For each [MPR or PI] Assessment Period, a [Measured Performance Ratio or Performance Index] shall be calculated as provided in Section 2 (Calculation of [Measured Performance Ratio or Performance Index]) of Attachment Q (Calculation of Certain Metrics) of this Agreement. In the event the [MPR or PI] is less than [**95%** of the GPR Performance Metric as adjusted by the degradation factor set forth below, or **97%** of the GPI Performance Metric] Seller shall be subject to liquidated damages as set forth in this Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages). For avoidance of doubt, because calculation of the [Measured Performance Ratio or Performance Index] requires twelve (12) calendar

months of data, the first month for which such liquidated damages would be assessed would be the concluding calendar month of the initial Contract Year. If the [Measured Performance Ratio or Performance Index] for a [MPR or PI] Assessment Period is less than [95% of the GPR Performance Metric as adjusted by the degradation factor set forth below, or 97% of the GPI Performance Metric] Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for Seller's failure to achieve the [GPR or GPI] Performance Metric for such [MPR or PI] Assessment Period, an amount calculated in accordance with the following formula **[NOTE DIFFERENT VERSIONS FOR PV-GPR AND WIND-PI]**:

**[PV Version]**

<u>Tier</u>	<u>Measured Performance Ratio</u>	<u>Amount of Liquidated Damages Per MPR Assessment Period</u>
<b>Tier 1</b>	<b>GPR Performance Metric x DF x 0.95 &gt; Measured Performance Ratio ≥ GPR Performance Metric x DF x 0.90</b>	For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such MPR Assessment Period falls below the upper limit of the bandwidth specified in this subparagraph, an amount equal to one-tenth of one percent (0.001) of the MPR Assessment Period Lump Sum Payment. The upper end of the aforementioned bandwidth is equal to the product of the GPR Performance Metric, the applicable degradation factor (DF), and 95%. The lower limit of the aforementioned bandwidth consists of and includes the product of the GPR Performance Metric, the

applicable degradation factor (DF), and 90%; plus

**Tier**  
**2**  
**GPR**  
**Performance**  
**Metric x DF x**  
**0.90 >**  
**Measured**  
**Performance**  
**Ratio ≥ GPR**  
**Performance**  
**Metric x DF x**  
**0.80**

For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such MPR Assessment Period falls below the upper limit of the bandwidth specified in this subparagraph, an amount equal to two-tenths of one percent (0.002) of the MPR Assessment Period Lump Sum Payment. The upper end of the aforementioned bandwidth is equal to the product of the GPR Performance Metric, the applicable degradation factor (DF), and 90%. The lower limit of the aforementioned bandwidth consists of and includes the product of the GPR Performance Metric, the applicable degradation factor (DF), and 80%; plus

**Tier**  
**3**  
**Measured**  
**Performance**  
**Ratio < GPR**  
**Performance**  
**Metric x DF x**  
**0.80**

For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such MPR Assessment Period falls below the product of the GPR Performance Metric, the applicable degradation factor (DF), and 80%, an amount equal to four-tenths of one percent (0.004) of the MPR Assessment Period Lump Sum Payment.

**[Wind Version]**

<u>Tier</u>	<u>Performance Index</u>	<u>Amount of Liquidated Damages Per PI Assessment Period</u>
<b>Tier 1</b>	<b>97.0% &gt; PI ≥ 90.0%</b>	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
<b>Tier 2</b>	<b>90.0% &gt; PI ≥ 80.0%</b>	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
<b>Tier 3</b>	<b>80.0% &gt; PI</b>	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 80.0%, an amount equal to four-tenths of one percent (0.004) of the PI Assessment Period Lump Sum Payment.

[PV]For purposes of the foregoing calculations under this Section 2.6(a) (GPR Performance Metric and Liquidated Damages), the degradation factor (DF) is calculated for each Contract Year (e.g., second Contract Year, third Contract Year, fourth Contract Year, etc.) as follows:  $DF = 1 - 0.005 * (\text{Applicable Contract Year} - 1)$ . For purposes of the foregoing formula, the "Applicable Contract Year" is the Contract Year within which the calendar month in question falls. If all of the months of an MPR Assessment Period fall within the same Contract Year, the Contract Year is the "Applicable Contract Year."

For example, if all of the months of MPR Assessment Period fall within the third Contract Year, the value assigned to the "Applicable Contract Year" would be "3" and the formula for calculating the DF for such MPR Assessment Period would be:  $DF = 1 - 0.005 * (3 - 1)$ . However, because the MPR Assessment Period is a rolling 12-month period, the MPR Assessment Period will often straddle two consecutive Contract Years. In such cases, all of the months falling within the same Contract Year will be assigned the value for such Contract Year and the value assigned to the "Applicable Contract Year" for purposes of the foregoing formula shall be the average of the assigned monthly values for such 12-month MPR Assessment Period. For example, for an MPR Assessment Period which has four months in the third Contract Year and eight months in the fourth Contract Year, the value assigned to the "Applicable Contract Year" for such MPR Assessment Period would be 3.67, as calculated as follows:

$$\frac{(3 \times 4) + (4 \times 8)}{12}$$

and the formula for calculating the DF for such MPR Assessment Period would be  $DF = 1 - 0.005 * (3.67 - 1)$ . For purposes of determining liquidated damages under this Section 2.6(a) (GPR Performance Metric and Liquidated Damages), the amount by which the Measured Performance Ratio for the MPR Assessment 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 GPR Performance Metric for a MPR Assessment Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

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

The MPR Assessment Period has five months in the second Contract Year and seven months in the third Contract Year.

The GPR for the Facility as determined by the OEPR is 0.9.

The MPR has been calculated to be 0.694.

Applicable Contract Year =  $[(5 \times 2) + (7 \times 3)]/12 = 2.58$

DF =  $1 - 0.005 * (2.58 - 1) = 0.9921$

Upper limit of the Tier 1 bandwidth =  $0.9 \times 0.9921 \times 0.95 = 0.848$

Lower limit of the Tier 1 bandwidth/Upper limit of the Tier 2 bandwidth =  $0.9 \times 0.9921 \times 0.9 = 0.804$

Lower limit of the Tier 2 bandwidth =  $0.8 \times 0.9921 \times 0.9 = 0.714$

Liquidated damages =  $[(0.848 - 0.804) \times 1] + [(0.804 - 0.714) \times 2] + [(0.714 - 0.694) \times 4] \times \text{MPR}$

Assessment Period Lump Sum Payment =  $0.304 \times \text{MPR}$

Assessment Period Lump Sum Payment

- (b) [MPR or PI] Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the [GPR or GPI] Performance Metric for a [MPR or 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 [GPR or GPI] Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages) for those [MPR or PI] Assessment Periods during which the Seller failed to achieve the [GPR or GPI] Performance Metric, the failure of the Facility

to achieve, for each of three consecutive Contract Years, a [Measured Performance Ratio or 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 [RESERVED]

2.8 BESS Capacity; Liquidated Damages; Termination Rights.

(a) BESS Capacity and Liquidated Damages. Prior to achieving Commercial Operations, and for each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a BESS Capacity Test or otherwise demonstrate satisfaction of the BESS Capacity 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 BESS Capacity Performance Metric, Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the BESS Measurement Period in question:

<b>BESS Capacity Ratio</b>	<b>Liquidated Damage Amount</b>
Tier 1 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 100% and is equal to or greater than 95.0%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus

<p>Tier 2 85.0% - 94.9%</p>	<p>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</p>
<p>Tier 3 75.0% - 84.9%</p>	<p>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</p>
<p>Tier 4 60.0% - 74.9%</p>	<p>For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 75% and is above 59.9%, an amount equal to two and a half-tenths of one percent (0.0025) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 5 50.0% - 59.9%</p>	<p>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</p>
<p>Tier 6 49.9% and below ("Lowest BESS Capacity Bandwidth")</p>	<p>For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 50%, an amount equal to three and a</p>

	half-tenths of one percent (0.0035) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.
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For purposes of determining liquidated damages under this Section 2.8(a) (BESS Capacity 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 monthly Lump Sum Payment is \$1,000,000

The BESS Contract Capacity (MW) 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 (MWh) = 25 MW x 4 hours = 100 MWh

BESS Capacity Ratio = MWh Discharged/BESS Contract Capacity = 65 MWh/100 MWh = 0.65

BESS Allocated Portion of the Lump Sum Payment = 50% x 3 calendar months x \$1,000,000 = \$1,500,000

Liquidated damages = [((1 - 0.950) x 1) + ((0.950 - 0.850) x 1.5) + ((0.850 - 0.750) x 2) + ((0.750 - 0.65) x 2.5)] x \$1,500,000

= [0.05 + 0.15 + 0.2 + 0.25] x \$1,500,000 = \$975,000

(b) BESS Capacity Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.8(a) (BESS Capacity 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 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 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 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, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), 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 current BESS Measurement Period:

<b>BESS Annual Equivalent Availability Factor</b>	<b>Liquidated Damage Amount</b>
Tier 1 85.0% - 96.9%	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
Tier 2 80.0% - 84.9%	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 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.

For purposes of determining liquidated damages under this Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the BESS Annual Equivalent Availability Factor Performance Metric and is included for illustrative purposes only. Assume the following:

The monthly Lump Sum Payment is \$1,000,000

The BESS Annual Equivalent Availability Factor Performance Metric was calculated to be 72.9%.

BESS Allocated Portion of the Lump Sum Payment = 50% x 3 calendar months x \$1,000,000 = \$1,500,000

Liquidated Damages = [((0.970 - 0.850) x 1) + ((0.850 - 0.800) x 2) + ((0.800 - 0.750) x 3) + ((0.750 - 0.729) x 4)] x \$1,500,000

= [0.120 + 0.100 + 0.150 + 0.084] x \$1,500,000 = \$681,000

(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 (4) 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 (4) 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; Termination Rights.

(a) BESS Annual Equivalent Forced Outage Factor and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Forced Outage Factor shall be

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 4% (the "BESS EFOF Performance Metric"), Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), 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:

<b>BESS Annual Equivalent Forced Outage Factor</b>	<b>Liquidated Damage Amount</b>
Tier 1 0.0% - 4.0%	-0-
Tier 2 4.1% - 6.9%	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 4.0% but less than 7.0%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 7.0% and above	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 6.9%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

For purposes of determining liquidated damages under this Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages; Termination Rights), 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 Annual Equivalent Forced Outage Factor was 4.1% as calculated in the example in Attachment Y (BESS Annual Equivalent Forced Outage Factor) to this Agreement and the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question is \$1,000,000, the liquidated damages would be \$2,000, calculated as follows:

$$\begin{aligned} 4.1\% - 4.0\% &= 0.1\% \\ 0.1\%/0.001 &= 1 \\ \$1,000,000 \times .002 &= \$2,000 \\ \$2,000 \times 1 &= \$2,000 \end{aligned}$$

- (b) BESS Annual Equivalent Forced Outage Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to maintain the BESS Annual Equivalent Forced Outage Factor in conformance with the BESS EFOF 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 exceed the BESS EFOF Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the BESS EFOF Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.10(b) (BESS Annual Equivalent Forced Outage Factor Termination

Rights). If the BESS Annual Equivalent Forced Outage Factor is not in Tier 1 of the immediately preceding table for any two BESS Measurement Periods in a 12-month period, a 12-month cure period (the "BESS EFOF 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 EFOF Cure Period, if the BESS Annual Equivalent Forced Outage Factor does not meet the BESS EFOF Performance Metric, e.g., the BESS Annual Equivalent Forced Outage Factor for any such BESS Measurement Period exceeds 4.0%, liquidated damages shall be paid and accepted as set forth in Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages); provided, however, that during a BESS EFOF Cure Period, should Seller achieve a BESS Annual Equivalent Forced Outage Factor of 4.0% or lower in each of two consecutive BESS Measurement Periods, then the BESS EFOF Cure Period shall terminate on the Day following the close of the second such BESS Measurement Period. If the Seller fails to demonstrate satisfaction of the BESS EFOF Performance Metric at the expiration of the BESS EFOF Cure Period, namely, the BESS Annual Equivalent Forced Outage Factor exceeds 4.0% as of the end of the BESS EFOF Cure Period, such failure shall constitute an Event of Default under Section 15.1(j) 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).

## 2.11 BESS Round Trip Efficiency; Liquidated Damages; Termination Rights.

- (a) RTE and Liquidated Damages. Prior to achieving Commercial Operations, and 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, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to

Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept liquidated damages for such shortfall, in the amount to be calculated as provided in this Section 2.11(a) (RTE and Liquidated Damages), upon proper demand at the end the BESS Measurement Period in question.

The RTE Performance Metric represents the lowest acceptable efficiency of the BESS for a full charge and discharge cycle as set forth in Attachment W (BESS Tests).

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

Seller shall be liable for liquidated damages if:

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

Where:

PM = RTE Performance Metric stated as percentage

RTE Ratio = RTE Ratio from operational data or most recently completed RTE Test during the applicable BESS Measurement Period, measured in accordance with Attachment W (BESS Tests), 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, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages).

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 Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.11(a) (RTE 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 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 Termination Rights). If the RTE Ratio 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 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 Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages.

(a) Payment of Performance Metrics LDs by Seller. With respect to the liquidated damages payable under Section 2.5(a) ([PV System Equivalent or Modified

Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages), Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages), Section 2.8(a) (BESS Capacity 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; Termination Rights) and Section 2.11 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights) (collectively, the "Performance Metrics LDs"), Company shall set-off such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement; provided, however, that Company shall retain the right, at any time on or after the LD Assessment Date for the liquidated damages in question, to draw such liquidated damages from the Operating Period Security, as follows:

(ii) [RESERVED]

(iii) [RESERVED]

(iv) If a Monthly Report shows a failure to achieve one or more of the Performance Metrics required for the [PV System EAF or MPXEEAF] Assessment Period that concludes with the most recent calendar month covered by such Monthly Report, the [MPR or PI] Assessment Period that concludes with the most recent calendar month covered by such Monthly Report or the BESS Measurement Period that concludes with the most recent calendar month covered by such Monthly Report, as applicable, and Company does not submit a Notice of Monthly Report 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 in Section 2.5(a) ([PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages), Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages), Section 2.8(a) (BESS Capacity 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; Termination Rights) and Section 2.11

(BESS Round Trip Efficiency; Liquidated Damages; Termination Rights), as applicable;

- (v) 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 Performance Metric LD Period(s) in question, 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
- (vi) in the event of any disagreement as to the liquidated damages owed under this Section 2.12(a) (Payment of Performance Metric LDs by Seller):
  - (1) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages that are eventually found to be payable for the Performance Metric LD Period(s) in question as determined under Section 2 (Monthly Report Disagreements) or Section 4 (Independent AF Evaluator Process) 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
  - (2) if Company does not exercise its rights to set-off or draw liquidated damages for such Performance Metric LD Period(s), or does not set-off or draw the full amount of the liquidated damages that are eventually found to be payable for the Performance Metric LD Period(s) in question as determined under Section 2 (Monthly Report Disagreements) or Section 4 (Independent AF Evaluator Process)

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 from 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 2.12(a) (Payment of Performance Metrics LDs by Seller), 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 2.17 (Payment Procedures). For avoidance of doubt: A monthly Lump Sum Payment that is payable for, e.g., the twelfth (12<sup>th</sup>) calendar month of Contract Year N, is to be invoiced by Seller to Company pursuant to Section 2.16 (Seller's Preparation of the Monthly Invoice) during the first month following Contract Year N and paid by Company to Seller during the third month following

Contract Year N pursuant to Section 2.17 (Payment Procedures), and, thus, for purposes of determining the limitation on Performance Metrics LDs under this Section 2.12(b) (Limitation on Liquidated Damages), shall be included in the total of the twelve (12) monthly Lump Sum Payments payable during the Contract Year that immediately follows Contract Year N. 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 2.12(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 2.12(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.

2.13 Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, and only to the extent a partial commissioning of the Facility has been approved in writing by Company consistent with Section 3.4 (Partial Commissioning), Company may accept electric energy delivered by Seller in accordance with and at the rates set forth in Section 1 (Price for Purchase of Electric Energy) and Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).

2.14 Sales of Electric Energy by Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by

this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Seller).

2.15 [RESERVED]

2.16 Seller's Preparation of the Monthly Invoice. By the tenth (10<sup>th</sup>) Business Day of each calendar month, Seller shall submit to Company an invoice that separately states the following for the preceding calendar month: (i) the Actual Output during the preceding calendar month; (ii) the monthly Lump Sum Payment for the preceding calendar month; and (iii) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement.

2.17 Payment Procedures. By the fifth (5<sup>th</sup>) Business Day of the second calendar month following the month for which the invoice was submitted (i.e., for January charges, invoice submitted in February, to be paid by the 5<sup>th</sup> Business Day of April), Company shall, subject to Company's right to set-off liquidated damages as provided in Section 2.12 (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 2.16 (Seller's Preparation of the Monthly Invoice) of this Agreement.

2.18 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.12(a)(iii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20<sup>th</sup>) 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 2.17 (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.

2.19 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 28.4 (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.

2.20 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.

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 technical and operational requirements as more fully described in Attachment B (Facility Owned by Seller). 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 Capacity Available for Dispatch from the Facility may exceed the Contract Capacity. Company may dispatch up to the Capacity Available for Dispatch in accordance with Article 8 (Company Dispatch). Company may limit the net instantaneous MW 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).
- 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 Partial Commissioning.
- (a) If Seller desires to partially commission the Facility prior to the Commercial Operations Date, Seller shall provide notice to Company of its readiness for partial commissioning of the Facility and shall inform Company of the portion of the Facility (in MWs) being proposed for partial commissioning. Any proposed partial commissioning shall be subject to Company's written

acceptance and approval, which may be withheld in Company's sole discretion. In the event the Parties agree to partial commissioning of the Facility, the Guaranteed Commercial Operations Date shall not be extended.

- (b) Within ten (10) Business Days after each Pre-CSAT Partial In-Service Date, Seller shall provide written notice to Company (the "Pre-CSAT Partial In-Service Notice") confirming (i) the portion of the Facility in MW that qualifies as a Pre-CSAT Partial Installation and the Pre-CSAT Partial In-Service Date, (ii) the conditions precedent in Section 1(h) (Control System Acceptance Test Procedures) of Attachment B (Facility Owned by Seller) for commencement of the Control System Acceptance Test with respect to such Pre-CSAT Partial Installation have been met and (iii) to the extent delivery of Test Energy has occurred, or is occurring, that the portion of the Facility has been successfully synchronized to the grid.
  
- (c) Partial commissioning of a portion of the Facility may require additional costs and expenses to be incurred by Company to facilitate such partial commissioning, including but not limited to multiple Control System Acceptance Tests (all such additional costs and expenses, the "Partial Commissioning Costs"). Seller agrees to pay for all Partial Commissioning Costs in advance upon request by Company. Company shall not be obligated to perform any work on the partial commissioning unless and until it receives payment of the Partial Commissioning Costs. Alternatively, to the extent Company reasonably believes there are available funds in the Total Estimated Interconnection Cost paid by Seller to cover the Partial Commissioning Costs, Company shall be authorized to use such funds for such purposes. The Partial Commissioning Costs shall be included in the Total Actual Interconnection Cost for the purposes of the true-up specified in Section 3(d) (True-Up) of Attachment G (Company-Owned Interconnection Facilities).

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 Grant of Easement).

ARTICLE 5  
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Seller's Logs. Seller shall maintain, at least daily, a log, which may be in digital form, 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 individual unit, 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 starts/failed starts, hours on-control and hours on-line. Company shall have the right, upon reasonable notice to request for electronic copies of 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 electronic 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 via electronic copies to the Company 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor was less than **94%** and/or the [MPR or PI] was less than the Tier 1 Bandwidth for such Contract Years, 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 1<sup>st</sup>, June 1<sup>st</sup>, September 1<sup>st</sup> and December 1<sup>st</sup> (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, no 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 by June 30 of each year a written schedule for the next two-year period, beginning with January of the following year, of any maintenance outages that will reduce the capacity of the Facility by an amount equal to or greater than 5 MW or 25% of the Net Nameplate Capacity. 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 (a) void or violate any warranties of equipment that is part of, or used in connection with, the Facility, (b) violate any long-term service agreement with respect to such equipment, or (c) 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. 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 individual unit, including for high wind speed. Any unit 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 unit shut-down.
- 5.6 Operating and Maintenance Manuals. Not later than each Post-CSAT Partial In-Service Date, if applicable, and the Commercial Operations Date, Seller shall provide Company with (i) any and all manufacturer's equipment manuals and recommendations for maintenance, and a copy of the operating and maintenance manual for each Post-CSAT Partial Installation, if applicable, and for the Facility within three (3) Business Days after Seller's receipt of same; and (ii) a copy of all updates, supplements or amendments thereto, if any, within three (3) Business Days after such updates, supplements or amendments are adopted (subsequent to the first Post-CSAT Partial In-Service Date and the Commercial Operations Date, as applicable). In addition, throughout the Term, Seller shall deliver to Company, promptly upon Seller's receipt of the same, any reports, studies or assessments of the Facility prepared by an independent engineer for the benefit of the Seller.

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 Technical and Operational Requirements set forth in Section 3 (Technical and Operational Requirements) of 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 acceptable to Company for each such data parameter in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller) and, (ii) recording and transferring such data to Company in real time in accordance with Section 1(b)(iii)(E) (Company Telemetry and Control) of Attachment B (Facility Owned by Seller). Requirements made in this section with reference to Attachment B (Facility Owned by Seller) shall still apply even if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in Attachment G (Company-Owned Interconnection Facilities). Seller shall maintain at the Site sufficient replacement parts for the Monitoring and Communication Equipment 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 recalibrated.

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 as 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 to 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 shut down 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 shut down the Facility and the Facility shall remain shut down 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor under Section 1 (Calculation of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Seller to Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Seller requests in writing for confirmation that the Facility's data is available to Company, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with E-mail 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 renewable resource 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 renewable 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. 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 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), Section 10.2 (Station Service Metering Package) and Section 10.3 (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 2.14 (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. Consistent with Company Dispatch, 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 the Facility's generating units, as it deems appropriate in its reasonable discretion, subject only to and consistent with the restrictions set forth in Section 9(d) (Battery Energy Storage System) of Attachment B (Facility Owned by Seller), Good Engineering and Operating Practices, the requirements set forth in Section 3 (Technical and Operational Requirements) 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).
- 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.
- 8.3 Company Rights of Dispatch. Company may require derating or outage in response to the Facility's failure to comply with Company Dispatch or to any conditions of Seller-Attributable Non-Generation. A derating or outage required by Company pursuant to the preceding sentence shall be considered Seller-Attributable Non-Generation and, until the conditions that led to the derating or outage are resolved by Seller and Seller notifies Company of the same, any such derating shall "count against" Seller for purposes of calculating the [Measured Performance Ratio or Performance Index], and any such derating or outage shall "count against" Seller for the purpose of calculating the [PV System Equivalent or 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 derating or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the derating or outage until the conditions that led to such outage or derating 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 derating or outage were successfully completed, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with E-mail 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 (10<sup>th</sup>) 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 or Modified Pooled OMC Equipment] Availability Factor for the [PV System EAF or MPXEEAF] Assessment Period, (b) the [Measured Performance Ratio or Performance Index] for the [MPR or PI] Assessment Period, (c) any of the BESS Capacity Ratio, the BESS Annual Equivalent Availability Factor, the BESS Annual Equivalent Forced Outage Factor or the RTE Performance Metric 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), Section 2 (Monthly Report Disagreements) and Section 4 (Independent Evaluator Process) 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 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 E-mail 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 import and export of electric energy from the Facility 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 in accordance with Section 10.3 (Meter Testing) as often as Company deems reasonably necessary, but no more than once every seven (7) years. 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 Station Service Meters. Seller shall furnish, install and maintain the Station Service Metering Package dedicated exclusively to the Facility and by which all measurable aspects of Station Service must be measured. The Station Service meter shall be installed for Station Service power and Seller shall make available a mutually agreeable location for the Station Service Metering Package, to measure the Station Service energy use during BESS grid charging and when the Facility is not able to self-serve

Station Service energy. Seller shall separately meter the Station Service, and shall cause the installation, maintenance, operation and replacement (as needed) of the Station Service Metering Package. Seller shall install, own and maintain the infrastructure and other related equipment associated with the Station Service 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 Four (Metering 15kV and below) of the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test such Station Service meter in accordance with the applicable tariff. Seller shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Station Service Metering Package.

10.3 Meter Testing. Company shall provide at least forty-eight (48) 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 Company initiated tests, and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to tests conducted within a seven-year timeframe 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 10.3 (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 10.4 (Corrections).

10.4 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 2.19 (Adjustment to Invoices After Payment) for the amount of electric energy supplied to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11  
GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

11.1 Governmental Approvals for Facility. Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Under no circumstances 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. No later than the applicable Pre-CSAT Partial In-Service Date, Seller shall obtain all Governmental Approvals necessary to deliver Test Energy to Company from the corresponding Pre-CSAT Partial Installation. No later than the applicable Post-CSAT Partial In-Service Date, Seller shall obtain all Governmental Approvals necessary for the ownership, operation and maintenance of the corresponding Post-CSAT Partial Installation and shall satisfy any condition or requirement set forth in any such Governmental Approvals for the ownership, operation and maintenance of such Post-CSAT Partial Installation (excluding on-going reporting or monitoring requirements that may continue beyond the applicable Post-CSAT Partial In-Service Date in accordance with such Governmental Approval). No later than the Commercial Operations Date, Seller shall obtain all other Governmental Approvals necessary for the ownership, operation and maintenance of the Facility and shall satisfy any condition or requirement set forth in any such Governmental Approvals for the ownership, operation and maintenance of the Facility (excluding on-going reporting or monitoring requirements that may continue beyond the Commercial Operations Date in accordance with such Governmental Approval).

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, and in the case where Seller has satisfied the requirements of Section 11.2(a) by way of an option agreement or binding letter of intent, Seller shall have: (i) affirmatively exercised such option agreement or fulfilled the requirements of such binding letter of intent, and (ii) delivered to Company the completed Land

Rights resulting therefrom, no less than sixty (60) Days prior to commencing any construction activity.

Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Seller's failure to identify and/or timely obtain necessary Land Rights. In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to determine whether such documents establish the Land Rights of Seller to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

- 11.3 Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Company, Seller shall, prior to commencement of construction thereof, provide the necessary Governmental Approvals and Land Rights for the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Seller, then Seller shall provide the necessary Governmental Approvals and Land Rights required for the commencement of construction and, prior to the start of each subsequent phase of construction, Seller shall provide the necessary and appropriate Governmental Approvals and Land Rights necessary for such related construction activity. Regardless of whether Company or Seller constructs the Company-Owned Interconnection Facilities, Seller shall provide Company with an accounting of all necessary Governmental Approvals (in a list or spreadsheet) at the commencement of construction including relevant information regarding status and estimated completion. Seller shall update Company on the status of all necessary Governmental Approvals, including the addition of any new Governmental Approvals that may be discovered and required, in Seller's Monthly Progress Report submitted to Company. Notwithstanding the above, to the extent not already provided to Company, all required Governmental Approvals for the Company-Owned Interconnection Facilities shall be provided to Company on the Transfer Date in accordance with

Section 9 (Governmental Approvals for Any 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.

12.2 Effectiveness of Obligations. Only Article 3 (Facility Owned and/or Operated by Seller), Section 11.4 (Compliance With Laws), 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 21 (Force Majeure), 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 Schedule of Defined Terms of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.

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 Order 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 as information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether 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 [RESERVED]

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(g) of Attachment A (Description of Generation, Conversion and Storage Facility).
- (b) Seller is in material breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) and Section 22.2(d) requiring Seller to have all Land Rights and Governmental Approvals as provided therein; and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amounts specified within the time periods provided therein.
- (c) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (d) [RESERVED]

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 its terms (i.e., if the applicable conditions entitling a Party to declare the Agreement null and void are satisfied or present and such Party notifies the other Party of its election to declare this Agreement null and void), 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 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, 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 its terms 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 14.3 (Return of Development Period Security), 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 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review Of Facility) 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; provided, that any extension will run concurrently with (and not in addition to) any other extension permitted under this Agreement:

- (a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Seller and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates, Seller's Conditions Precedent Dates and Company Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond [REDACTED]; or **[DRAFTING NOTE: OUTSIDE DATE TO BE INSERTED BASED ON TYPE OF PROPOSAL.]**

- (b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this Section 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 (Seller's Conditions Precedent and Company Milestones), 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.

##### (b) Daily Delay Damages.

(i) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of the Daily Delay Damages for each Day following the tenth (10<sup>th</sup>) Day after 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").

(ii) 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 tenth (10<sup>th</sup>) Day after 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 (10<sup>th</sup>) 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 event, 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 (Seller's Conditions Precedent and Company Milestones). 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) (each such date, a "Seller's Conditions Precedent Date"), 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) Business Days of the Execution Date and the remaining 50% of the Development Period Security within ten (10) Business Days of the Effective Date.
- 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 its terms; (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 Security and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form set forth in Attachment M (Form of Letter of Credit) to this Agreement from a bank doing business in the United States and subject to United States state or federal regulation, 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 doing business in the United States and subject to United States state or federal regulation, 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 Agreement or the GHG Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities), any amounts for which Company is entitled to reimbursement or indemnification under this Agreement, and any amounts necessary under Section 29.21(a)(2)(f) to fund Seller's Community Benefits Program. 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 Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security), which substitute letter of credit shall be procured no later than five (5) Business Days after expiration of the Letter of Credit.

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 for 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) ("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." The establishment of an L/C Proceeds Escrow shall not abrogate Seller's obligation to provide a substitute letter of credit under this Article 14 (Credit Assurance and Security). Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement, the IRS Letter Agreement or the GHG Letter Agreement, 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 the issuance of a substitute letter of credit satisfying the requirements of this Article 14 (Credit Assurance and Security), 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. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Security Funds through the L/C Proceeds Escrow shall be borne by Seller.

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 electric energy that was not (i) generated by the Facility, or (ii) stored from the Company System and discharged in accordance with this Agreement;
- (b) if at any time subsequent to the Commercial Operations Date, the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor is less than **84%** for each of thirty-six (36) consecutive monthly [PV System EAF or MPXEEAF] Assessment Periods as provided in Section 2.5(b) ([PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Termination Rights);
- (c) if at any time subsequent to the Commercial Operations Date, the [Measured Performance Ratio or Performance Index] for each of three consecutive Contract Years falls below the Tier 2 Bandwidth for such Contract Year as provided in Section 2.6(b) ([MPR or PI] Termination Rights);
- (d) [RESERVED]
- (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 as provided in Section 2.8(b) (BESS Capacity Termination Rights);
- (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 four (4) consecutive BESS Measurement Periods as provided in Section 2.9(b) (BESS Annual Equivalent Availability Factor Termination Rights);
- (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 as provided in Section 2.11(b) (RTE Termination Rights);

- (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 subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the BESS EFOF Performance Metric at the expiration of the BESS EFOF Cure Period, as provided in Section 2.10(b) (BESS Annual Equivalent Forced Outage Factor Termination Rights);
- (k) if at any time during the Term, Seller fails to comply with the requirements of Section 19.1 (Sale of the Facility) and Attachment P (Sale of Facility by Seller); or
- (l) 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) a decision under Article 28 (Dispute Resolution), (ii) or an

Independent Evaluator's decision under Article 23 (Process for Addressing Certain Revisions), 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 Certain Revisions), 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 technical and

operational requirements 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 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 pursuant Section 16.1 (Termination Due to Failure to Meet a Guaranteed Project Milestone Date) or Section 16.2 (Termination Due to an Event of Default). 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 under such sections, 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.

- i. 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, any Pre-CSAT Partial Installation, any Post-CSAT Partial Installation and the Company-Owned Interconnection Facilities, including, without limitation, closure of such permitting for the Facility, any Pre-CSAT Partial Installation, any Post-CSAT Partial Installation and the Company-Owned Interconnection Facilities prior to or after the Transfer Date (but excluding, (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, provided, however, that such exclusion shall not apply to matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or (B) if Company constructs any portion of the Company-

Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party, except as and to the extent that such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.

ii. 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.

iii. 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.

iv. 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, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by or under common ownership and/or control with Seller relating to (i) (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, excluding, however, matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or (B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the negligence or willful misconduct of an Indemnified Seller Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Seller but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Seller Party from and against any and all Losses in any way arising out of, incident to, or resulting

directly or indirectly from the failure of Company to comply with any Laws.

(c) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.

(d) Indemnification Procedures.

(1) In case any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under this Section 17.2 (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld or delayed.

(2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, if and to the extent that, in the opinion of Seller, such Claim involves the potential imposition of criminal liability on an Indemnified Seller Party or a conflict of interest between an Indemnified Seller Party and Company, in which case Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. Seller shall supply, or shall cause an Indemnified Seller Party to supply, Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section

17.2(d)(2). Seller shall not enter, and shall restrict any Indemnified Seller Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.

- (3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.
- (4) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Seller).

ARTICLE 18  
INSURANCE

18.1 Required Coverage. Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. The insurance coverage required hereunder shall provide that it is primary with respect to Seller and Company. 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), Section 3 (Automobile Liability Insurance) and Section 9 (Pollution 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 30 Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. During the Term, Seller, upon Company's reasonable request, shall make available to Company for its inspection at Seller's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.

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

18.6 Application of Proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown 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 (a) its EPC Contractor is separately covered by liability insurance policies equivalent in type and monetary limits as those required of Seller, as specified in Attachment R (Required Insurance) excluding, however, the Failure to Supply endorsement required under Section 2(a)(viii) of Attachment R (Required Insurance); and (b) its EPC Contractor has required each of its subcontractors performing tasks directly related to the engineering, procurement, construction, energizing, pre-Commercial Operations testing and/or commissioning of the Facility are covered by insurance policies in type and in monetary amounts appropriate for the type of work such subcontractor is performing, including commercial general liability insurance that shall not be less than the greater of \$500,000 or the value of work to be performed by such subcontractor. All such insurance shall be provided at the sole cost of Seller or EPC Contractor or its aforementioned subcontractors.

18.10 General Insurance Requirements.

- (a) Each policy and certificate of insurance shall specifically provide the following: "This policy shall be considered to be primary liability insurance, which shall apply to any loss or claim before any contribution by any insurance that Company, its employees and/or agents may have in force."
- (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 the 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 the 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 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, 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 ("Subsequent Owner"), such Subsequent Owner shall, prior to operating the Facility for such purpose, have provided 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 the Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained, except, in the case of Seller's inability to obtain Governmental Approvals, such inability is attributable solely to the Governmental Authority responsible for issuing such approval where Seller has provided satisfactory evidence that: (i) all commercially reasonable measures have been taken by Seller to timely apply for such Governmental Approval and to timely respond to questions, revisions and clarifications required by such Governmental Authority in connection with such Governmental Approval; and (ii) all required information, requirements and conditions necessary to issue such Governmental Approval have been met;
- (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 (Events 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 nor 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 the Parent Entity, 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 each Pre-CSAT Partial In-Service Date, Post-CSAT Partial In-Service Date and as of the Commercial Operations Date, the Pre-CSAT Partial Installation, the Post-CSAT Partial Installation and the Facility, as applicable, will be a qualified renewable resource under RPS in effect as of the Effective Date.

(f) Prior to the commencement of, and at all times during the performance of any construction work on the Facility or Company-Owned Interconnection Facilities until Commercial Operations is achieved, all contractors, at any tier, including, but not limited to, the EPC Contractor and any subcontractors performing such construction work, shall enter into and be subject to a project labor agreement with the Covered Entities.

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ARTICLE 23  
PROCESS FOR ADDRESSING CERTAIN REVISIONS

23.1 Revisions to Technical and Operational Requirements and Resilience Requirements.

(a) Revisions to Technical and Operational Requirements.

The Parties acknowledge that, during the Term, certain Technical and Operational Requirements 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 technical and operational requirements. 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.

(b) Revisions to Resilience Requirements. The Parties acknowledge that, during the Term, certain Resilience Requirements may be revised or added to facilitate necessary improvements to improve the resilience of the Company System with respect to withstanding environmental risks, such as hurricanes, wildfires, earthquakes, and/or flooding.

23.2 Company Request.

- (a) Technical and Operational Requirements Information Request. If Company concludes that a Technical and Operational Requirements 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 Technical and Operational Requirements Information Request with respect to such Technical and Operational Requirements Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Technical and Operational Requirements Information Request, but in no event more than ninety (90) Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Technical and Operational Requirements Proposal responsive to the Technical and Operational Requirements Revision proposed in such Technical and Operational Requirements Information Request.
- (b) RPS Information Request. If, as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as "renewable electrical energy," Company shall have the right to issue to Seller a RPS Information Request. Seller shall, within a reasonable period of time following Company's Request, but in no event more than ninety (90) Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company an RPS Proposal responsive to the RPS Information Report.
- (c) Resilience Requirements Information Request. If Company concludes that a Resilience Requirements Revision is necessary or important for the Company System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Resilience Requirements Information Request with respect to such Resilience Requirements Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Resilience Requirements Information Request, but in no event more than ninety (90) Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Resilience Requirements Proposal responsive to the Resilience Requirements Revision proposed in such Resilience Requirements Information Request.

23.3 Seller Proposal. Upon receipt of a Seller Proposal submitted in response to a Company Request, Company will evaluate such Seller 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 Seller Proposal submitted at Seller's own initiative.

23.4 Revision Document. If, following Company's evaluation of a Seller Proposal, Company desires to consider implementing the changes addressed in such Proposal (including, if applicable, any Technical and Operational Requirements Revisions or any Resilience Requirements Revisions), Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Seller Proposal, and Company and Seller shall proceed to negotiate in good faith a Revision Document setting forth the specific revisions to the Agreement that are necessary to implement the changes addressed in the Seller Proposal (including, if applicable, any Technical and Operational Requirements Revisions or Resilience Requirements Revisions). 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 the Seller Proposal in question, including but not limited to the proposed revisions to the Agreement and the Modification Pricing Impact. Any adjustment to the Contract Pricing pursuant to a Technical and Operational Requirements Revision Document or a RPS Revision Document shall be limited to the Revision Modification Pricing Impact (other than with respect to the financial consequences of non-performance as to a Technical and Operational Requirements Revision). The time periods set forth in a Revision Document as to the effective date for the Revision Modification shall be measured from the date the PUC Revision Order becomes non-appealable as provided in Section 23.6 (PUC Revision Order).

23.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Revision Document within 180 Days of Company's written notice to Seller pursuant to Section 23.4 (Revision Document), Company shall have the option of declaring the failure to reach agreement on and

execute such 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 Revision Document as described in Section 23.4 (Revision Document).

23.6 PUC Revision Order. No Revision Document shall constitute an amendment to the Agreement unless and until a PUC Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Revision Order), such PUC 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 (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 Revision Document or to initiate dispute resolution under Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Revision Document.

23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Certain Revisions) to the contrary, Seller shall have no obligation to respond to more than one Technical and Operational Requirements Information Request and one Resilience Requirements Information Request during any 12-month period.

23.9 Limited Purpose. This Article 23 (Process for Addressing Certain Revisions) is intended to specifically address: (a) necessary revisions to the Technical and Operational Requirements and Telemetry and Control interfaces to enhance integration of intermittent resources and energy storage resources onto the 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; (b) possible changes to the RPS that might cause the electric energy delivered from the Facility to no longer qualify as "renewable electrical energy"; and (c) necessary revisions to the Resilience Requirements to support the resilience of the Facility and/or Company-Owned Interconnection Facility. This Article 23 (Process for Addressing Certain Revisions) is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions in accordance with the provisions of this Article 23 (Process for Addressing Certain Revisions) 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 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 Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Technical and Operational Requirements, Resilience Requirements, 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) If the Revision Document is for purposes of implementing Technical and Operational Requirements Revision(s):

(aa) The Technical and Operational Requirements Revision(s);

(bb) The technical feasibility of complying with the Technical and Operational Requirements Revision(s) and likelihood of compliance;

(cc) How Seller would comply with the Technical and Operational Requirements Revision(s); and

(dd) Reasonably expected net costs and/or lost revenues associated with the Technical and Operational Requirements Revision(s);

(2) If the Revision Document is for purposes of responding to an RPS Amendment:

(aa) The reasonable measures required to be taken by Seller to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under the RPS Amendment in question;

(bb) How Seller would implement such measures; and

(cc) 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;

(3) If the Revision Document is for the purposes of implementing Resilience Requirements Revision(s):

(aa) The Resilience Requirements Revision(s);

- (bb) The technical feasibility of complying with the Resilience Requirements Revision(s) and likelihood of compliance;
    - (cc) How Seller would comply with the Resilience Requirements Revision(s); and
    - (dd) Reasonably expected net costs and/or lost revenues associated with the Resilience Requirements Revision(s);
  - (4) The appropriate level, if any, of the Revision Modification Pricing Impact in light of the foregoing; and
  - (5) Contractual consequences for non-performance (including any non-performance of any revised Technical and Operational Requirement(s) and any revised Resilience Requirement(s)) that are commercially reasonable under the circumstances.
- (b) Within ninety (90) Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed forty-five (45) Days, to render a decision.
- (c) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.
- (d) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Technical and Operational Requirements Revision: (i) if it is not technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Technical and Operational

Requirements Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall incorporate such Technical and Operational Requirements Revision into a Revision Document including (aa) Technical and Operational Requirements Modifications, (bb) pricing terms that incorporate the Revision Modification 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 Technical and Operational Requirements Revision(s). In addition to the 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 following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to revisions arising out of a RPS Proposal:
- (i) if it is not technically or operationally feasible for Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy", the Independent Evaluator shall determine that the Agreement shall not be amended in response to the RPS Amendment in question (unless the Parties agree otherwise);
  - (ii) if it is technically or operationally feasible for Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy", the Independent Evaluator shall incorporate the necessary changes into a Revision Document including (aa) the RPS Modifications, (bb) pricing terms that incorporate the Revision Modification 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 if the RPS Modifications fail to cause the energy delivered from the Facility to come within the revised definition of "renewable electrical energy." In addition to the 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.

(f) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Resilience Requirements Revision: (i) if it is not technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Resilience Requirements Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall incorporate such Resilience Requirements Revision into a Revision Document including (aa) Resilience Requirements Modifications, (bb) pricing terms that incorporate the Resilience Requirements Modification 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 Resilience Requirements Revision(s). In addition to the 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.

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

23.11        HERA Law. The provisions of this Article 23 (Process for Addressing Certain Revisions) 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 ("ASC") 810, Consolidation ("FASB ASC 810"), (ii) FASB ASC 842, Leases, (iii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 842 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. Such financial statements shall be provided by Seller to Company within sixty (60) Days after Company's request but no later than fifteen (15) Days after the first reporting period upon which Company must consolidate Seller's financial results, and thereafter without the need for any prior request, as soon as reasonably practicable but in no event later than fifteen (15) Days after the end of each subsequent reporting period. If Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller fifty percent (50%) of the reasonable and verifiable costs of having necessary

audits performed and preparation of the audited financial statements; provided that the foregoing reimbursement shall not include the costs, whether actual or estimated, of preparing unaudited financial statements. 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 negotiate and may effectuate a sale of the Facility to Company at (i) if the sale occurs, if applicable, prior to Seller's tax equity investors have been paid their targeted internal rate of return, the greater of the Make Whole Amount determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by 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, if applicable, on or after the date that Seller's tax equity investors have been paid their targeted internal rate of return, 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).

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 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller).

ARTICLE 26  
EQUAL EMPLOYMENT OPPORTUNITY

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

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

ARTICLE 27  
SET OFF

Company shall have the right to set off any payment due and owing by Seller, including but not limited to any payment under this Agreement and any payment due under any award made under Article 28 (Dispute Resolution), against Company's payments of subsequent monthly invoices as necessary.

ARTICLE 28  
DISPUTE RESOLUTION

28.1 Good Faith Negotiations. Before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the dispute resolution procedures set forth in Article 28 (Dispute Resolution), the presidents, vice presidents, or authorized delegates from both Seller and Company, having full authority to settle the Dispute(s), shall personally meet in Honolulu, Hawai'i and attempt in good faith to resolve the Dispute(s) (the "Management Meeting"). The Parties shall endeavor to meet within fourteen (14) Days of a Party's request for a Management Meeting and the Parties may agree to meet remotely via an agreed upon video conferencing platform (e.g., Microsoft Teams, Zoom, Cisco Webex, etc.) if such would facilitate scheduling the Management Meeting within the desired fourteen (14) Days. A Party's refusal to meet within thirty (30) Days of a request for such a meeting by a Party shall be deemed a material default of this Agreement.

28.2 Mediation. Any and all Dispute(s) arising out of or relating to this Agreement which remain unresolved for a period of twenty (20) Days after the Management Meeting takes place 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 Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules") of the American Arbitration Association ("AAA") then in effect. If the Parties agree to submit the Dispute(s) 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 AAA) and shall otherwise each bear their own mediation costs and attorneys' fees.

28.3 Arbitration. If the Parties do not agree to mediation of the Dispute(s) within thirty (30) Days after the Management Meeting, or if the Parties submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within thirty (30) Days after completion of the mediation, either Party may initiate arbitration by submitting a demand for arbitration within thirty (30) Days after the date of either of the above events. Such Dispute(s) shall be resolved in Honolulu, Hawai'i by arbitration administered by AAA under its then-current Commercial

Rules, including, if appropriate, the Procedures for Large Complex Commercial Disputes.

- (a) Initiation of Arbitration. A Party submitting the Dispute(s) to arbitration shall initiate the arbitration pursuant to the Commercial Rules and shall identify provisions of this Agreement that such Party alleges is subject to the Dispute(s). A respondent shall file an answering statement and/or counterclaim within twenty-one (21) Days of receipt of notice from AAA of the initiation of the arbitration. Any response to a counterclaim shall be filed within twenty-one (21) Days of receipt of such counterclaim.
- (b) Selection of Arbitrator. If a Party initiates arbitration of the Dispute(s), the Parties shall attempt to mutually agree on one person to serve as arbitrator of the Dispute(s). If the Parties are unable to mutually select an arbitrator within fourteen (14) Days of filing an answering statement and/or counterclaim, the arbitrator will be appointed pursuant to the Commercial Rules, provided, however, that the Parties may agree to extend the time to mutually select an arbitrator. The Parties agree that, regardless of the amount in controversy in the Dispute(s), one person shall serve as arbitrator.
- (c) Authority of Arbitrator, Judicial Review. The award rendered by the arbitrator shall be final, non-appealable and binding on the Parties and may be entered in any court having jurisdiction. The arbitrator need not enter a reasoned award unless a Party requests such award prior to the selection of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate. Judgment on the award shall be final and non-appealable.
- (d) Confidentiality. Except as may be required by applicable law or to enter an award pursuant to Section 28.3(c) (Authority of Arbitrator, Judicial Review), neither Party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right.

28.4 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 Certain Revisions), (ii) an Independent AF Evaluator under Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) or (iii) an OEPR Evaluator under Attachment U (Calculation and Adjustment of Net Energy Potential).

28.5 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.

28.6 Waiver of Trial by Jury. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding, suit, or action arising out of or related to this Agreement.

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 by the Parties. Any waiver hereunder shall not be valid unless in writing and signed 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 Technical and Operational Requirements in Section 3 (Technical and Operational Requirements) 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](mailto:legalnotices@hawaiianelectric.com)

Seller

By Mail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Delivered by Hand or Overnight Delivery:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By E-mail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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

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 Power Purchase Agreement for Renewable Dispatchable Generation, the IRS Letter Agreement and the GHG Letter Agreement (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. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding, suit, or action arising out of or related to this Agreement.

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 Technical and Operational Requirements 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:

- (i) this Agreement is approved;
- (ii) 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;
- (iii) Company is authorized to include the Lump Sum Payment that Company incurs under this Agreement in Company's Purchase Power Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;
- (iv) the purchased energy costs and the Lump Sum Payment to be incurred by Company as a result of this Agreement are reasonable;
- (v) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase renewable dispatchable generation from

Seller, are prudent and in the public interest;  
and

(vi) determine that the \_\_\_kV line extension that is included in the Company-Owned Interconnection Facilities should be constructed above the surface of the ground, if applicable.

- (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:

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

- (a) The Parties acknowledge that, prior to the Execution Date, Seller provided to Company a comprehensive community engagement and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project ("Community Engagement Plan").
- (i) General Requirements. Seller agrees to work with the Host Community and 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, Governmental Approvals, Project schedule, plan for reporting construction related updates, labor and prevailing wage commitment (if any), and a Community Outreach Plan which factors in monthly Project status updates. The "Host Community" shall refer generally to the residential community in the immediate vicinity of the Project that would be affected by the ongoing development, construction, operation and maintenance of the Project, including but not limited to increased traffic, construction noise, odors, dust and debris, modified or affected view planes and other environmental effects. Seller's determination of the Host Community shall be subject to review by Company to ensure that the Host Community has been satisfactorily identified and that the benefits of Seller's Community Benefits Program are targeting specific needs identified by the Host Community.
- (ii) Community Benefits Program. Seller shall also provide Seller's plan for the creation of the mandatory community benefits program (the "Community Benefits Program") required under the RFP and included in Seller's RFP Proposal.  
[NOTE: COMPANY RESERVES THE RIGHT TO REQUIRE

REVISIONS AND/OR ADDITIONAL PROVISIONS TO  
SELLER'S COMMUNITY BENEFITS PROGRAM TO ADDRESS  
ISSUES IDENTIFIED IN THE RFP EVALUATION PROCESS].

- (a) The Community Benefits Program shall be designed to specifically benefit the needs identified by the Host Community affected by the Project by addressing the Host Community's identified needs, including but not limited to, one or more of the following: infrastructure improvements, enhanced educational opportunities, jobs and job training, historical and/or cultural protection, neighborhood beautification, identified mitigation of Project effects on the Host Community, and any other similar community benefit. Any material revision(s) to the Community Benefits Program (from that proposed in Seller's RFP Proposal) shall be subject to Company's prior review and approval before implementation and funding by Seller.
- (b) Seller shall implement the Community Benefits Program no later than six (6) months after the Commercial Operations Date, with the requirement that decisions on the community benefits and distribution of the first annual payment of funds be completed no later than six (6) months after program implementation.
- (c) Annually, Seller shall re-fund the Community Benefits Program with the required amount even if all or any portion of prior year's funds remains to be distributed. The annual funding amount for Seller's Community Benefit Program shall be no less than \$3,000 per MW of Contract Capacity per year, provided however, that Seller's Community Benefits Program may commit to fund a higher amount above the applicable minimum at Seller's option (the "Community Benefits Funding Amount"). With Company's review and prior approval, other methods and timing of funding the Community Benefits Funding

Amount may be proposed provided that such alternative methods do not materially alter or diminish the intended effects of an annual funding requirement. Approval will be at Company's sole discretion.

- (d) Results of the Community Benefits Program, including but not limited to, disclosure of the community benefit(s) funded, the recipients and amounts distributed and a summary of the community benefit(s) to be expected from such funding, shall be annually reported and publicly available for review at any time on Seller's website and upon request.
- (e) It shall be Seller's sole responsibility to ensure that the Community Benefits Program is properly funded by Seller and that funds are distributed for the benefit of the needs identified by the Host Community on a timely basis. The Community Benefits Program shall be subject to audit by Company no more than once every two years during the Term to ensure compliance by Seller, provided, however, that if Company receives credible evidence and/or reports of abuse or neglect of the Community Benefits Program by Seller or any of its partners administering the program (a "Program Complaint"), Company may conduct an immediate audit notwithstanding that a prior audit had been conducted in the year immediately preceding the Program Complaint. Seller shall cooperate with Company's reasonable requests to Seller in its efforts to complete any audit. Seller shall reimburse Company for actual expenses incurred in completing any audit (whether biennial or as a result of a Program Complaint) of Seller's Community Benefits Program. Seller shall additionally pay Company for Company's time and effort, e.g., labor and overhead, to complete an audit necessitated by a Program Complaint.

- (f) If Seller fails to fund any annual funding requirement for the Community Benefits Program, then Seller, upon demand by Company, shall make the required annual funding within thirty (30) Days of Company's demand. If Seller does not make such funding after demand by Company within the time required, Company shall be entitled to, at Company's sole option, setoff the funding requirement from amounts due to Seller or draw upon Operating Period Security in the amount necessary so that Company can direct such funds to the Community Benefits Program.
- (g) If an audit discovers and confirms that funds previously distributed under the Community Benefits Program were misused or otherwise not expended for the benefit of the needs identified by the Host Community in accordance with the program, Seller shall, in addition to the annual funding requirement for the next year of the program, also re-fund the program with the amount of the misused funds for reallocation and distribution.
- (h) If Seller, with Company's prior approval, administers its own Community Benefits Program (including any program administered by an affiliate or non-profit foundation of Seller), and it is discovered and confirmed that Seller has not funded its Community Benefits Program and/or has not distributed such funds in accordance with the program (as such may be revised with Company's prior review and approval) in any year during the Term, Seller shall double its funding to and distribution of funds from the program in the subsequent year. If Seller fails to properly fund or distribute funds in accordance with the program for two (2) years or more, Company may disqualify Seller's Community Benefits Program and require Seller to administer a new program with a Host Community-based non-profit

entity capable of administering a new Community Benefits Program for and on behalf of Seller.

(iii) Seller's Community Outreach 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 Plan.

(b) The Parties also acknowledge that, within thirty (30) Days of Proposal submission, Seller provided reasonable advance notice of a minimum of fourteen (14) days and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; (iii) information regarding the Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have fourteen Days from the date of said public meeting to submit written comments to Company and/or Seller for inclusion for evaluation of the RFP Proposal and 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, within 21 days after the public meeting; provided, however, that if members of the public submit comments to the Company directly, then Company shall share such comments with Seller for inclusion in Company's PUC Application. 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) The Parties also acknowledge that, subsequent to selection to the RFP final award group and prior to the Execution Date, Seller provided reasonable advance notice and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; (iii) an update regarding the Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) 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.
- (d) 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.
- (e) 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 Engagement) 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.

(f) 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 and the E-mail address and phone number for Seller's Community Representative are as follows:

Name: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

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, 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 the islands of Maui, Moloka'i and Lāna'i (totaling 4.0% as of the Execution Date) would include an additional 4.166%**] [**plus surcharge on Hawai'i island (totaling 4.5% as of the Execution Date) would include an additional 4.712%**] [**plus surcharge on the island of O'ahu (totaling 4.5% as of the**

**Execution date) would include an additional 4.712%)]** so 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 nonexclusive, noncharacterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.
- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.
- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
- (f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.
- (g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

29.27      Agreement is Not a Design or Construction Contract.

This Agreement is not a design or construction contract. The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the laws of the State of Hawai'i. Notwithstanding anything to the contrary, all work related to the design, engineering, and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawai'i and intend to develop the Facility in full

compliance with all applicable state laws. For the avoidance of doubt, in all instances where this Agreement refers to Seller performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Seller in accordance with laws of the State of Hawai'i.

**[Signatures for this Power Purchase Agreement for Renewable Dispatchable Generation appear on the following page]**

IN WITNESS WHEREOF, Company and Seller have executed this Agreement as of the day and year first above written.

**HAWAIIAN ELECTRIC COMPANY, INC.,**  
**or**  
**MAUI ELECTRIC COMPANY, LIMITED**  
**or**  
**HAWAI'I ELECTRIC LIGHT COMPANY,**  
**INC.**

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

("Company")

**[NAME OF PROJECT ENTITY]**

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

("Seller")

## SCHEDULE OF DEFINED TERMS

For the purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"Acceptance Notice": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Acceptance Test": A test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in Section 2(f) (Acceptance Test Procedures) 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.

[WIND] "Actual Generation": The measured energy delivered from the WTGs to the BOP over a given time period.

"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 before the "Whereas" clauses on page 1 of the document captioned "Power Purchase Agreement for Renewable Dispatchable Generation".

"Appeal Period": Shall have the meaning set forth in Section 29.20(b) (Non-appealable PUC Approval Order) of this Agreement.

"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 first anniversary of the event (e.g., completion of equipment replacement) which occasioned the preparation of such Subsequent OEPR.

"Applicable Period Lump Sum Payment": For each applicable period (i.e., each calendar month, each Contract Year and each BESS Measurement Period, as applicable), the total amount of Lump Sum Payment payable for 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(d) of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), but excluding any set-off of liquidated damages under Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages). For purposes of calculating liquidated damages under Section 2.5(a) ([PV System Equivalent or 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 [PV System EAF or MPXEEAF] Assessment Period in question. For purposes of calculating liquidated damages under Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the [MPR or PI] Assessment Period Lump Sum Payment payable for the last calendar month of the [MPR or PI] Assessment Period in question. For purposes of calculating liquidated damages under Section 2.8(a) (BESS Capacity 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; Termination Rights), and Section 2.11(a) (RTE and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the BESS Allocated Portion of the Lump Sum Payment for the three months of the BESS Measurement Period in question.

"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.

"BAFO": Shall mean Seller's Best and Final Offer, as such term is defined in the RFP.

"BAFO Unit Price": Shall mean the dollar amount per MWh of Net Energy Potential described in Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), which is based on the Investment Grade Lump Sum Payment and Non-Investment Grade Lump Sum Payment, as applicable, provided by Seller in its BAFO.

"Battery Energy Storage System" or "BESS": The battery energy storage system as described in Section 5 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 connection with or to facilitate, the storage, transmission, delivery or furnishing by Seller to Company of the electric energy stored in the BESS.

[PV] "Benchmark Performance Ratio": Shall have the meaning set forth in Section 3(a) (Benchmark Performance Ratio) of Attachment Q (Calculation of Certain Metrics) of this Agreement.

"BESS Allocated Portion of the Lump Sum Payment": For each BESS Measurement 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 Aux Loads": The energy that the Facility loses and/or uses in the process of charging and discharging energy under Company dispatch. BESS Aux Loads do not include the load consumed by the BESS when not charging or discharging energy, but connected to the Company System, as those loads are considered Station Service. BESS Aux Loads are expected to be variable with charging or discharging, and represent an increase in consumption above Station Service while charging or discharging energy.

"BESS Capacity Cure Period": Shall have the meaning set forth in Section 2.8(b) (BESS Capacity Termination Rights).

"BESS Capacity Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"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": [REDACTED]/[REDACTED] MW/MWh, which represents the anticipated maximum net instantaneous active power and maximum energy storage capability (MWh stored that represents a 100% State of Charge) for export to the Point of Interconnection upon Commercial Operations as proposed by Seller in its RFP Proposal. The BESS Contract Capacity (MW) shall not be less than the Net Nameplate Capacity. **[DRAFTING NOTE: For IGP RFP the BESS Contract Capacity MWh rating for a Paired Facility (PV+BESS or Wind+BESS) must be sized to support the Facility's Net Nameplate Capacity for at least four (4) continuous hours.]**

"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; Termination Rights).

"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.

[WIND] "BOP": The "balance of the plant", i.e., the infrastructural components of the Facility (excluding the WTG(s) and the BESS) 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).

[WIND] "BOP Benchmark": The BOP Benchmark shall be determined and re-evaluated as set forth in Section 3(t) (Balance of Plant ("BOP") Efficiency Ratio) of Attachment B (Facility Owned by Seller) to this Agreement.

[WIND] "BOP Efficiency Ratio": The estimated efficiency of the Facility during a given period in delivering to the Point of Interconnection the electric energy produced by the WTG(s).

[WIND] "BOP IE Benchmark Estimate": The estimated BOP Efficiency Ratio associated with the NEP IE Estimate.

"Business Day": Any calendar day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.

"Capacity Available for Dispatch": The calculated net 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 (iii) the BESS State of Charge and (iv) Station Service, Generation Aux Loads and BESS Aux Loads.

"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 for the entire Facility have passed a Control System Acceptance Test, (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, Seller has issued a Source Code LC as required in Section 6(b)(ii)(A) (Establishment of Source Code Security) of Attachment B (Facility Owned by Seller), (v) Seller has demonstrated that the Facility satisfies the BESS Capacity Performance Metric and RTE Performance Metric, in accordance with the terms of Attachment W (BESS Tests), and (vi) 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 the Agreement.

[WIND] "Company-Designated BOP Benchmark": The BOP Benchmark associated with the Company-Designated NEP Estimate 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) 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) to 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 (Technical and Operational Requirements) 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 Milestone Date": Shall have the meaning set forth in Section 13.8 (Company Milestones).

"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 Request": Each Technical and Operational Requirements Information Request, each RPS Information Request, and each Resilience Requirements Information Request.

"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":        kW, which represents the anticipated maximum net instantaneous active power for export at the Point of Interconnection of the Facility upon Commercial Operations as proposed by Seller in its RFP Proposal.

"Contract Pricing": The total of the Energy Payment (if any) 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 a Pre-CSAT Partial Installation, as applicable, and 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.

"Covered Entities": Shall mean the International Brotherhood of Electrical Workers, Local 1260, the Bricklayers & Allied Craftworkers, Local Union 1, the Operating Engineers, Local Union 3, District Council 50 (Local Union 1791, Local Union 1889, Local Union 1926, and Local Union 1944), the Elevator Constructors, Local Union 126, the Heat & Frost Insulators & Allied Workers, Local Union 132, the United Union of Roofers, Waterproofers & Allied Workers, Local Union 221, the International Association of Sheet Metal, Air, Rail & Transportation Workers, Local Union 293, the Laborers International Union of North America, Local Union 368, the Iron Workers, Local Union 625, the International Brotherhood of Boilermakers, Local Union 627, the Operative Plasterers and Cement Masons, Local Union 630, the Plumbers and Fitters, Local Union 675, the Hawaii Teamsters & Allied Workers, Local Union 996, and the International Brotherhood of Electrical Workers, Local Union 1186.

"Daily Delay Damages": \$ [REDACTED] per Day. **[DRAFTING NOTE: Calculate as follows: (Contract Capacity X \$50/kW ÷ 180 Days = Daily Delay Damages.)]**

"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.

"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).

"E-mail": Shall have the meaning set forth in Section 29.3 (Notices).

"Effective Date": Shall mean the same date as the Non-appealable PUC Approval Order Date.

"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.

"Energy Payment": The amount (if any) 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)(3) (Endpoint and Server Security) of Attachment B (Facility Owned by Seller) to this Agreement.

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the fact that the Facility is a non-fossil fuel facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and

any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

"EPC Contractor": Shall mean Seller's engineering, procurement and construction contractor for the Facility.

"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.

[WIND] "Expected Generation": The theoretical production of the WTGs over a given period of time based on the measured meteorological data during such period and the WTG Measured Power Curve, calculated as set forth in Section 5 (Calculation of Expected Generation for Each WTG) of Attachment Q (Calculation of Certain Metrics).

"Facility": Seller's renewable electric energy facility that is the subject of this Agreement, including the [PV System or 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).

"FASB ASC 842": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"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.

"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 Cost Comparison": Shall mean a cost comparison, confirmed as accurate by an officer of Seller (or other documentation reasonably acceptable to Company), and which illustrates the difference between the (1) financing costs Seller estimated for each of its construction financing and its long-term financing, as applicable, when it submitted its BAFO, consistent with the indicative costs and fees and any other documentation Seller received from potential lenders and financing parties (and submitted as part of its RFP Proposal) supporting such estimated financing costs, and (2) Seller's actual financing costs for its construction financing or long-term financing, as applicable, as supported by executed financing agreements and/or other documentation of costs paid by Seller to lenders or other financing parties to complete the Construction Financing Closing Milestone or to close on long-term financing, as applicable.

"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(a) (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(a) (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) and is consistent with Section 21.2 (Events That Could Qualify as Force Majeure) but not excluded by Section 21.3 (Exclusions From Force Majeure).

"Force Majeure Notice": Shall have the meaning set forth in Section 21.4 (Satisfaction of Certain Conditions).

"Full Dispatch": A time period during which all inverters 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).

"GDPIPD" or "Gross Domestic Product Implicit Price Deflator": Shall mean the index value shown in the United States Department of Commerce, Bureau of Economic Analysis ("BEA") publication entitled "Implicit Price Deflators for Gross Domestic Product", Table 1.1.9, Line 1, for each quarter of the calendar year (BEA

Interactive Data Application), or a successor publication or index, which may be used to adjust the BAFO Unit Price.

"GDPIPD<sub>BAFO Submission</sub>": [insert value], which represents the GDPIPD as of the calendar quarter in which Seller submitted its BAFO.

"GDPIPD<sub>PUC Approval</sub>": Shall mean the latest GDPIPD released as of the PUC Approval Order Date.

"GDPIPD Compare Rate": Shall have the meaning set forth in Section 2(b) (BAFO Unit Price Adjustment) to Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).

"Generation System Aux Loads": The energy that the Facility loses and or uses in the process of producing energy under Company dispatch. Generation System Aux Loads do not include the load consumed by the System when not producing energy, but connected to the Company System, as those loads are considered Station Service. Generation System Aux Loads are expected to be variable with Facility production, and represent an increase in consumption above Station Service during production.

"GHG Letter Agreement": Shall mean the letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the greenhouse gas emissions analysis to be completed in connection with the application with the PUC for regulatory approval of this Agreement.

"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, including spare parts inventories, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.

- (b) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.
- (c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.
- (d) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
- (e) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as temperature, current, frequency, polarity, synchronization, control system limits, etc.
- (f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for similarly situated renewable energy facilities, considering Company's isolated island setting, and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"Governmental Approvals": 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.

"[GPR or GPI] Performance Metric": Shall have the meaning set forth in Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages) of this Agreement.

"Guaranteed Commercial Operations Date": [REDACTED], which is the date 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 Electric 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 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 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 Technical and Operational Requirements Revision Document.

"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 [[PV]fifteenth (15<sup>th</sup>) or [Wind]twenty fourth (24<sup>th</sup>)] calendar month after 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 Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreement to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Technical and Operational Requirements for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"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.

"Investment Grade Lump Sum Payment": Shall mean the Investment Grade Lump Sum Payment (\$/year) amount provided by Seller in its BAFO.

"Investment Grade Status": A credit rating for Company's senior unsecured long-term debt obligations or an issuer credit rating for the Company, in each case, without regard for third-party credit enhancements, meeting at least two out of three of the following:

- (1) BBB- or higher for S&P Global Ratings, or any successor by law;
- (2) BAA3 or higher by Moody's Investor Services, Inc., or any successor by law; or
- (3) BBB- or higher by Fitch Ratings, Inc., or any successor by law.

"IPP Bill": H.B. 974 and S.B. 1501 from the 2025 Hawai'i State Legislative Session, or any subsequent similar bill.

"IRS Letter Agreement": The system impact study and Facility study letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"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 (including, but not limited to, executive 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 purposes of assessing liquidated damages for failure to satisfy any of the Performance Metrics, the "LD Assessment Date" is the Day following the expiration of the 10-Business Day period provided for Company to submit, 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, a Notice of Monthly Report Disagreement concerning any calculation material to the assessment of such liquidated damages.

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

"Lump Sum Payment": The payment to be made by Company to Seller in exchange for (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company's 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. When necessary to account for the availability of some but not all of the Facility, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each individual unit 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.

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

"Management Meeting": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

[PV] "Measured Performance Ratio" or "MPR": Shall have the meaning set forth in Section 2 (Calculation of Measured Performance Ratio) of Attachment Q (Calculation of Certain Metrics) of this Agreement.

[WIND] "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 (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) 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

(Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

[WIND] "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.

"MMS or MMT": Meteorological monitoring station or meteorological monitoring tower.

[WIND] "Modified Pooled OMC Equipment Availability Factor" or "MPXEEAF": Shall be calculated for each MPXEEAF Assessment Period as set forth in Section 1 (Calculation of the Modified Pooled OMC Equipment Availability Factor) of Attachment Q (Calculation of Certain Metrics) to this Agreement.

[WIND] "Modified Pooled OMC Equipment Availability Factor Performance Metric": Shall have the meaning set forth in Section 2.5(a) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) of this Agreement.

"Modification Pricing Impact": Each Revision Modification Pricing Impact and Resilience Requirements Modification Pricing Impact, as applicable.

"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 for the [PV System EAF or MPXEEAF] Assessment Period, the [MPR or PI] Assessment Period and the BESS Measurement Period ending with such calendar month) necessary for the calculation of 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 final month of a BESS Measurement Period

shall be deemed to include the BESS Measurement Period Report for such BESS Measurement Period.

"Monthly Report Disagreement": Any disagreement arising out of a Monthly Report, including whether the applicable Performance Metrics have been satisfied.

"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 [[PV]fourth (4<sup>th</sup>) or [Wind]sixth (6<sup>th</sup>)] 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(c)(i) 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.

[WIND] "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).

[PV] "MPR": Shall have the meaning set forth in Section 2(a) of Attachment Q (Calculation of Certain Metrics) of this Agreement.

[PV] "MPR Assessment Period": Shall mean, for purposes of calculating a Measured Performance Ratio, a rolling period of twelve (12) consecutive calendar months. At the end of each calendar month, the MPR Assessment Period will roll forward to include the next calendar month. The initial "MPR Assessment Period" shall consist of the 12 full calendar months of the initial Contract Year.

[PV] "MPR Assessment Period Lump Sum Payment": For each MPR Assessment Period, the monthly Lump Sum Payment for the concluding month of such MPR Assessment Period after deducting the amounts (if any) payable as liquidated damages under Section 2.5(a) (PV System Equivalent Availability Factor Performance Metric and Liquidated Damages) for that same calendar month.

[PV] "MPR Test": Shall have the meaning set forth in Section 2(d) (MPR Test) of Attachment Q (Calculation of Certain Metrics) of this Agreement.

[WIND] "MPXEEAF Assessment Period": Shall mean, for purposes of calculating a Modified Pooled OMC Equipment Availability Factor, a rolling period of twelve (12) consecutive calendar months. At the end of each calendar month, the MPXEEAF Assessment Period will roll forward to include the next calendar month and thus create a new MPXEEAF Assessment Period. The initial MPXEEAF Assessment Period shall consist of the 12 full calendar months of the initial Contract Year.

[WIND] "MPXEEAF Assessment Period Lump Sum Payment": For each MPXEEAF Assessment Period, the monthly Lump Sum Payment for the concluding calendar month of such MPXEEAF Assessment Period.

"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 P95 as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential).

"NEP OEPR Estimate": For each OEPR, the estimated Net Energy Potential of the Facility to which such OEPR assigns a P95 as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential).

"NEP RFP Projection": The Net Energy Potential of the Facility to which Seller assigned a P95 as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential). The NFP RFP Projection for the Facility as specified in Seller's RFP Proposal is [REDACTED] MWh, which may be adjusted upward pursuant to Section 1(b) (NEP RFP Projection) of Attachment U (Calculation and Adjustment of Net Energy Potential).

"NERC GADS": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics).

"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, 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" is the equivalent of "Actual Output."

"Net Energy Potential": The estimated single number with a 95% probability of exceedance (P95) for the annual Net Energy that could be produced by the Facility based on a Renewable Resource Baseline and the estimated losses and uncertainties 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.

"Net Nameplate Capacity": Shall mean the kW value set forth as the Net Nameplate Capacity in Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

"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 the Non-Defaulting Party; Forward Contract) of this Agreement.

"Non-Investment Grade Lump Sum Payment": Shall mean the Non-Investment Grade Lump Sum Payment (\$/year) amount provided by Seller in its BAFO.

"Non-performing Party": The Party who is in breach of, or is otherwise failing to perform, its obligations under this Agreement.

[WIND] "Notice of Disagreement": A Notice of Monthly Report Disagreement or Notice of MPC Disagreement, as applicable.

"Notice of Monthly Report 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.

[WIND] "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 identified as provided in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, as such list may be expanded or contracted by the Parties as provided in Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of said Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"OEPR Evaluator": Shall have the meaning set forth in Section 4(a) (Selection of OEPR Evaluator) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement.

"OEPR Period of Record": For each OEPR, the twelve-month period preceding the Applicable NEP Verification Date for such OEPR.

"Offer Date": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Materials": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Notice": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Offer Price": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Operating Period Security": Shall have the meaning set forth in Section 14.4 (Operating Period Security).

"Parent Entity":           , a **[state type of entity and jurisdiction of organization]**.

"Parties": Seller and Company, collectively.

"Party": Each of Seller or Company.

[WIND]"Performance Index" or "PI": Shall be calculated as set forth in Section 2 (Calculation of Performance Index) of Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Performance Metric LD Period": For liquidated damages payable under Section 2.5(a) ([PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric and Liquidated Damages), the Performance Metric LD Period is the most recent calendar month of the [PV System EAF or MPXEEAF] Assessment Period in question. For liquidated damages payable under Section 2.6(a) ([GPR or GPI] Performance Metric and Liquidated Damages), the Performance Metric LD Period is the most recent calendar month of the [MPR or PI] Assessment Period in question. For liquidated damages payable under Section 2.8(a) (BESS Capacity 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; Termination Rights) and Section 2.11(a) (RTE and Liquidated Damages), the Performance Metric LD Period is the three-month period of the BESS Measurement Period in question.

"Performance Metrics": Each of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric, the [GPR or GPI] Performance Metric, the BESS Capacity Performance Metric, the BESS EAF Performance Metric, the BESS EFOF Performance Metric, and the RTE Performance Metric.

"Performance Metrics LDs": Shall have the meaning set forth in Section 2.12(a) (Payment of Performance Metrics LDs by Seller).

"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.

[WIND] "PI Assessment Period": Shall mean, for purposes of calculating a Performance Index, a rolling period of twelve (12) consecutive calendar months. At the end of each calendar month, the PI Assessment Period will roll forward to include the next calendar month and thus create a new PI Assessment Period. The initial "PI Assessment Period" shall consist of the 12 full calendar months of the initial Contract Year.

[WIND] "PI Assessment Period Lump Sum Payment": For each PI Assessment Period, the monthly Lump Sum Payment for the concluding month of such PI Assessment Period after deducting the amounts (if any) payable as liquidated damages under Section 2.5(a) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) for that same calendar month.

[WIND] "PI Test": Shall have the meaning set forth in Section 2(c)(v) (PI Test) of Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Point of Interconnection" or "POI": The point of delivery of electric energy and/or capacity supplied by Seller to Company, depicted in Attachment E (Single-Line Drawing and Interface Block Diagram) based on the results of the IRS, 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.

"Post-CSAT Partial In-Service Date": Each date from which a Post-CSAT Partial Installation may commence normal operations in parallel with the Company System.

"Post-CSAT Partial Installation": The aggregate of all partial installations (in MW) of the Facility's total Contract Capacity, each approved in accordance with Section 3.4 (Partial

Commissioning), which has successfully completed the Control System Acceptance Test

[WIND] "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 and (ii) the available energy resource. The Power Possible is a telemetered value provided to Company as an analog value (i.e., pure instantaneous).

"Pre-CSAT Partial In-Service Date": Each date from which a Pre-CSAT Partial Installation has been placed into service by commencing the Control System Acceptance Test by delivering Test Energy to the Point of Interconnection in accordance with this Agreement.

"Pre-CSAT Partial In-Service Notice": Shall have the meaning set forth in Section 3.4 (Partial Commissioning).

"Pre-CSAT Partial Installation": Any partial installation approved in accordance with Section 3.4 (Partial Commissioning), aggregated with the most recent Post-CSAT Partial Installation (in MW), of the Facility's total Contract Capacity which has commenced (but not yet completed) the Control System Acceptance Test.

"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 have the meaning set forth in Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller).

"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" or "Commission": 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 Revision Order": The decision and order of the PUC (i) approving the application or motion by the Parties seeking (a) approval of each Technical and Operational Requirements Revision and each Resilience Requirements Revision in question (if applicable) and (b) approval of the associated Revision Document in question, (ii) finding that the impact of the changes to the Contract Pricing on Company's revenue requirements is reasonable (if applicable), and (iii) approving the inclusion of the costs arising out of pricing changes in Company's Energy Cost Recovery Clause and/or Company's Purchase Power Adjustment Clause (or equivalent).

"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.

"Purchased Power Adjustment Clause": The provision in Company's rate schedules that allows Company to pass through to its customers Company's costs of purchased power non-energy.

[PV] "PV System": The photovoltaic solar electric generating project as more particularly described in Attachment A (Description of Generation, Conversion and Storage Facility).

[PV] "PV System EAF Assessment Period": Shall mean, for purposes of calculating a PV System Equivalent Availability Factor, a rolling period of twelve (12) consecutive calendar months. At the end of each calendar month, the PV System EAF Assessment Period will roll forward to include the next calendar month and thus create a new PV System EAF Assessment Period. The initial "PV System Assessment Period" shall consist of the 12 full calendar months of the initial Contract Year.

[PV] "PV System Equivalent Availability Factor": Shall be calculated for each PV System EAF Assessment Period as set forth in Section 1 (Calculation of the PV System Equivalent

Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement.

[PV] "PV System Equivalent Availability Factor Performance Metric": Shall have the meaning set forth in Section 2.5(a) (PV System Equivalent Availability Factor Performance Metric and Liquidated Damages).

"Qualified Consultant": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Seller) to this Agreement.

"Ramp Rate": The rate at which the active power output of the Facility is changed in a constant manner over a fixed time in units of MW/minute. The ramp should be a constant slope over the duration of the change in output, and not a step change(s). See Attachment B (Facility Owned by Seller) for the specifications and limits to the Facility Ramp Rate.

"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, derived using at minimum, long-term solar resource data correlated and adjusted for on-site measurements once available. 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.

"Reporting Milestones": Each of the milestones identified as such in Attachment L (Reporting Milestones).

"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.

"Resilience Requirements": The various standards for the Facility and the Company-Owned Interconnection Facility specified in Section 1(b)(iii)(I) (Resilience Requirements) of Attachment B (Facility Owned by Seller) and Section 2(a)(iii) of Attachment G (Company-Owned Interconnection Facility), as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Certain Revisions) of this Agreement.

"Resilience Requirements Information Request": A written notice from Company to Seller proposing revisions to one or more of the Resilience Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

"Resilience Requirements Modification": For each Resilience Requirements 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 requirements of such Resilience Requirements Revision that exceed the requirements of any applicable Laws.

"Resilience Requirements Modification Pricing Impact": Any reimbursement as may be necessary to specifically reflect the recovery of the net costs specifically attributable to any Resilience Requirements 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 Resilience Requirements Modification is made effective following a PUC Revision Modification 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) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Resilience Requirements Modification.

"Resilience Requirements Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Resilience Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Resilience Requirements Revision and the basis therefor; (ii) the Resilience Requirements Modifications proposed by Seller to comply with the Resilience Requirements

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 Resilience Requirements Modification 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, that would be commercially reasonable under the circumstances, for failure to comply with the Resilience Requirements Revision; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Resilience Requirements Proposal may be issued either in response to a Resilience Requirements Information Request or on Seller's own initiative; provided, however, that, in accordance with Section 23.3 (Seller Proposal), Company shall have no obligation to evaluate a Resilience Requirements Proposal submitted at Seller's own initiative.

"Resilience Requirements Revision": A revision, as specified in a Resilience Requirements Information Request or a Seller-initiated Resilience Requirements Proposal, to the Resilience Requirements in effect as of the date of such Request or Proposal.

"Resilience Requirements Revision Document": A document specifying one or more Resilience Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Resilience Requirements Revision(s). A Resilience Requirements 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.

"Revision Document": Each Technical and Operational Requirements Revision Document, RPS Revision Document, and Resilience Requirements Revision Document, as applicable.

"Revision Modification": Each Technical and Operational Requirements Modification, RPS Modification, and Resilience Requirements Modification, as applicable.

"Revision Modification Pricing Impact": Any reimbursement, adjustment in Contract Pricing and/or the calculation of Performance Metrics LDs, as may be necessary to specifically

reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Technical and Operational Requirements Modification or 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 Technical and Operational Requirements Modification or RPS Modification is made effective following a PUC Revision Modification 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; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Technical and Operational Requirements Modification or RPS Modification; and (iv) an adjustment in Contract Pricing or Performance Metrics, as applicable, necessary to compensate Seller for reasonably expected reductions, if any, in the Lump Sum Payment, or reasonably expected increases in Performance Metrics LDs directly related to the Technical and Operational Requirements Modification or RPS Modification.

"Revenue Metering Package": The revenue meter, revenue metering PTs and CTs, and secondary wiring.

"RFP": Company's Request for Proposals for [REDACTED], Island of [REDACTED], issued on [REDACTED], 202[REDACTED], to which Seller responded in proposing this Project.

"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 Information Request": A written notice from Company to Seller asking Seller to develop and recommend to Company

reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under the RPS Amendment in question.

"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 the RPS Amendment in question.

"RPS Proposal": A written communication from Seller to Company detailing the following in response to a RPS Information Request: (i) a statement as to whether Seller believes that it is technically feasible to for Seller to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under RPS Amendment in question and the basis for that belief; (ii) the RPS Modifications proposed by Seller to achieve that result; (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 Revision Modification 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, that would be commercially reasonable under the circumstances, if the RPS Modifications fail to cause the energy delivered from the Facility to come within the revised definition of "renewable electrical energy"; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A RPS Proposal may be issued either in response to a RPS Information Request or on Seller's own initiative.

"RPS Revision Document": A document specifying one or more measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under the RPS Amendment in question. A RPS 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.

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

"RTE Performance Metric": [REDACTED]%, which represents the lowest acceptable efficiency of the BESS for a full charge and discharge cycle as more fully set forth in Attachment W (BESS Tests). **[DRAFTING NOTE: RTE PERFORMANCE METRIC TO BE TAKEN FROM RESPONSE TO RFP.]**

"RTE Ratio": 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.

"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 [[PV]third (3<sup>rd</sup>) or [wind]fifth (5<sup>th</sup>)] 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(b)(i) 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(b)(i).

"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(g) 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) of this Agreement.

"Seller": Shall have the meaning set forth in the preamble to the Agreement.

"Seller-Attributable Non-Generation": Refers to time periods during which the individual unit 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 Technical and Operational Requirements, Good Engineering and Operating Practices, Governmental Approvals, Resilience Requirements, 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 this Article 9 (Personnel and System Safety) of this Agreement that is caused by Seller or any Seller Representatives;
- (v) The Company has reasonably decided that it is inadvisable for such individual unit (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);

(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; and

(viii) The Facility fails to comply with Company Dispatch or other outage or deration as provided in Section 8.3 (Company Rights of Dispatch)

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/or 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 Proposal": Each Technical and Operational Requirements Proposal, each RPS Proposal, and each Resilience Requirements Proposal.

"Seller's Conditions Precedent Date": Shall have the meaning set forth in Section 13.8 (Company Milestones).

"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 MWh of stored energy and as a percentage of BESS Contract Capacity.

"Station Service": The energy used by the Facility associated with the communication equipment, substation, lighting, and balance of plant equipment at all times. Station Service loads are relatively fixed or constant and do not vary with renewable energy production and BESS charging/discharging activities. Station Service does not include Generation System Aux Loads and BESS Aux Loads, but includes the loads associated with the Generation System and BESS when not producing or charging/discharging energy under Company Dispatch.

"Station Service Metering Package": The Station Service meter and all associated equipment used to track Station Service energy used during grid charging events and when the Facility cannot self-serve Station Service.

"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).

"Technical and Operational Requirements": The various technical and operational requirements for the operation of the Facility and the delivery of electric energy from the Facility to Company specified in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Certain Revisions) of this Agreement.

"Technical and Operational Requirements Information Request": A written notice from Company to Seller proposing revisions to one or more of the Technical and Operational Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

"Technical and Operational Requirements Modifications": For each Technical and Operational Requirements 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 Technical and Operational Requirements Revision.

"Technical and Operational Requirements Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Technical and Operational Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Technical and Operational Requirements Revision and the basis therefor; (ii) the Technical and Operational Requirements Modifications proposed by Seller to comply with the Technical and Operational Requirements 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 Revision Modification 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, that would be commercially reasonable under the circumstances, for failure to comply with the Technical and Operational Requirements Revision; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Technical and Operational Requirements Proposal may be issued either in response to a Technical and Operational Requirements Information Request or on Seller's own initiative; provided, however, that, in accordance with Section 23.3 (Seller Proposal), Company shall have no obligation to evaluate a Technical and Operational Requirements Proposal submitted at Seller's own initiative.

"Technical and Operational Requirements Revision": A revision, as specified in a Technical and Operational Requirements Information Request or a Seller-initiated Technical and Operational Requirements Proposal, to the Technical and Operational Requirements in effect as of the date of such Request or Proposal.

"Technical and Operational Requirements Revision Document": A document specifying one or more Technical and Operational Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Technical and Operational Requirements Revision(s). A Technical and Operational Requirements 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.

"Telemetry and Control": The interface between Company's EMS and the physical equipment at the Facility.

"Term": Shall mean the Initial Term.

"Termination Damages": Liquidated damages calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

"Test Energy": Shall have the meaning set forth in Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this 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(a) ([GPR or GPI] Performance Metric and Liquidated Damages) of this Agreement.

"Tier 2 Bandwidth": The Tier 2 bandwidth set forth in Section 2.6(a) ([GPR or GPI] Performance 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 Facility Load": The total consumption of Seller's Facility. Total Facility Load comprised of all Generation System Aux Loads, BESS Aux Loads, Station Service.

"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 earlier of (i) the first Pre-CSAT Partial In-Service Date (if applicable), or (ii) 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": Shall mean the dollar amount per MWh of Net Energy Potential resulting from any adjustment to the BAFO Unit Price as described in Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).

[WIND] "WTG": A wind turbine generating system and its internal components and subsystems.

ATTACHMENT A  
DESCRIPTION OF GENERATION, CONVERSION AND STORAGE FACILITY  
**[ALL ISLANDS]**

1. Name of Facility: \_\_\_\_\_
- (a) Location: \_\_\_\_\_ (TMK No. \_\_\_\_\_)
- (b) Telephone number (for system emergencies): \_\_\_\_\_
- (c) 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:

Inverters/WTGs        kW

Energy Storage        /        kW/kWh

Synchronous Generators \_\_\_\_\_ kW

Individual Unit of Aux Load (Generator & Storage): **[if more than one type, list information for each type]**  
**List expected Aux Load and expected Total Facility Loads.**

Maximum Auxiliary load:

	kVAR	kVAR
kW	Consumed	Produced

Total Number of Generators (Inverters, PV Modules, BESS Modules/WTGs/Synchronous]:

**Example 1 (Wind + BESS):**

**Ten (10) Brand X, 1500 kW AC, Wind Turbine Generators;**

**Ten (10) Brand Y, 1650 kW DC, BESS Modules**

**Ten (10) Brand Z, 1500 kW AC, BESS Inverters**

**Example 2 (PV + BESS; AC-Coupled):**

**Seventy-five thousand (75000) Brand W, 200 W DC, PV Modules;**

**Ten (10) Brand X, 1500 kW AC, PV-Inverters;**

**Ten (10) Brand Y, 1650 kW DC, BESS Modules**

**Ten (10) Brand Z, 1500 kW AC, BESS Inverters**

**Example 3 (PV + BESS; DC-Coupled):**

**Seventy-five thousand (75000) Brand X, 200 W DC, PV Modules;**

**Ten (10) Brand Y, 1650 kW DC, BESS Modules**

**Ten (10) Brand Z, 1500 kW AC, Central Inverters**

Description of Generator Equipment:

**[For example: Describe the type of energy and conversion equipment, capacity, and any special features. (i.e. Modules per converter; AC or DC coupling; DC/AC ratio; plant controller information)]**

Total Number of Energy Storage Units:

**[number and size of each unit, e.g., one (1) Brand X, 200 kW/800 kWh; one (1) Brand Y, 300 kW/1200 kWh. Brand is Make & Model.]**

Description of Storage Equipment:

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

Individual Unit (Generator & Storage): **[if more than one type, list information for each type]**

Maximum Auxiliary load:

<u>kW</u>	<u>kVAR Consumed</u>	<u>kVAR Produced</u>
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Generator:

Type (PV Inverter, BESS Inverter, Central Inverter, Synchronous)

Rated Power \_\_\_\_\_ kW (AC)

Voltage \_\_\_\_\_ V, \_ phase

Frequency \_\_\_\_\_ Hz

Class of Protection

Number of Poles

Rated Speed \_\_\_\_\_ rpm

Rated Current \_\_\_\_\_ A

Rated Power Factor See Exhibit B-2

(c) [RESERVED]

(d) Net Nameplate Capacity: Shall be the net instantaneous active power capability of the Facility at the point of interconnection, considering all generation and converter equipment and power plant controls which may act to limit the Facility capability in steady state conditions. The Net Nameplate Capacity shall not be less than the Contract Capacity and shall not limit expected transient dynamic responses to system events.

The Net Nameplate Capacity of this Facility shall be: \_\_\_\_\_ kW. The maximum kW value set forth in the Interconnection Requirements Study.

(e) Description of Facility SCADA and control system(s):  
**[Describe the SCADA and control system utilized for Facility monitoring and control.]**

(f) [RESERVED]

(g) Seller may propose revisions to this Section 5 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, the conversion method, the storage method, or the renewable resource used by the 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(g) 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. The preceding sentence is without limitation to the provisions Article 19 (Transfers, Assignments, and Facility Debt) of the Agreement.

EXHIBIT A-1  
GOOD STANDING CERTIFICATES

EXHIBIT A-2  
OWNERSHIP STRUCTURE

Model RDG PPA (PV+BESS or WIND+BESS)  
All Islands

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 (Modeling Requirements).

(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 is subject to changes and additions as part of any Technical and Operational Requirements Modifications. If Company directs any changes in or additions to the Facility records and operating procedures that are not part of any Technical and Operational Requirements 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 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**

- **Telecommunications equipment for communications, telemetry and control**

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

- (A) Seller shall install a [redacted] kV gang operated, load breaking, lockable disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection shall be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker shall be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure shall be provided for metering transformers. From the high-voltage circuit breaker, another bus connection shall be made to another pole mounted disconnect switch, with surge protection.
- (B) Seller shall provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller shall provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller shall also provide within such area, space for Company to install its communications, supervisory control and data acquisition ("SCADA") equipment (remote terminal unit or equivalent) and certain relaying if necessary for the interconnection. Seller shall also provide AC and DC source lines as specified by Company. Seller shall provide a telephone line for Company-owned meters. Seller shall work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

- (C) Seller shall ensure that the Seller-Owned Interconnection Facilities have a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum, the relaying equipment will provide over and under frequency (81), negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip (if required). The settings shall meet or exceed the requirements for over/under frequency and voltage ride-through set forth in IEEE 2800-2022 Section 9 "Protection". Seller shall install protective relays that operate a lockout relay (86), which in turn will trip the main circuit breaker and not allow it to be reclosed without reset.
- (D) 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 and a disturbance monitor fault recorder, as specified by Company, at the Facility POI, 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), reactive response, etc. Such high-resolution measurement data collection and provisioning requirements are intended to be in accordance with IEEE 2800-2022

Section 11 "Measurement data for performance monitoring and validation".

- (E) Company Telemetry and Control. Seller's equipment shall provide at a minimum:
- (1) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of electrical quantities such as total Facility net MW, MVar, power factor, voltages, currents, and other quantities as identified by the Company;
  - (2) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide status for circuit breakers, reactive devices, switches, inverters, BESS equipment, and other equipment as identified by the Company;
  - (3) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide control of the voltage, var, or pf target setpoint at the point of regulation when operating in each regulation control mode;
  - (4) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide the active power control requirements of this Agreement;
  - (5) 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;
  - (6) For Variable Energy Facilities:  
Interface with Company's Telemetry and

Control, or designated communications and control interface, to provide telemetry of equipment availability, Station Service Load, Aux Load, Power Possible, and meteorological and production data required under Section 8 (Data and Forecasting) of this Attachment B (Facility Owned by Seller) and the Facility's Capacity Available for Dispatch;

- (7) Seller shall provide such analog telemetry to Company via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 2 seconds; and
  - (8) 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.
  - (9) The Facility shall have the capability of a variable, settable value that represents the minimum charge maintained in the BESS for Company Dispatch. This value shall be set remotely by the Company in order to preserve energy for blackstart or other purposes.
- (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) Cybersecurity and Critical Infrastructure Protection. While the State of Hawaii is not currently under North American Electric Reliability Corporation ("NERC") jurisdiction, the Facility shall be designed and maintained with the criteria to meet at all times applicable NERC Critical Infrastructure ("CIP") Medium Impact compliance requirements as the same may be amended, updated and/or replaced during the Term.

(1) Security Policies and Documentation. Seller shall implement and document security policies and standards in accordance with industry best practices (e.g., aligned with the intent of the current version of NERC CIP-003 for Medium Impact Assets) and consistent with Company's security policies and standards. Seller shall submit documentation describing the approach, methodology, and design to provide physical and cyber security (i.e., aligned with the intent of the current version of NERC CIP-003 for Medium Impact Assets) with its submittal of the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Material, 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.

- (aa) The design shall meet industry standards and best practices, consistent with the current version of the National Institute of Standards and Technology ("NIST") guidelines as indicated in Special Publication 800-53 "Security and Privacy Controls for Federal Information Systems and Organizations" and Special Publication 800-82 "Guide to Industrial Control Systems (ICS) Security". The system shall be designed with the criteria to meet applicable compliance requirements and identify areas that are not consistent with NIST guidelines and recommendations.
- (bb) The cybersecurity documentation shall include a block diagram of the control system with all external connections clearly described.
- (cc) Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.
- (dd) Company shall be notified in advance when there is any condition that would compromise physical or cyber security.
- (ee) Seller shall, at the request of Company or, in the absence of any request from Company, at least annually during the term of this Agreement, provide Company with updated documentation and diagrams including a record of changes.

(2) [RESERVED]

(3) Endpoint and Server Security. Seller shall implement appropriate endpoint and server security processes and

practices commensurate with the level of risk as determined by periodic risk assessments.

Seller shall (consistent with the following sentence) ensure that no Malware or unauthorized code is 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 shall periodically review, analyze and implement improvements to and upgrades of its Malware prevention and detection 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.

(4) Cybersecurity Program. Seller shall establish and maintain a continuous cybersecurity program (i.e., aligned with the current version of NERC CIP-003 for medium impact Bulk Energy System Cyber Systems and NIST standards) that enables Seller (or its designated third party) to:

(aa) Define the scope and boundaries, policies, and organizational structure of the cybersecurity program.

(bb) Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the

Seller's Organization consistent with guidance provided in the current version of NIST Special Publication 800-30 "Guide for Conducting Risk Assessments".

- (cc) Implement appropriate mitigating controls and training programs and manage resources.
  - (dd) Monitor and periodically test the cybersecurity program to ensure its effectiveness. Seller shall review and adjust their cybersecurity program as appropriate for any assessed risks.
  - (ee) Applicability is extended to Cloud Service providers and other third-party services the Seller may use.
- (5) Security Monitoring and Incident Response. Company and Seller shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training (i.e., aligned with the current version of NERC CIP-008). Seller shall, at the request of Company or, in the absence of any request from Company, at least quarterly, provide Company with a report of the incidents that it has identified and describe measures taken to resolve or mitigate.

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 (aa) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's

confidential information; (bb) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller; (cc) cooperate with Company with respect to any such breach or unauthorized access or use; (dd) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (ee) 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.

If malicious software or unauthorized code is found to have been introduced into the Environment, Seller will promptly notify Company. 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 shall promptly report to Company the nature and status of all efforts to isolate and eliminate malicious software or unauthorized code.

- (6) Monitoring and Audit. Seller shall provide information on available audit logs and reports relating to cyber and physical security (i.e., aligned with the current version of NERC CIP-007 R4). Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1(b)(iii)(G) (Cybersecurity and 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.

(7) Contingency Plans. Seller shall implement and maintain a business continuity plan, a disaster recovery plan, and an incident response plan ("Contingency Plans" - i.e., aligned with the current version of NERC CIP-009) appropriate for the level of risk based on the impact of Seller's associated facilities, systems and equipment, which, if destroyed, degraded, misused, or otherwise rendered unavailable, would affect the reliable operation of the Company System. The Contingency Plans shall be provided to Company upon request. Such Contingency Plans shall be updated to reflect lessons learned from real recovery events.

(8) Supply Chain Risk Management. Seller shall implement and maintain a supply chain risk management plan with implementation of appropriate security controls (i.e., aligned with the current version of NERC CIP-013). Controls should address the following security considerations: (1) software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.

(H) Available Power Production.

(1) Variable Resource Power Potential. Seller's instantaneous real power (MW) production available to be delivered to the Point of Interconnection from only [PV or Wind] considering equipment and resource availability (). The value will be determined at any given time using the best-available data and

methods for an accurate representation of the amount of active power available at the Point of Interconnection for the next several control cycles.

- (2) Variable Resource Power Potential 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 Capacity Available for Dispatch will be determined at any given time using the best-available data and methods for an accurate representation of the amount of active power available at the Point of Interconnection for the next several control cycles. Telemetry will be provided to indicate state of charge, including available estimated duration at the current dispatch and Capacity Available for Dispatch given state of charge and forecast production.
- (3) For variable resources where Capacity Available for Dispatch 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 Capacity Available for Dispatch 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 within the tolerance provided in Section 3(b) (Active Power and Capacity Available for Dispatch Performance) of this Attachment B (Facility Owned by Seller). During those periods of time when the SCADA derived Capacity Available for Dispatch 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 Capacity Available for Dispatch. 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).

(4) [RESERVED]

(I) Resilience Requirements.

- (1) The Facility shall be equipped with a voice communication system capable of contact with the Company during a Company System outage.
- (2) Facility design and implementation shall be such as to avoid any single points of failure resulting in a loss of greater than [142 MW - Oahu, 20 MW- Maui, 30 MW - Hawai'i] MW net or the total loss of the Facility power output if the Facility Net Nameplate Capacity is less than [142 MW - Oahu, 20MW - Maui, 30 MW - Hawai'i]. For single points of failure, this would apply to settings on the equipment that will cause equipment shutdown.
- (3) Seller shall reserve space within the Site for possible future installation of Company-owned meteorological and safety equipment (such as wind speed, direction and relative humidity monitors, SODAR and irradiance monitors, cameras, etc.) and AC and DC source lines and connectivity infrastructure for such equipment as may be required depending on the Facility resource type and location. In the event Company decides to install

such meteorological and/or safety 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.

(4) The Facility shall, at a minimum, be assigned a risk category in accordance with, and satisfy the wind load and seismic load requirements of, the International Building Code and any more stringent requirements imposed under applicable Laws.

(5) Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.

(c) Design Drawings, Bill of Material, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility, and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and

the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings and protection coordination study, including fuse selection and AC/DC Schematic Trip Scheme (part of design drawings), for the Facility to Company during the 60% design. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.

- (d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.
  
- (e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval. **[COMPANY TO REVISE THIS SECTION 1(e) PRIOR TO EXECUTION FOR SPECIFICS OF THE PROJECT.]**
  
- (f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with Good Engineering and Operating Practices.
  
- (g) Active Power Control Interface.
  - (i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Active Power Control Interface") necessary to interface the Facility active power controls with the

Company System Operations Control Center for real power control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the net real power import or export from the entire Facility remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center as required 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 SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval. Company's review shall include design description and parameters for 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) controls.
- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system immediately upon, and within 2 seconds of receiving the respective control signal from Company.

- (v) Seller shall provide an analog input to the Telemetry and Control for the gross MW input or output of the individual generating and BESS units or all Facility generating and BESS units (Company to determine based on number of generating and BESS units), and an analog signal for the total net MW input or output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the net real power input or output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. The alternate means of dispatch, including but not limited to local controls, is to be the temporary dispatch mechanism until the Active Power Interface is returned to service and must be capable of changing the real power export or import as directed by the Company System Operator within 5 minutes (or such other period as Company accepts in writing) of the Seller receiving the directive by the Company System Operator, verbal or otherwise permitted by such alternate means. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to import or export electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.
- (A) If all local and remote active power controls become unavailable or fail, the Facility shall immediately alert and

verbally inform the Company's System Operator.

- (B) If protection is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to ramp down and shutdown Facility and open and lockout the main circuit breaker. Company shall approve the proposed design and implementation of this function. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

- (vii) The rate at which the Facility changes net real power import or export shall comply with the Ramp Rate specified in Section 3(c) (Ramp Rates) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will provide the Company SCADA control of the Ramp Rate at which the active power output is changed in response to Company dispatch as specified in Section 3(c) (Ramp Rates) of Attachment B (Facility Owned by Seller). **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

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

- (A) Maximum Power Import and Export Limits: The Facility is not allowed to exceed these settings under any circumstances. The primary frequency response control specified in Section 3(m) (Active-power - Frequency Response Requirements) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.
- (B) Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the renewable resource and energy storage and shall be

within the tolerance defined in Section 3(b) (Active Power Control and Capacity Available for Dispatch Performance) of this setting when system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller). When system frequency exceeds the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller), the Facility's net real power import or export is allowed to deviate from this setting when commanded by the primary frequency response control specified in Section 3(m) (Active-power - Frequency Response Requirements) of Attachment B (Facility Owned by Seller).

- (C) Inverter/WTG Enable/Disable Control: The Facility shall include an inverter/WTG Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its inverters/WTGs. When Enable is selected, the Facility inverters/WTGs can start up, ramp up, and remain in normal operations.
  - (D) Black start mode Enable/Disable control
  - (E) Isochronous mode Enable/Disable control
  - (F) The ability to allocate a portion of stored energy (MW and MWh) toward contingency response and black start reserves and the frequency response parameters required to control the response of these allocations.
- (ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.
- (x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.
- (h) Control System Acceptance Test Procedures.
- (i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting a

Control System Acceptance Test on the entire Facility or a Pre-CSAT Partial Installation approved in accordance with Section 3.4 (Partial Commissioning), as applicable:

(A) Facility:

- (1) Successful completion of the Acceptance Test.
- (2) Facility has been successfully energized.
- (3) All of the Facility's generators have been fully synchronized.
- (4) The control system computer has been programmed for normal operations with respect to the Facility.
- (5) 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 for the Facility.

(B) Pre-CSAT Partial Installation:

- (1) Successful completion of the Acceptance Test. Facility requirements will apply to all capacity and resources that have been declared commercial through a partial installation until the Facility is complete indicating all resources comprising the Facility have completed CSAT.
  - (aa) If a Pre-CSAT Partial Installation is requested for a project with multiple substation or circuit points of interconnection, Company will, in its sole discretion, determine if the Acceptance Test must be completed on a full substation.

- (2) Pre-CSAT Partial Installation to be tested has been successfully energized.
  - (3) The control system computer has been programmed for normal operations based on the Pre-CSAT Partial Installation configuration being tested.
  - (4) All equipment that is relied upon for normal operations (including generating resources, ancillary devices such as capacitors/inductors, energy storage devices, statcom, etc.) shall have been commissioned and be operating within normal parameters for the Pre-CSAT Partial Installation being tested.
- (ii) Facility Energy Equipment. Unless all of the energy equipment (PV System, BESS) of the Facility (or Pre-CSAT Partial Installation being tested, as applicable) in the Control System Acceptance Test is available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's (or Pre-CSAT Partial Installation's) equipment 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. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the

Control Systems Acceptance Test due to the need to complete and execute such amendment.

- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
  
- (j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth in such written notice, to meet the telemetry and control requirements specified in Section 1(b)(iii)(E) (Company Telemetry and Control) and/or the operational and performance requirements specified in Section 3 (Technical and Operational Requirements) of this Attachment B (Facility Owned by Seller), and to require documentation or testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice or such longer time period agreed to in writing by Company, a written report of both the results of such investigation and the corrective action taken by Seller; 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 it takes 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 recommendation 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. The Company shall have the right to declare the Facility derated and the Facility shall be deemed to be in Seller-Attributable Non-Generation status until 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.

- (k) Applicability of IEEE 2800-2022.<sup>1</sup> The requirements set forth in this Attachment B (Facility Owned by Seller) in its entirety shall be aligned and in accordance with the requirements of IEEE 2800-2022, for all intents and purposes. IEEE 2800-2022 is referenced herein as the Company has adopted specific sections of

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<sup>1</sup> This Agreement does not adopt Sections 1 through 4 of IEEE 2800-2022. These sections, however, provide context for the sections of IEEE 2800-2022 incorporated into this Agreement. The IEEE 2800-2022 definitions may conflict with definitions in this Agreement and therefore the IEEE 2800-2022 definitions are referenced solely for the purpose of understanding the definition within the context of the specific IEEE 2800-2022 references and not for interpretation of other sections of this Agreement which are not reference sections of IEEE 2800-2022.

IEEE 2800-2022, unless otherwise specified or clarified. Should there be conflicts between IEEE 2800-2022 and the requirements specified herein, the requirements of this Agreement, including this Attachment B (Facility Owned by Seller), shall control, consistent with the flexibility afforded the Company serving as the TS Owner and TS Operator, as such terms are defined in IEEE 2800-2022 Section 1 "Overview".

- (i) For purposes of referencing IEEE 2800-2022, the reference point of applicability ("RPA") in Section 4.2 of IEEE 2800-2022 shall apply to the POI.
- (ii) For purposes of referencing IEEE 2800-2022, the applicable voltages and applicable frequency shall have the meaning set forth in Section 4.3 of IEEE 2800-2022, unless otherwise specified in this Agreement.

The nominal phase-to-phase voltage at the POI shall be \_\_\_\_ kV. **[DRAFTING NOTE: CHANGE TO THE APPROPRIATE POI VOLTAGE FOR THE FACILITY]**

The nominal frequency is 60 Hz.

- (iii) Prioritization of IBR responses. The Facility shall comply with IEEE 2800-2022 Section 4.7 "Prioritization of IBR responses" in its entirety.

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 local or system-wide outage 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 Company System Operator 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) (Cybersecurity and Critical Infrastructure Protection) of this Attachment B (Facility Owned by Seller).
- (h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System only when the [ ] circuit is in normal operating configuration served by breaker [ ] at

[ ] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Technical and Operational Requirements.

(a) Reactive Power Control. Seller shall at minimum meet IEEE 2800-2022 Section 5 "Reactive power-voltage control requirements within the continuous operation region", as supplemented or modified by the following **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**:

(i) Reactive Amount. The Facility shall have sufficient equipment, as specified in IEEE 2800-2022 Section 5 "Reactive power-voltage control requirements within the continuous operation region", so that the Facility will have the ability to deliver or receive, at the Point of Interconnection, dynamic reactive power at all active power levels including zero active power, as illustrated in the **[generation and BESS capability]** curve(s) attached to this Agreement as Exhibit B-2 (Generator and Energy Storage Capability Curve(s)) **[to be updated by IRS]**, which represents the Facility Composite (Generator and Energy Storage) Capability Curve(s). Full dynamic reactive power capability shall be maintained for system equivalent impedances between \_\_\_\_\_ and \_\_\_\_\_ [TBD IRS], and all voltage operating ranges. **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

(ii) Seller shall automatically regulate 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, var, or power factor specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller).

(iii) The Facility shall be able to accept a reactive power droop setting between 0 and 0.3 puV/puVAR **[settable range to be confirmed by IRS]**

where puVAR is based on the Reactive Amount specified in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller). Company shall have the ability to specify the reactive power droop setting among other voltage control settings remotely through Company SCADA. The Seller shall not change the voltage control settings unless instructed or approved by the Company. The default reactive power droop setting shall be:          puV/puVAR **[To be determined by the results of the IRS]**

- (iv) For voltage disturbances at the Point of Interconnection, including faults on the transmission system, for which the applicable voltage is within +/- 5% of the nominal voltage inclusive, the Facility shall at minimum meet IEEE 2800-2022 Section 5.2.2 "Voltage Control" within the reactive power capabilities described in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller). The step response time shall be 1 second or less.  
**[DRAFTING NOTE: LONGER STEP RESPONSE TIMES MAY BE PERMITTED IF SHOWN TO PROVIDE A MORE STABLE RESPONSE IN IRS]**
- (v) For voltage disturbances at the Point of Interconnection, including faults on the transmission system, for which the applicable voltage falls outside of +/- 5% of the nominal voltage, the Facility shall at minimum meet IEEE 2800-2022 Section 7.2.2.3.5 "Response to TS abnormal conditions - Performance Specifications", where the IBR unit maximum current rating is to be provided in accordance with the Short-term Overcurrent Capability as described in Section 3(u) (Short-term Overcurrent Capability) of this Attachment B (Facility Owned by Seller).
- (vi) 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 SCADA through Company's Telemetry and Control.

- (b) Active Power Control and Capacity Available for Dispatch Performance. The tolerance of active power control accuracy shall be +/- 0.1 MW. When system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller) the Facility shall maintain active power output as close to the latest received Power Reference Setpoint as possible, but within this tolerance.
- (i) The tolerance of Capacity Available for Dispatch accuracy shall be +/- 0.1 MW.
- (c) Ramp Rates.
- (i) For changes in active power under Seller's local dispatch control Seller shall ensure that the rate of change is at or below a Ramp Rate specified by the Company. This should not constrain the primary frequency response control described in Section 3(m) (Active-power - Frequency Response Requirements) or the restoration of active power as described in Section 3(d) (Ride-Through Requirements).
- (ii) Upon receiving a command from the Company active power control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility's net active power import or export at the Ramp Rate specified by the Company, as described in Section 1(g)(vii) of this Attachment B (Facility Owned by Seller), to the extent allowed by the renewable resource and energy storage. The Facility will respond to the change in Power Reference Setpoint immediately without intentional delay. The maximum dispatchable Ramp Rate shall be as fast as the Facility is able to support but at least the greater of 4 MW/min or 10% of the Facility Contract Capacity per minute; a slower dispatchable Ramp Rate may be specified by the Company.
- (iii) The Ramp Rate requirements of this Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) shall not impede the response when the Facility net active power import or export is changed by the primary frequency

response control described in Section 3(m) (Active-power - Frequency Response Requirements) of this Attachment B (Facility Owned by Seller) or when restoring active power output as described in Section 3(d) (Ride-Through Requirements) of this Attachment B (Facility Owned by Seller).

(d) Ride-Through Requirements.

- (c) (i) In meeting the voltage and frequency ride-through requirements in this Attachment B (Facility Owned by Seller), Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), Section 3(g) (Transient Stability Ride-Through), and Section 3(i) (Frequency Ride-Through), the Facility shall not enter momentary cessation of operations within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System and at minimum meet or exceed the capabilities required in IEEE 2800-2022 Section 7.1 "Response to TS abnormal conditions - Introduction"; Section 7.2.2.3.2 "Low- and high-voltage ride-through capability"; Section 7.2.2.3.3 "Low- and high-voltage ride-through performance"; and 7.3.2.1 "Frequency disturbance ride-through requirements - General requirements and exceptions" as parameterized and modified in this Attachment B (Facility Owned by Seller). Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value. In the many 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 in accordance with IEEE 2800-2022 Section 9 "Protection", and Section 7.2.1 "Voltage protection requirements" and Section 7.3.1 "Mandatory frequency tripping requirements". Any such protection driven limits of operation should be conveyed to the Company and represented in the provided models. **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF**

**MOMENTARY CESSATION IS NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH LIMITATION SHALL BE PROVIDED TO COMPANY IN WRITING WITH THE SELLER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]**

- (ii) The Facility shall at minimum meet IEEE 2800-2022 Section 7.2.2.6 "Response to TS abnormal conditions - Restore output after voltage ride-through," as supplemented or modified by the following: During the voltage recovery, following an event resulting in abnormal voltage conditions, the Facility shall maintain its response and subsequently restore active power output to at least 100% of pre-disturbance levels or available active power, whichever is lower, within 1 second without any Ramp Rate limitation, and as adjusted by the Active-power - frequency response requirements in Section 3(m) (Active-power - Frequency Response Requirements) of this Attachment B (Facility Owned by Seller), or the GFM response described in Section 3(n) (Grid Forming ("GFM")) of this Attachment B (Facility Owned by Seller). Changes of active power are permitted in response to control commands in accordance with Active Power Control or in response to other control settings.
- (iii) The Facility shall meet or exceed the minimum requirements to ride-through consecutive voltage deviation events as required in IEEE 2800-2022 Section 7.2.2.4 (Consecutive voltage deviations ride-through capability) and as modified for the ride-through ranges of Section 3(e) (Undervoltage Ride-Through) and Section 3(f) (Over Voltage Ride-Through) of this Attachment B (Facility Owned by Seller).
- (iv) The response of each generating resource while within the ride-through requirements of Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), Section 3(g) (Transient Stability Ride-Through), and Section 3(i) (Frequency Ride-Through) of this Attachment B (Facility Owned by Seller), 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 within the Facility and the Facility supports Company System reliability and provides a stable transient response to grid events.

- (e) Undervoltage Ride-Through. The Facility will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the lowest magnitude voltage of any three voltage phases at the Point of Interconnection): **[THESE VALUES MAY BE CHANGED BY COMPANY IN ITS SOLE DISCRETION UPON COMPLETION OF THE IRS IF REQUIRED FOR SYSTEM PERFORMANCE.]**

0.80 pu $\leq$ V $\leq$ 1.00 pu	The Facility remains connected to the Company System and in continuous operation.
0.70 pu $\leq$ V < 0.80 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the voltage remains in this range.
0.40 pu $\leq$ V < 0.70 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for ten (10) seconds while the voltage remains in this range.
0.25 pu $\leq$ V < 0.40 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for 1200 milliseconds while the voltage remains in this range.

0.00 pu  $\leq$  V < 0.25 pu      The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for 600 milliseconds while the voltage remains in this range.

- (f) Over Voltage Ride-Through. 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 highest magnitude voltage of any of the three voltage phases at the Point of Interconnection): **[THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM AT V > 1.2 pu. RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEMS WILL BE DETERMINED IN THE IRS.]**

1.00 pu  $\leq$  V  $\leq$  1.10 pu      The Facility remains connected to the Company System and in continuous operation.

1.10 pu < V  $\leq$  1.20 pu      The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for thirty (30) seconds while the voltage remains in this range.

V > 1.20 pu      The Facility remains connected to the Company System and ride-through for as long as the equipment allows.

- (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. The Facility shall provide the options of being configured as active power priority or reactive power priority during the ride-through. The selection of the appropriate priority of the Facility shall be determined by the Interconnection Requirements Study. **[TO BE PROVIDED UPON COMPLETION OF IRS].**

- (h) Voltage Phase Angle Change Ride-Through.
  - (i) The Facility shall ride through positive-sequence phase angle changes within a sub-cycle-to-cycle time frame of the voltage at the Point of Interconnection of less than or equal to 30 electrical degrees. In addition, the Facility shall remain in operation for any change in phase angle of individual phases caused by occurrence and clearance of unbalanced faults, provided that the positive-sequence angle change does not exceed the forestated criterion. Active and reactive current oscillations in the post-disturbance period that are positively damped shall be acceptable in response to phase angle changes. Momentary cessation in the post-disturbance period shall not be permitted.
  - (ii) 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.
- (i) Frequency Ride-Through. Seller shall at minimum meet IEEE 2800-2022 Section 7.3.2.1 "Frequency disturbance ride-through requirements - General requirements and exceptions" and Section 7.3.2.2 "Frequency disturbance ride-through requirements - Continuous operation region" with the frequency thresholds provided in the following Sections (3)(i)(i) (Underfrequency Ride-Through) and 3(i)(ii) (Overfrequency Ride-Through) replacing the values in the "Percent from  $f_{nom}$ " column in IEEE 2800-2022 Section 7.3.2.1, Table 15 -Frequency ride-through capability for an IBR plant):

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

57.0 Hz  $\leq$  f  $\leq$  60.0 Hz      The Facility remains connected to the Company System and in continuous operation.

56.0 Hz  $\leq$  f < 57.0 Hz      The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the frequency remains in this range.

f < 56.0 Hz      The Facility remains connected to the Company System for as long as the equipment allows.

(ii) Overfrequency Ride-Through. The Facility shall meet the following overfrequency ride-through requirements during an overfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

60.0 Hz  $\leq$  f  $\leq$  63.0 Hz      The Facility remains connected to the Company System and in continuous operation.

63.0 Hz < f  $\leq$  64.0 Hz      The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the frequency remains in this range.

f > 64.0 Hz      The Facility remains connected to the Company

System for as long as the equipment allows.

- (j) [RESERVED]
- (k) Power Quality. Seller shall at a minimum meet IEEE 2800-2022 Section 8 "Power Quality." Voltage harmonics at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-2014, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems".
- (l) [RESERVED]
- (m) Active-power - Frequency Response Requirements. Seller shall at minimum meet IEEE 2800-2022 Section 6 "Active-power - frequency response requirements," as supplemented or modified by the following:
  - (i) Seller Facility shall provide a primary frequency response (PFR) and fast frequency response (FFR) with the appropriate frequency droop characteristic in both the overfrequency and underfrequency directions except to the extent such response is not operationally possible because of the level of available renewable resource and/or energy storage State of Charge.
  - (ii) The frequency response control shall be in continuous operation when operating in parallel with the Company System including all continuous operation and ride-through ranges provided in Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), and Section 3(i) (Frequency Ride-Through) of this Attachment B (Facility Owned by Seller), unless directed otherwise by the Company.
  - (iii) The Company shall have the ability to specify the PFR and FFR droops and deadband settings among other frequency response control settings and enable or disable PFR or FFR remotely through Company SCADA.
  - (iv) The Primary Frequency response shall change the active power import or export without any Ramp

Rate limitation to the extent the equipment can support.

- (iv) Primary Frequency Response. IEEE 2800-2022 Section 6, Table 7 - "Parameters of primary frequency response for IBR plant" shall be replaced as follows:

Parameter	Units	Default (Oahu)	Default (Hawaii, Maui)	Ranges of available settings	
				Min	Max
$db_{uf}$	Hz	0.02	0.017	0.01	0.1
$db_{of}$	Hz	0.02	0.017	0.01	0.1
$k_{uf}$	%	5	4	0.1	10
$k_{of}$	%	5	4	0.1	10

- (v) Fast Frequency Response. IEEE 2800-2022 Section 6, Table 10 - "Parameters of FFR1" shall be replaced as follows:

Parameter	Units	Default (Oahu)	Default (Hawaii, Maui)	Ranges of available settings	
				Min	Max
$f_{uf, FFR1}$	Hz	0.3	0.1	0.1	1
$f_{of, FFR1}$	Hz	0.3	.1	0.1	1
$k_{uf, FFR1}$	%	1	0.833	0.1	4
$k_{of, FFR1}$	%	1	0.833	0.1	4

- (vi) Isochronous Frequency Response Mode. The Facility will provide the capability to supply isochronous mode of operation. The control design shall allow for a bumpless transfer between modes of operation. 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. When isochronous mode of operation is selected while connected to the live system the target frequency shall be initialized to the grid frequency and the target increased or decreased from the Company System through the control interface. In a black start configuration, the target shall be 60 Hz.

- (n) Grid Forming ("GFM"). **[REQUIRED FOR FACILITIES WITH STORAGE, CAPABILITIES OF WIND TURBINE GENERATOR INVERTERS TO PROVIDE THIS FUNCTION IS PREFERABLE AND WOULD BE STUDIED IN THE IRS IF OFFERED]**GFM control sets an internal voltage waveform reference such that an inverter with the GFM control shall be able to synchronize with the grid and regulate active and reactive power generation appropriately, regardless of the grid's strength, or operate independently of other generation. An inverter with GFM control shall immediately respond to grid disturbances to support stability of the grid and maintain its own control stability during the system disturbance.

Seller Facility inverters shall be designed with GFM control and be capable of operating in GFM mode supporting system operation under normal and emergency conditions without relying on the characteristics of synchronous machines. While in GFM mode, the inverters shall support grid operation, consistent with tariff requirements, as a continuous ac voltage source during normal and transient conditions (as long as no limits are reached within the inverter) and be able to synchronize to other voltage sources and operate autonomously if a grid reference is unavailable, and shall be able to share active and reactive power burden with other voltage sources without impacts on system stability.

Seller shall provide information to the Company regarding control design, capabilities, characteristics, etc. of the GFM control of the Facility for Company review and approval. Additional specifics of the GFM control may be defined during the IRS.

**Specifically, the GFM controls shall have the following functions and characteristics:**

- (i) Allow Seller Facility to operate in stable manner on low system strength grids (e.g. low short circuit ratio, low inertia, inertia-less system, etc.).
- (ii) Sets an internal voltage waveform reference and is able to synchronize with the grid or operate independently of other generation.
- (iii) Responds to system condition changes (i.e. frequency change and voltage change) beyond the control deadband in a timely manner by contributing towards the subsequent recovery of system frequency and voltage to the pre-disturbance value, assuming energy and power margins are available.
- (iv) Provide damping control function which damps oscillation within the interconnection and other adverse interactions among GFM and Grid following Inverter Based Resources (IBRs) and other power electronic devices on the grid.
- (v) Upon the loss of the last synchronous machine in the power system, GFM will have the ability to operate autonomously if a grid reference is unavailable and be able to share active and reactive power burden with other voltage sources without impacts on system stability.
- (vi) Ability to transition from an electrical island to a grid-connect configuration without an impact to system stability.
- (vii) Provide active low-order harmonics cancellation (as applicable).
- (viii) Provide black-start capability (as applicable).
- (ix) 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 required to communicate to the Company

its parameters and settings pertaining to grid forming mode.

- (x) The grid forming control block diagram shall be submitted to the Company for review. The design shall be approved in writing by the Company and implemented by the Seller prior to control system testing. This shall include initial settings for tunable controls parameters based on modeling. The initial control parameters may be modified by seller on company request; based on field data and performance, subsequent system resource changes, etc. to achieve acceptable system stability.
- (o) Blackstart. The Facility shall be able to blackstart, start and energize itself without support from the Company System to the extent allowed by the operating limits of the Facility.
  - (i) At the Company System Operator's sole discretion and to the extent of the operating limits of the Facility, the Facility shall blackstart and energize a part of the Company System as directed by the Company System Operator.
  - (ii) Upon blackstart and energization of a part of the Company System, the Facility shall:
    - (A) Voltage Regulation according to Section 3(a) (Reactive Power Control) of this Attachment B (Facility Owned by Seller).
    - (B) Frequency Control with an isochronous governor to a frequency target initially set to 60 Hz and adjustable at the sole discretion of the Company System Operator.
    - (C) Supply power to the part of the Company System that the Facility has energized, which shall include supplying power to start synchronous and other inverter-based generating resources.
    - (D) Blackstart and operate in grid forming mode as described in Section 3(n) (Grid Forming ("GFM")) of this Attachment B (Facility Owned by Seller).

- (iii) The Facility shall seamlessly and bumplessly transition from blackstart mode to normal operating mode as directed by and at the sole discretion of the Company System Operator. The blackstart control mode status shall be telemetered to Company through SCADA.
- (iv) The Facility shall maintain a minimum level of energy in the Facility storage system for blackstart use to be specified by the Company in its sole discretion.
- (v) The Facility blackstart design and configuration, including the isochronous governor, shall be subject to the prior written approval of Company in its sole discretion and implemented by Seller prior to conducting the CSAT. The blackstart design and configuration may be modified by mutual agreement of Seller and Company.
- (p) [RESERVED]
- (q) Rate of Change of Frequency ("ROCOF"). Seller shall at minimum meet IEEE 2800-2022 Section 7.3.2.3.5 "Rate of change of frequency (ROCOF) ride-through".
- (r) Self-Energization. Seller's Facility shall be able to self-energize, i.e. start and energize itself without connecting with the Company System. The process of interconnecting the energized Facility with the Company System shall be seamless and bumpless using an auto-synchronizing circuit breaker. Immediately upon connecting to the Company System, the Facility shall transition to normal operation. The self-energization control status shall be telemetered to the Company through SCADA.
- (s) Energization from the Company System. If Seller's Facility is unable to self-energize, then Seller's Facility shall be able to energize from the Company's System. The process from energizing from the Company's System shall occur at the feeder level.
- (t) Balance of Plant ("BOP") Efficiency Ratio. **[FOR WIND FACILITIES]** Wind Facilities must achieve a satisfactory BOP Efficiency Ratio. Both the BOP Benchmark and the process for determining the BOP Efficiency Ratio will be determined upon completion of the NEP IE Estimate

or Company-Designated NEP Estimate in accordance with Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. The BOP Benchmark will be re-evaluated as part of the OEPR process under Attachment U (Calculation and Adjustment of Net Energy Potential).

- (u) Short-term Overcurrent Capability. The Facility shall be capable of providing a Short-Term Overcurrent Capability at least 1.6 times the steady-state current that would correspond to the Contract Capacity at nominal voltage at the Point of Interconnection, for a minimum of 5 seconds per event. The Short-Term Overcurrent Capability shall be available during system disturbances through any post disturbance system recovery stage to provide system stability support, during which the Facility net export can be temporarily above the Facility continuous net export limit. If the Facility has a Short-Term Overcurrent Capability greater than the 1.6 minimum provision, the entire Short-Term Overcurrent Capability must be made available to respond during system disturbances. The Facility short-term overcurrent capability is calculated by the formula:

$$\begin{array}{rcl}
 \text{Facility Short-Term} & \text{Per Unit BESS} & \text{Total of BESS} \\
 \text{Overcurrent} & = \text{Inverter Overcurrent} & \text{Inverters MVA} \\
 \text{Capability} & \text{Capability} & \times \frac{\text{Facility}}{\text{Contract}} \\
 & & \text{Capacity (MW)}
 \end{array}$$

**[TO BE PROVIDED UPON COMPLETION OF IRS]**

The Facility current injection shall meet or exceed the requirements of IEEE 2800-2022 Section 7.2.2.3.4 "Current injection during ride-through mode" as modified herein to apply for voltage disturbances within the continuous operation and all ride-through conditions up to the full equipment capability limits as described in Section 3(a) (Reactive Power Control), Section 3(d) (Ride-Through Requirements), and this Section 3(u) (Short-term Overcurrent Capability) of Attachment B (Facility Owned by Seller).

4. Disconnection of Seller Facility.

- (a) Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller). For this purpose, a "Disconnection Event" is a sudden change of active power at the Point of Interconnection of at least \_\_\_ MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** and/or disconnection of the Facility from the Company's System in a period of two (2) minutes or less, (i) that is not the result of Company dispatch, frequency droop response, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller). Company's election to exercise its rights under said Section 1(j) (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller) for any future Disconnection Event during the pendency of such election or thereafter.
- (b) For every Disconnection Event, Seller shall investigate the cause. Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause of the Disconnection Event.
- (c) Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection Event ("Proposed Actions"). The aforementioned findings, data relied upon for such findings, and Proposed Actions, should at a minimum, mimic the reporting requirements outlined in NERC Standard PRC-030-1 (Unexpected Inverter-Based Resource Event Mitigation). 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 (Disconnection of Seller Facility) 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. 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 (Mediation) of this Agreement.

6. Modeling.

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

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

Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per Day for each Day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(f) under the Agreement.

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

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

- (E) Authorized Use. If Company becomes entitled to a release of the Source Code of the Required Models from escrow, Company may thereafter correct, modify, update and

enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) (the "Source Code Authorized Use").

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

(ii) Source Code Security.

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

periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit (the "Source Code LC") with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank doing business in the United States and subject to United States state or federal regulation, 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) of this Attachment B (Facility Owned by Seller), until and unless Seller provides a substitute form of letter of credit meeting the requirements of this Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller).
- (D) Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 6(b)(ii)(C) (Extend Letter of Credit) of this Attachment B (Facility Owned by Seller), Company shall, in order to avoid comingling the Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller) with a reputable escrow agent acceptable to Company ("Proceeds Escrow Agent") subject to an escrow agreement acceptable to Company ("Proceeds Escrow Agreement"). Without limitation to the generality of the foregoing, a federally insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this Section 6

(Modeling) of this Attachment B (Facility Owned by Seller). To that end, the Proceeds Escrow Agreement governing such escrow account shall give Company the sole authority to draw from the account. Seller shall not be a party to such Proceeds Escrow Agreement and shall have no rights to the Proceeds. Upon full satisfaction of Seller's obligations under Section 6 (Modeling) of this Attachment B (Facility Owned by Seller), Company shall instruct the Proceeds Escrow Agent to remit to the bank that issued the letter of credit that was the source of the Proceeds the remaining balance (if any) of the Proceeds. If there is more than one escrow account with Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

- (E) Seller's Obligation. If the letter of credit is not sufficient to cover Company's associated consultant fees, costs and expenses to develop and recreate the Required Models, Seller shall pay to Company the difference within ten (10) Days of Company's written notice to Seller.
- (F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.
- (G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been

placed into a Proceeds Escrow, the Proceeds Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

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

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

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this Section 6(b) (Escrow Establishment) of Attachment B (Facility Owned by Seller) and the Source Code Escrow Agreement and Proceeds Escrow Agreement are "supplementary agreements" as contemplated in 11 U.S.C. § 365(n)(1)(B). In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code or the funds in the Proceeds Escrow, pursuant to 11 U.S.C. § 365(n)(1)(B), under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election

to terminate the contract by Company under 11 U.S.C. § 365(n) (1) (A).

7. Testing Requirements.

(a) Testing Requirements. Once a Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility control or Post-CSAT Partial Installation control, as applicable, inverter/WTGs control settings and/or ancillary device controls, without prior written agreement from the 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 technical and operational requirements 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:

(a) 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 the Facility's resource type(s) and use of storage**] which may not be changed during the Term without Company's prior written consent:

(i) Location Facility Map showing the layout of the Facility (coverage area or footprint), the coordinates (latitude and longitude), and height above ground of generating equipment, MMS, and

each field measurement device (e.g., air density, ambient air pressure, air temperature):

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

Wind: And height above ground of each WTG hub.

Seller shall provide a map and key for each inverter or WTG sufficient to allow Company to correlate the data received by the Company to each individual resource.

- (ii) Solar generation technology employed at the Facility with temperature dependence, mounting, tracking/tilt, and module type.
- (iii) Representative power curve(s).

(b) Meteorological and Production Data.

- (i) Seller shall install, maintain, and ensure the measurement accuracy acceptable to Company of 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.
- (ii) Seller shall install, maintain, and ensure measurement accuracy acceptable to Company of a minimum of two MMS for facilities that have either (i) a Contract Capacity of 5 MW or greater or (ii) a coverage area greater than one square kilometer.
- (iii) 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.
- (iv) Seller shall arrange for a backup power source from a dedicated distribution line to provide separate service from Company to temporarily store and record the meteorological data from the field measuring devices at the MMS(s). Any such backup power source must be capable of providing

power for the field measurement devices for a reasonable period until primary power is restored. The same backup power source can serve multiple MMS(s) as needed by the Facility.

(c) Additional telemetering:

- (i) The following additional data shall be measured and telemetered to Company with an accuracy level acceptable to Company. Units are indicated in parenthesis.

For sites with a variable renewable source (such as Wind or PV):

- Wind speed (m/s)
- Wind direction (Degrees)
- Ambient air Temperature (Degrees C)

Solar PV:

- PV inverters available (Quantity)
- Plane of Array (POA) Irradiance (W/m<sup>2</sup>)
- Global Horizontal Irradiance (W/m<sup>2</sup>)
- Back of panel temperature (Degrees C)

Wind:

- Number of turbines available (Quantity)
- For each turbine:
  - Wind speed at nacelle(m/s)
  - Wind direction at nacelle (Degrees)
  - Ambient air temperature at hub height (Degrees C)
  - Ambient air pressure at hub height (mbar)

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 2800-2022 (or latest version), except as described in Section 3 (Technical and Operational Requirements) 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 519-2014 (or latest version).
- (d) Battery Energy Storage System. The operating parameters of the Battery Energy Storage System ("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) From the Commercial Operations Date, 100% of the BESS energy capacity must be capable of being charged from the grid.
  - (iii) For Contract Years that are non-leap years, the BESS shall be discharged no more than BESS Contract Capacity x 365, MWh in each Contract Year. For Contract Years that are leap years, the BESS shall be discharged no more than BESS Contract Capacity x 366, MWh in each Contract Year.

- (iv) The BESS will not be required to discharge more energy than available relative to the available state of charge.
- (v) Facilities with variable energy and paired storage shall be able to charge the storage from the variable energy resource while disconnected from the Company System. If the Seller's Facility is disconnected from the Company System but still available for use, the Seller shall charge the storage from the available energy resource while disconnected from the Company System up to the operating limits of the Facility unless otherwise directed by the Company.
- (vi) The BESS energy capacity shall be sized above the BESS Contract Capacity to provide sufficient energy to self-energize the Facility in accordance with Section 3(r) (Self-Energization) of this Attachment B (Facility Owned by Seller). The BESS shall maintain sufficient energy to self-energize the Facility at all times except when discharged for such purpose. Upon discharging to self-energize the Facility, the BESS must restore the self-energization energy as soon as possible.
- (vii) Facilities with variable energy and paired storage shall design, furnish, and install a BESS that meets all the requirements of this Agreement including specifications referenced in Section 3 (Battery Energy Storage System Design) of Exhibit B-3 (BESS Fire Safety Requirements).

EXHIBIT B-1  
MODELING REQUIREMENTS

To be completed based on the Project's characteristics. The Required Models are listed in the RFP Appendix B, Attachment 4 - Model and Interconnection Requirements (IRS) Scope of the RFP.

Modeling requirements are set forth in the RFP Appendix B, Attachment 3 Hawaiian Electric Facility Technical Model Requirements and Review Process of the RFP.

EXHIBIT B-2  
GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S)

**[EXHIBIT B-2 WILL BE PREPARED TO REFLECT THE RESULTS OF THE IRS]**

EXHIBIT B-3  
BESS FIRE SAFETY REQUIREMENTS

Except as modified herein, the Project, including the energy storage technology, power conversion system, and site energy controller shall be designed, manufactured, and tested in compliance with the latest versions (including any issued revisions) of the applicable standards of American National Standards Institute (ANSI), Institute of Electrical Engineers (IEEE), National Electrical Code (NEC), National Electrical Manufacturers Association (NEMA), Occupational Safety and Health Administration (OSHA), American Society for Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), National Fire Protection Association (NFPA), Factory Mutual Insurance Company (FM) and Owner safety practices. Finally, state and local building, fire, and zoning requirements shall also be met.

All design drawings, specifications, studies, and other engineering documents associated with the Facility shall be sealed by a Professional Engineer (who shall, for all purposes under the Agreement, be licensed to practice in the State of Hawaii and licensed in his or her relevant subject matter, as required by the state). Where drawings, specifications, studies, and other engineering documents are developed as required to manufacture a listed/certified product, a Professional Engineer seal is not required. Prior to the COD, the design drawings, specifications, studies, and other engineering documents shall be revised as necessary to reflect the as-built condition of the Facility and sealed by a Professional Engineer, and Seller shall provide Buyer with a Professional Engineer's certification letter stating that the Facility has been completed in all material respects in accordance with the requirements of this Exhibit B-3 (BESS Fire Safety Requirements). Buyer may allow exceptions to the above documentation requirements for parts of the Facility that are listed/certified products in accordance with Good Engineering and Operating Practice.

1. Safety.

The Project must be compliant with all applicable provisions of IEEE 1547, Underwriters Laboratory (UL) 1642, UL 1741 Supplement A, UL 1973, FMDS 0533 and NFPA. The Project must be able to protect itself from internal failures and utility grid disturbances. As such, the Project must be self-protecting for

alternating current (AC) or direct current (DC) component system failures. In addition, the Project must be able to protect itself from various types of external faults and other abnormal operating conditions on the grid.

The Project must be designed in compliance with applicable federal, state, and local safety standards and regulations with regard to construction and potential exposure to chemicals and with regard to container or enclosure resistance to hazards such as ruptures and exposure to fire.

All Project systems and equipment must be grounded in accordance with the NEC and adhere to the guidelines in IEEE 80 and IEEE 142.

All electrical equipment shall be designed to the 'High Seismic Qualification Level' in accordance with IEEE 693 Standard.

For all Project equipment, Seller shall provide information on all known or reasonably foreseeable safety issues related to the equipment, including appropriate responses on how to handle the Project in case of an emergency, such as fires or module ruptures.

The Project must be designed such as to minimize risk of injury to the workforce and public during installation, maintenance, and operation.

Visual and audible fire alarms shall be included as necessary per all applicable fire and safety codes.

A physical Emergency Stop (E-Stop) button is required to be installed at all entrances and exits of the buildings or containers. The E-Stop button shall have the ability to open contactors/breakers to the inverter and batteries isolating the DC and AC potential.

A baseline emergency action plan should be provided as part of the documentation for the system.

Contractor will provide training for the safe operation of the unit.

## 2. Fire Protection.

The Seller shall provide fire protection system for the complete BESS system including modification of existing site fire

protection system to meet all applicable codes including the latest approved revision of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems", the latest approved revision of FMDS 0533 "Lithium-Ion Battery Energy Storage Systems" and the latest approved revision of the applicable County code covering Fire Protection.

Seller shall comply with NFPA and FMDS coordination, design, installation, commissioning, testing, training and startup requirements. This shall include all other requirements as outlined in this Exhibit. Fire Protection system design shall include, but not be limited to, the following:

Emergency vehicle access and fire hydrants per applicable local and national codes,

Appropriate enclosure/spacing per FMDS 0533 and local and national codes,

Hazard Mitigation Analysis (HMA) to defend and gain alignment for the system design with all key stakeholders before the design is finalized (e.g. risk mitigation for runaway prevention)

Emergency response center or kiosk with screens shall be installed outside of danger zone. Emergency response center must include backup generator or second power source (e.g. UPS) to keep the key safety equipment operational during an event,

Shelter design in accordance with NFPA requirements for location, separation, materials of construction, ventilation, smoke or flammable conditions detection, fire suppression, communications/alarms, training, commissioning, permitting, and documentation.

The fire alarm control panel shall provide supervised addressable relays for HVAC shutdown. The HVAC Engineer shall design and specify startup and testing services to support the interface with the Fire Protection System and ensure that the HVAC is de-energized as designed. Alarms shall clearly annunciate location of detected condition within building or by individual container.

Startup and testing of the Fire Protection System will be provided by the fire protection contractor in accordance with NFPA requirements.

If defined by the Hazard Mitigation Analysis (HMA), an exhaust system should be provided to detect and mitigate flammable gases.

### 3. Battery Energy Storage System Design.

The Contractor shall design, furnish and install a BESS that meets all of the requirements of the Agreement, including this Specification.

#### Cells and Modules (if applicable)

The energy storage shall consist of cells of proven technology designed for the type of service described herein. For the purposes of this Specification, proven technology shall be defined as cells that have been in successful commercial service in similar type applications for a period of time sufficient to establish a service life and maintenance history. Only cells that are commercially available or for which suitable (not necessarily identical) replacement cells (or modules or strings) can be supplied on short notice throughout the Project life will be allowed. Cells shall be listed to UL 1642 and manufacturer must provide UL certificate prior to shipment to Project Site.

The cells may be supplied as separate, individual units or as group of cells combined into modules. Modules shall be listed to UL 1973, and UL 9540A and manufacturer must provide UL certificate prior to shipment to Site.

Cell construction and accessories (as applicable) shall be sealed to prevent electrolyte seepage. Post seals shall not transmit stresses between the cover or container and the posts. Cell terminals and interconnects shall have adequate current carrying capacity and shall be designed to withstand short circuit forces and current generated by the energy storage. Safety features shall be designed into each cell in accordance with UL 1642, UL 1973, and UL 9540A.

DC Contactors will disconnect the string from the circuit during high temperature conditions but will reconnect once the cell temperatures reach an acceptable range and other conditions are met allowing reconnection. Labeling of the cell (or modules) shall include manufacturer's name, cell type, nameplate rating and date of manufacture, in fully legible characters or QR code. Contractor shall provide a list showing all the modules by their unique identification number along with their corresponding physical location within the project site. The unique

identification numbers shall correspond to their identification within the Project so to provide easy location of all cells or modules.

The energy storage subsystem as a whole and as individual cells shall be designed to withstand seismic events as described herein. The batteries may consist of one or more parallel strings of cells.

DC wiring shall be sized per NEC Article 310 or based on UL standards and be appropriately braced for available fault currents. Protection shall include a DC breaker, fuse or other current-limiting device on the energy storage bus. This protection shall be coordinated with the PCS capabilities and energy storage string protection and shall take into account transients and the L/R ratio at the relevant areas of the DC system. The Project shall operate no higher than 1,500 Volts DC.

The Contractor shall provide information on the impact that weak or failed cells have on the life and performance of the entire string. The Contractor shall specify critical parameters, such as temperature variation limits between cells of a string. The Contractor shall provide a means of monitoring critical parameters to ensure the limits are being met.

Cells, wiring, switchgear and all DC electrical components shall be insulated for 2,000 Volts DC. The Contractor shall have overall responsibility for the safety of the electrical design and installation of the Project. The Project shall include a monitoring/alarm system and/or prescribed maintenance procedures to detect abnormal cell conditions and other conditions that may impair the ability of the Project to meet performance criteria.

The energy storage monitoring system shall be capable of balancing the voltages across cells automatically and independently without any input from the operator or the SEC. Cell monitoring system shall be specified so as to alert the proper personnel in a timely manner that an abnormal cell condition exists or may exist. Abnormal cell conditions shall include over- and under-cell voltage. Temperature is not expected to be monitored at the individual cell level.

The monitoring/alarm system will record data on the number and general location of failed modules, to expedite maintenance and cell replacement. This data shall be stored in non-volatile memory. Such monitoring/alarm system shall be integrated into the overall control system.

The Project shall include racks or shall consist of stackable modules of batteries. Aisle spaces shall be set to permit access for equipment needed for easy removal and replacement of failed modules. The lengths and widths of aisles shall conform to all applicable codes and facilitate access by maintenance personnel. As applicable, the racks shall provide sufficient clearance between tiers to facilitate required modules maintenance, including modules testing and inspection, and replacement.

Rack-mounted modules shall have all connections located on the front of the enclosure or module. Modules shall not be required to be removed from the racks during regular maintenance. All racks and metallic conductive members of stackable modules shall be solidly grounded. Racks shall be seismically designed based on the requirements of this Exhibit B-3 (BESS Fire Safety Requirements) and shall include means to restrain cell movement during seismic events. All designs shall be in accordance with seismic design requirements of this Exhibit B-3 (BESS Fire Safety Requirements).

ATTACHMENT C

[RESERVED]

ATTACHMENT D  
CONSULTANTS LIST

(To be completed pursuant to Section 25.4 of the Agreement)

ATTACHMENT E  
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

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

ATTACHMENT F  
RELAY LIST AND TRIP SCHEME

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

ATTACHMENT G  
COMPANY-OWNED INTERCONNECTION FACILITIES

**[ATTACHMENT G SHALL BE REVISED TO REFLECT THE RESULTS OF THE  
IRS]**

1. Description of Company-Owned Interconnection Facilities.

- (a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at [REDACTED] volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").
- (b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC) are required, Seller shall provide such sources, at no expense to Company.
- (c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreement, 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; and
  - (vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.
- (e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves 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), Matrix G-2 (Telecom Responsibilities) and Matrix G-3 (T&D Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]**

2. Construction and Support Services by Seller.

- (a) Construction and Support Services by Seller.
  - (i) Seller (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense:
    - (A) The items identified in Matrix G-1 (Substation Responsibilities), Matrix G-2 (Telecom Responsibilities) and Matrix G-3 (T&D Responsibilities) as being the responsibility of Seller to construct; and
    - (B) **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER.]**

**[NOTE: SUBPARTS "A" AND "B" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE.]**

- (ii) Seller shall provide the necessary support for the Company's [REDACTED] kV overhead line extension work, which may include, but not limited to:
  - (A) Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
  - (B) Staking of Company proposed poles and anchors by surveyor.
  - (C) Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
  - (D) Graded level pads to provide vehicle working areas around all Company poles and anchors.
  - (E) Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
  - (F) Grubbing and clearing of vegetation within Company's easement area or as required.
- (iii) Resilience Requirements.
  - (A) All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, be in accordance with the appropriate risk category determined by, and satisfy the wind load and seismic load requirements of, the International Building Code and any more stringent requirements imposed under applicable Laws.

- (B) Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.
- (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%, 90%, 100% and final issue for construction. 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 latest 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 twenty (20) Business Days following receipt of the complete Plans at each stage (30%, 60%, 90%, 100% and final issue for construction) 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 twenty (20) Business 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 and on-going system work; (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) in the Company's sole discretion based on its assessment of Company's resources and overall schedule of projects at the time, the Project may lose its place in the queue and may be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that may 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 2(f)(ii) of this Attachment G (Company-Owned Interconnection Facilities) within the time period specified therein for the task in question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Seller fails to satisfy any of the Seller's Conditions Precedent set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test and the Control System Acceptance Test are not satisfactorily completed

within the time allotted to complete such testing.

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

- (A) Final Single-Line Drawing, and notes, has received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- (B) Final Relay List and Trip Scheme have received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- (C) Final Interface Block Diagram has received Company consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- (D) Final Control System Telemetry and Control List has received Company consent.
- (E) Final phasor measurement unit (PMU) devices, if applicable, have received Company consent.
- (F) Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with Attachment B (Facility Owned by Seller) Technical and Operational Requirements.

- (G) Agreement on Active Power Control Interface.
- (H) No later than 14 Days prior to commencement of the Acceptance Test:
  - (1) Seller shall have certified to Company that Seller-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of 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).
  - (2) Seller shall have certified to Company that any Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of 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).
- (I) Any Company-Owned Interconnection Facilities not built by or on behalf of Seller have been installed and commissioned.
- (J) No later than seven (7) Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
- (K) Redlined as-built drawings of the Seller-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities

built by Seller (and/or its Contractors) shall have been provided to Company.

- (L) Continuous power is being supplied to Company's protection and SCADA equipment.
- (M) Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high-speed communication lines required under this Agreement have been commissioned and are ready for use.
- (N) Not less than two (2) weeks prior to the commencement of the Acceptance Test, Seller and Company have participated in an on-Site Acceptance Test coordination meeting.
- (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 thirty (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, in the Company's sole discretion based on its assessment of the nature of Seller's lack of readiness and Company's resources and overall schedule of projects at the time, Company may assign Seller a new Test Ready Deadline and a new Acceptance Testing Milestone Date, which may be behind the other projects then in the queue, coinciding with the estimated time it would take Seller to become test-ready and Company's ability to commence the Acceptance Test. If prior to the new Test Ready Deadline established by Company, Seller becomes ready for the performance of the Acceptance Test, i.e., Seller provides Company with its fourteen (14) Day advance written notice of the commencement of the Acceptance Test (the "Seller Accelerated Test Ready Deadline"), and Company confirms, in its site walk-through of the Facility (which site walk-through the Company may waive in its sole discretion), that Seller is ready for the Acceptance Test, but Company is unable to perform the Acceptance Test within [ ] Days<sup>2</sup> (the "Seller Accelerated Acceptance Testing Milestone Date") and Company's inability to commence the Acceptance Test is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities), then, for up to the period of time from the Seller Accelerated Acceptance Testing Milestone Date to the date that Company commences performance of the Acceptance Test, Seller shall be entitled to a waiver of Daily Delay Damages that would otherwise be accruing if Seller ultimately fails to meet the Guaranteed Commercial Operations Date due to its failure to meet the original Test Ready Deadline specified in Attachment K-1 (Seller's Conditions Precedent and Company Milestones). For clarity, and to explain the limited waiver of Daily Delay Damages provided for in the preceding sentence, if Seller misses its Test Ready Deadline by 45 Days and

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<sup>2</sup> This would be the number of Days between the Test Ready Deadline and the Acceptance Testing Milestone Date stated in the Company Milestones of Attachment K-1 (Seller's Conditions Precedent and Company Milestones).

subsequently misses its Guaranteed Commercial Operations Date for that reason by 60 Days and the period of time between the Seller Accelerated Acceptance Testing Milestone Date and the commencement date of the Acceptance Test is 15 Days (and such delay is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities)), then Seller shall be entitled to a waiver of 15 Days of Daily Delay Damages otherwise accruing for Seller's failure to meet the Guaranteed Commercial Operations Date. If the above time periods remain the same but Seller only misses the Guaranteed Commercial Operations Date by 30 Days, Seller shall not be entitled to any Daily Delay Damages waiver as the 30-Day failure to meet the Guaranteed Commercial Operations Date would be attributable to the initial 45 Days that Seller missed the Test Ready Deadline. Finally, if the above time periods remain the same but Seller misses its Guaranteed Commercial Operations Date by 50 Days, Seller shall be entitled to only a 5 Day waiver of Daily Delay Damages. In the meantime, Seller shall remediate the deficiencies identified by Company, and the process described in this Section 2(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 a restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

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

(g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Seller shall provide for Company review a set of the proposed as-built drawings for the Company-Owned Interconnection Facilities constructed by Seller (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Seller with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility. **[TO BE REVISED THROUGH INTERCONNECTION REQUIREMENTS AMENDMENT TO REFLECT COMPANY BUILD OR DEVELOPER BUILD SCENARIO, AS APPLICABLE]**

(a) Seller Payment to Company.

(i) Seller shall pay the Total Estimated Interconnection Cost, which is comprised of the estimated costs of (aa) acquiring, constructing and installing the Company-Owned Interconnection

Facilities to be designed, engineered and constructed by Company, (bb) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (i) the application process for the PUC Approval Order, (ii) developing such Company-Owned Interconnection Facilities and (iii) reviewing and specifying those portions of Facility which allow interconnected operations as such are described in Attachment B (Facility Owned by Seller) (collectively, the "Engineering and Design Work"), and (cc) conducting the Acceptance Test and Control System Acceptance Test (the Engineering and Design Work and the work to conduct the Acceptance Test and Control System Acceptance Test being collectively called the "Company Interconnection Work"). The Total Actual Interconnection Costs (the actual cost of the Company Interconnection Work) are the "Total Interconnection Costs".

(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 by Seller in accordance with the following schedule:

(i) Initial Payment. Seller, in connection with early engineering offered by Company [or other reason], has paid \$ [REDACTED],000.00 to Company;

(ii) Company-Owned Interconnection Facilities Prepayment. Within thirty (30) Days after the Effective Date, the total estimated costs related to the Engineering and Design Work are 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 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) Scope Changes to Company Interconnection Work. Company may require additional estimated interconnection cost payments (an "Additional Interconnection Cost Payment") that may be required as a result of revisions to the Company-Owned

Interconnection Facilities, other Company Interconnection Work necessary but not covered by the Total Estimated Interconnection Costs and/or revisions to the Project schedule necessitating additional Company Interconnection Work not contemplated when the Total Estimated Interconnection Costs were determined. Company shall prepare commercially reasonable documentation justifying the necessity of the Additional Interconnection Cost Payment, which cannot be unreasonably denied by Seller. Seller shall pay the requested Additional Interconnection Cost Payment within 30 Days of receipt of Company's documentation. If Seller does not make such payment when due, Company shall have the right to draw on the Standby Letter of Credit provided under Section 6(a) (Standby Letter of Credit of this Attachment G (Company-Owned Interconnection Facilities) or, in Company's sole discretion, Company may stop the Company Interconnection Work when funds from the Total Estimated Interconnection Costs are exhausted and shall not be obligated to re-commence Company Interconnection Work until the Additional Interconnection Cost Payment, however made, is received by Company. The amount of the Additional Interconnection Cost Payment shall be included in the Total Estimated Interconnection Costs for purposes of the true-up required under Section 3(d) (True-Up) of Attachment G (Company-Owned Interconnection Facilities).

- (d) 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. 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 Costs, 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.

- (e) 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.
- (f) 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, subject to reimbursement by Seller of the costs thereof incurred by Company in accordance with Section 4(c) (Monthly Bill) of Attachment G (Company-Owned Interconnection Facilities) immediately below.

- (c) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Seller to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

- (a) In the event that the Land Rights include a relocation clause, and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.
- (b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

- (a) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses owed to 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 doing business in the United States and subject to United States state or federal regulation, 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 doing business in the United States and subject to United States state or federal regulation, 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 Grant of Easement). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Grant of Easement) to effectuate the transfer of such Land Rights.

- 9. Governmental Approvals for Any Company-Owned Interconnection Facilities. Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Seller, Seller shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other

Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in accordance with such Governmental Approval) or that such Governmental Approvals have otherwise been closed with the issuing Governmental Authority.

10. Land Rights. Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company) obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities.  
For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply:  
(i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to determine and exercise Company's rights under such contracts as a third-party beneficiary.

ATTACHMENT H  
FORM OF BILL OF SALE AND ASSIGNMENT

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT H IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("Transferor") and \_\_\_\_\_ ("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Power Purchase Agreement for Renewable Dispatchable Generation between Transferor and Transferee dated \_\_\_\_\_, 20\_\_\_\_ ("PPA") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in Attachment G (Company-Owned Interconnection Facilities) to the PPA between [**Transferor and Transferee**] and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and

transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

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

**[Signatures for Bill of Sale and Assignment  
Appear on the Following Page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

\_\_\_\_\_,  
a \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

"Transferor"

\_\_\_\_\_,  
a Hawai'i corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

"Transferee"

SCHEDULE H-1  
DESCRIPTION OF TANGIBLE PERSONAL PROPERTY AND FIXTURES

Model RDG PPA (PV+BESS or WIND+BESS)  
All Islands

SCHEDULE H-2  
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

Model RDG PPA (PV+BESS or WIND+BESS)  
All Islands

ATTACHMENT I  
FORM OF GRANT OF EASEMENT

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT I IS SUITABLE FOR BOTH  
PV+BESS AND WIND+BESS PROJECT AND FOR ALL ISLANDS.]**

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By:  Mail  Pickup

Hawaiian Electric Company, Inc.  
Survey Division  
P. O. Box 2750  
Honolulu, HI 96840-0001

This document contains \_\_\_\_\_ pages

HECO WO# \_\_\_\_\_/JP# \_\_\_\_\_

TITLE OF DOCUMENT(S):

R/W \_\_\_\_\_

**GRANT OF EASEMENT**

PARTIES TO DOCUMENT:

GRANTOR(S):

GRANTEE(S): **[HAWAIIAN ELECTRIC COMPANY, INC.], [HAWAII ELECTRIC LIGHT COMPANY, INC.], [MAUI ELECTRIC COMPANY, LTD.], a Hawaii corporation**

DESCRIPTION: Those certain premises situated off \_\_\_\_\_

Tax Map Keys:

Address:

**GRANT OF EASEMENT**

THIS GRANT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the “Grantor”), and [HAWAIIAN ELECTRIC COMPANY, INC.], [HAWAII ELECTRIC LIGHT COMPANY, INC.], [MAUI ELECTRIC COMPANY, LTD.], a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii, 96840 (the “Grantee”).

W I T N E S S E T H   T H A T :

WHEREAS, the Grantor is the owner of those certain premises situated off \_\_\_\_\_ (the “Premises”); and

WHEREAS, as evidenced by that certain \_\_\_\_\_ dated \_\_\_\_\_ and recorded in \_\_\_\_\_ as Document No. \_\_\_\_\_, the Grantor entered into an unrecorded \_\_\_\_\_ with \_\_\_\_\_, for purposes of constructing and operating a \_\_\_\_\_ facility (the “Project”) on the Premises; and

WHEREAS, the term of the \_\_\_\_\_ commenced on \_\_\_\_\_ and continues for a period of \_\_\_\_\_ years following the Operation Commencement Date (the “Term”) as defined in the \_\_\_\_\_; and

WHEREAS, the Grantee requires that the Grantor grant and convey unto the Grantee easements over, upon, across and through the Premises, to allow the Grantee to receive electric energy generated by the Project and to allow the Project to receive electric service from the Grantee’s existing grid, for as long as the \_\_\_\_\_ shall be in effect.

NOW THEREFORE, the Grantor, in consideration of the sum of One Dollar (\$1.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual right and easement to construct, reconstruct, operate, maintain, repair and remove poles, guy wires, anchors, overhead and/or underground wire lines and such other appliances and equipment (the “Grantee’s Improvements”) as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communications and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor’s land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through that certain parcel of land situate off \_\_\_\_\_ (the “Easement”).

TO HAVE AND TO HOLD the same unto the Grantee, for as long as the \_\_\_\_\_ shall be in effect, including any extensions thereto, provided however, that upon the termination of the \_\_\_\_\_ and the expiration of a termination period of up to \_\_\_\_\_ days afforded to the Grantee by the Grantor, then all rights granted hereunder shall cease and that upon such termination, Grantee shall have the right to and will, if so requested, remove from the

Easement, at its own expense, the Grantee's Improvements and will restore the ground to as reasonably close to the condition in which it was immediately before the installation of the Grantee's Improvements.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the Easement, the Grantee's Improvements, or Grantee's access to and maintenance of the Grantee's Improvements.

AND the Grantee hereby covenants and agrees that:

**1. Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

**2. Indemnification.** The Grantee, for itself only and not on behalf of the other, will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by such Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

**A. Condemnation.** If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee, to the extent of its interest.

**B. Landscaping.** The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

**C. Warranty of Title.** The Grantor, for itself, its heirs and assigns, covenants with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and has good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

**D. Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term “person” shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

**E. Parties in Interest.** The covenants contained in this Grant of Easement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants, and shall be responsible and obligated, for itself and not for the other Grantee party.

**F. Counterparts.** The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

*[Signatures begin on the following page.]*

IN WITNESS WHEREOF the undersigned have executed this instrument as of the day and year first above mentioned.

\_\_\_\_\_  
Grantor

STATE OF HAWAII                    )  
  : ss.  
CITY AND COUNTY OF                )  
HONOLULU

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing \_\_\_\_-page instrument entitled GRANT OF EASEMENT, dated \_\_\_\_\_, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

\_\_\_\_\_  
Notary Signature

Type or print name: \_\_\_\_\_  
Notary Public, First Circuit, State of Hawaii

My commission expires: \_\_\_\_\_

[Affix Seal]

**APPROVED**  
HAWAIIAN ELECTRIC CO., INC.  
Land & Rights of Way Department  
By \_\_\_\_\_  
Land Agent

**[HAWAIIAN ELECTRIC COMPANY, INC.],  
[HAWAII ELECTRIC LIGHT COMPANY, INC.],  
[MAUI ELECTRIC COMPANY, LTD.],**  
a Hawaii corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Grantee

STATE OF HAWAII )  
: ss.  
CITY AND COUNTY OF HONOLULU )

HECO

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that such person is the \_\_\_\_\_ of **[HAWAIIAN ELECTRIC COMPANY, INC.], [HAWAII ELECTRIC LIGHT COMPANY, INC.], [MAUI ELECTRIC COMPANY, LTD.]**, a Hawaii corporation, and the foregoing \_\_\_\_\_-page instrument entitled GRANT OF EASEMENT, dated \_\_\_\_\_, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

\_\_\_\_\_  
Notary Signature

Type or print name: \_\_\_\_\_  
Notary Public, First Circuit, State of Hawaii

My commission expires: \_\_\_\_\_

[Affix Seal]

ATTACHMENT J  
COMPANY PAYMENTS FOR ENERGY, DISPATCHABILITY  
AND AVAILABILITY OF BESS

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT J IS FOR WIND or PV+BESS]**

1. Price for Purchase of Electric Energy. For each period between each Post-CSAT Partial In-Service Date and a subsequent Pre-CSAT Partial Installation, Company shall compensate Seller for electric energy delivered by the corresponding Post-CSAT Partial Installation to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement at a rate of seventy percent (70%) of the Unit Price/kWh. For avoidance of doubt, if a partially commissioned Facility undergoes multiple Pre-CSAT Partial Installations, from the commencement of any new CSAT until such CSAT has been successfully passed, all energy delivered by the corresponding Pre-CSAT Partial Installation to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement shall be considered Test Energy and not compensated in accordance with Section 4 (Test Energy) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).
  
2. Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall pay Seller for the availability of the Facility's Net Energy Potential to respond to Company Dispatch in accordance with this Agreement, as well as for the BESS availability, a monthly Lump Sum Payment as calculated and adjusted as set forth in this Section 2 (Lump Sum Payment) and Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). For avoidance of doubt, because the Facility's Net Energy Potential will not be available to respond to Company Dispatch in accordance with this Agreement until the Commercial Operations Date, and because the BESS will also not be available until the Commercial Operations Date, if the Commercial Operations Date occurs on a Day that is not the first Day of a calendar month, the monthly Lump Sum Payment shall be prorated for the period from the Commercial Operations Date to the end of that month.
  - (a) Investment Grade Pricing. The Lump Sum Payment shall be the Investment Grade Lump Sum Payment if, by the Construction

Financing Closing Milestone: (i) Seller enters into a step-in agreement, or other substantially equivalent assurance in the event of default by Company of its contractual payment obligations under this Agreement (hereinafter, regardless of the form such assurance takes, a "Step-In Agreement"), with the State of Hawai'i or an applicable department thereof when a PPA is executed, or as soon as reasonably possible thereafter, in accordance with the IPP Bill, and/or (ii) Company's credit rating reaches Investment Grade Status. Seller shall not be permitted to opt out of the Step-In Agreement in order to circumvent the applicability of the Investment Grade Lump Sum Payment.

(a) Non-Investment Grade Pricing.

- (i) The Lump Sum Payment shall be the Non-Investment Grade Lump Sum Payment if, by the Construction Financing Closing Milestone: (A) the IPP Bill does not pass and become law or if the IPP Bill becomes law but the State does not elect to execute a Step-In Agreement with Seller (despite Seller's best efforts); and (B) Company's credit rating does not reach Investment Grade Status.
- (ii) Notwithstanding the application of Section 2(b)(i) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS):
  - (A) the Lump Sum Payment will be adjusted downward from the Non-Investment Grade Lump Sum Payment to the Investment Grade Lump Sum Payment, if, at any time during the Term:
    - (1) Seller executes a Step-In Agreement with the State under the IPP Bill; or (2) Company's credit rating reaches Investment Grade Status; and
  - (B) if Seller's actual financing costs are lower than assumed/estimated in developing its Non-Investment Grade Lump Sum Payment at the time of bid submission, as demonstrated by the Financing Cost Comparison (which shall be provided to Company, together with all supporting documentation, within thirty Days of Seller's completion of each of the Construction Financing Closing Milestone and the closing of Seller's long-term

financing), Seller will be required to adjust its Non-Investment Grade Lump Sum Payment downward on a pro rata basis to reflect such lower financing costs.

- (b) BAFO Unit Price Adjustment. To provide inflation protection to the Seller, the Company will allow Seller a one-time pricing adjustment to its BAFO Unit Price, not to exceed ten percent (10%) of the BAFO Unit Price, based on the increase, if any, in the GDPIPD index between the submission date of Seller's BAFO and the PUC Approval Order Date. Any change in the GDPIPD index value ("GDPIPD Compare Rate") shall be determined by dividing the  $GDPIPD_{PUC\ Approval}$  by the  $GDPIPD_{BAFO\ Submission}$ . If there is no change in the index value or if the index value decreases (i.e., the GDPIPD Compare Rate is less than or equal to 1.0) during the period between Seller's BAFO submission date and the PUC Approval Order Date, Seller will not be permitted an adjustment to its BAFO Unit Price. If the GDPIPD Compare Rate is greater than 1.0, the adjustment to the BAFO Unit Price shall be calculated by multiplying the BAFO Unit Price by the GDPIPD Compare Rate (which shall not exceed 1.10). Any GDPIPD Compare Rate exceeding 1.10 shall be adjusted to be 1.10 in order to determine the Unit Price.
- (c) The "BAFO Unit Price" is \$ \_\_\_\_\_/MWh of Net Energy Potential for the Investment Grade Lump Sum Payment, and \$ \_\_\_\_\_/MWh of Net Energy Potential for the Non-Investment Grade Lump Sum Payment. If the GDPIPD Compare Rate is greater than 1.0 (i.e., the  $GDPIPD_{PUC\ Approval}$  is greater than the  $GDPIPD_{BAFO\ Submission}$ ), the BAFO Unit Price may be adjusted to determine the Unit Price as follows:

$$\text{Unit Price} = \text{BAFO Unit Price} \times \text{GDPIPD Compare Rate}$$

Where the GDPIPD Compare Rate is capped at 1.10.

The Unit Price in \$/MWh shall be rounded to six (6) decimal places.

EXAMPLE (for illustrative purposes only):

*BAFO Submission Date - July 14, 2023*

*PUC Approval Order Date - August 15, 2025*

GDPIPD<sub>BAFO Submission</sub> - 122.762 (Q3 2023)  
GDPIPD<sub>PUC Approval</sub> - 124.766 (Q2 2025)  
BAFO Unit Price - 214.793375

Calculation of Unit Price:

Unit Price = BAFO Unit Price × GDPIPD Compare Rate  
GDPIPD Compare Rate = GDPIPD<sub>PUC Approval</sub>/GDPIPD<sub>BAFO Submission</sub>  
= 124.766/122.762 = 1.016324  
Unit Price = \$ 214.793375/MWh × 1.016324 =  
\$218.299662/MWh

If GDPIPD Compare Rate is greater than 1.10:

Unit Price = \$214.793375/MWh × 1.10 = \$236.272712/MWh

- (d) Investment Tax Credit Adjustment. For purposes of this Section 2(e) (Investment Tax Credit Adjustment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the "ITC Adjustment" shall mean the occurrence of a change in law that lowers the base investment tax credit ("ITC") amount for which the Project is eligible under the Inflation Reduction Act from the ITC amount Seller reflected in its RFP Proposal ("Seller's Base ITC"). Upon the occurrence of an ITC Adjustment, Seller may request an increase in the Unit Price; provided, that any such increase to the Unit Price shall be offset by any corresponding change in tax law (e.g., new tax credits, increase in available existing tax credits, reduction in corporate income tax rate, etc.) that benefits Seller. To the extent that Seller requests a price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment), Seller shall provide to Company such documentation and evidence necessary to establish, to Company's reasonable satisfaction, that the requisite circumstances are present to trigger a price change, including, without limitation: (i) written evidence of the change(s) to the ITC encompassed by the ITC Adjustment, and a description, with specificity, as to the impact of such change(s) on Seller's pricing, (ii) either (A) written evidence of the other changes in tax law, if any, benefitting Seller, and a description, with specificity, as to the impact of such change(s) on Seller's pricing, or (B) written certification from Seller that all other tax

assumptions made in Seller's current price remain unchanged due to a lack of any changes in tax law benefitting Seller, and (iii) any other information reasonably requested by Company for purposes of justifying the price change requested by Seller. Moreover, any price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment) shall be agreed to in writing by the Parties and shall be subject to approval by the PUC. Notwithstanding the foregoing, there shall be no change in price pursuant to this provision, if (1) Seller's RFP Proposal did not include or specify Seller's Base ITC, (2) a change to the ITC law applicable to the Project becomes effective after the Commercial Operations Date, or (3) if the inability to claim the ITC is due to any other reason other than a change in law. The Company reserves the right and opportunity to propose other methods to adequately preserve a Seller's pricing assumptions regarding such applicable federal tax credits.

3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as set forth below 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:

- (a) 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<sup>th</sup>) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the First NEP Benchmark.
- (b) Lump Sum Payment During Second Benchmark Period.
  - (i) One purpose of the Second Benchmark Period is to provide the Seller, in the event that the Initial NEP OEPR Estimate is less than the 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 and 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<sup>th</sup>) 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:

- (A) On the first Day of the Second Benchmark Period, the most recent OEPR will be the Initial OEPR;
- (B) 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 [[PV]third (3<sup>rd</sup>) or [Wind]fifth (5<sup>th</sup>)] Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;
- (C) If any Subsequent OEPR is prepared for an OEPR Period of Record ending prior to the commencement of the [[PV]fourth (4<sup>th</sup>) or [Wind]sixth (6<sup>th</sup>)] 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 (1/12<sup>th</sup>) 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.

(c) Lump Sum Payment Following Second Benchmark Period.

- (i) As of the first Day of the [[PV]fourth (4<sup>th</sup>) or [Wind]sixth (6<sup>th</sup>)] 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 [[PV]fourth (4<sup>th</sup>) or [Wind]sixth (6<sup>th</sup>)] 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 [[PV]fourth (4<sup>th</sup>) or [Wind]sixth (6<sup>th</sup>)] 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.
  
- (ii) 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<sup>th</sup>) 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 recalculated and adjusted as provided in this Section 3(c)(ii) 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.

- (d) 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 or all 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 [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor fails to satisfy the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor Performance Metric address this issue in certain of the circumstances when the [PV System or WTG(s)] or a portion thereof is unable to generate electric energy, the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor does not account for events of Force Majeure for purposes of calculating the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor under Section 1 (Calculation of the [PV System Equivalent or Modified Pooled OMC Equipment] Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement. Furthermore, in the case of the [PV System or WTG(s)], although the liquidated damages that are payable if the [MPR or PI] fails to satisfy the [GPR or GPI] Performance Metric address this issue in certain of the circumstances when the [PV System or WTG(s)] or a portion thereof is unable to generate electric energy, the [MPR or PI] does not account for Force Majeure because periods containing such events are excluded from the intervals used in the calculation under Section 2 (Calculation of [Measured Performance Ratio or Performance Index]) of Attachment Q (Calculation of Certain Metrics) to this Agreement. Similarly, in the case of the BESS, although the liquidated damages that are payable if the BESS Annual Equivalent Availability Factor fails to satisfy the BESS EAF Performance Metric addresses this issue in certain of the circumstances when the BESS or a portion thereof is unable to respond to Company Dispatch, the BESS Annual Equivalent Availability Factor does not account for events of Force Majeure because Force Majeure hours are deemed to be removed from Outage Hours for purposes of calculating the BESS Annual Equivalent Availability Factor under Attachment X (BESS Annual Equivalent Availability Factor) to 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 hour or portion thereof during the calendar month in question that the Facility or a portion thereof was not

available to generate energy or respond to Company Dispatch because of a Force Majeure condition affecting Seller (whether claimed by Seller or not) (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Seller from making the Facility or any portion thereof generate energy and make it available for Company Dispatch. In the case of a BESS Force Majeure, such downward adjustment in the Lump Sum Payment shall be limited to the BESS Allocated Portion of the Lump Sum Payment. Further, during any periods in which there is a Force Majeure affecting both the [PV System or WTG(s)] and the BESS, the Lump Sum Payment shall only be adjusted for the effect of the Force Majeure on the [PV System or WTG(s)]. The hours the Facility is affected by a Force Majeure are converted to equivalent full outage hours by multiplying the actual duration of the event (hours) by (i) the size of the reduction in MWs or number of individual units, divided by (ii) the Contract Capacity if the size of the reduction is in MWs or the total number of individual units in the affected system if the size of the reduction is an individual unit count. These equivalent hour(s) are then summed. The summation of equivalent full outage hours is then divided by the months total period hours (number of days in the month x 24hrs/day) to determine the pro-rated factor the Lump Sum Payment will be adjusted by.

- (e) Example (for illustrative purposes only): if the Facility has ten individual units and, during the month of May (which has 31 calendar days or 744 period hours), one unit is not available to respond to Company Dispatch for a period of 360 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = \begin{array}{l} (\text{MLSP} \times 1/10) \\ \times 360/744 \end{array}$$

where:

MLSP = The monthly Lump Sum Payment that would be payable for such month but for the downward adjustment.

Example 2: if a Facility BESS System has forty individual units and, during the month of June (which has 720 period hours), one BESS individual unit is not available to respond to Company Dispatch for a period of 240 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of June would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = \begin{array}{l} (\text{BLSP} \times 1/40) \\ \times 240/720 \end{array}$$

where:

BLSP = The BESS Allocated Portion of the 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 after completion of the Acceptance Test, such as energy delivered to Company during the Control System Acceptance Test and Seller commissioning but not energy delivered during the Acceptance Test (such delivered and accepted energy being referred to collectively as "Test Energy"); provided, that Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. In this regard, Company may determine when and how much Test Energy may be delivered, and Seller shall comply with such Company determination. Company shall not separately pay for Test Energy; provided however, that in the following circumstance only, for a limited time period as specified below, Company may pay for certain Test Energy in order for Seller to satisfy identified and confirmed tax credit qualification conditions necessary for Seller to obtain the benefit of such tax credit in the tax year requested by Seller. In the event that Seller is ready to commence the CSAT but Company is unable to commence the CSAT due to Company resource constraints, e.g., due to casualty or multiple

CSATs already being conducted, or if Seller requests CSAT to occur in whole, or in part during the final 21 days of a calendar year (such constraints being collectively referred to as "CSAT Constraints"), and if not for such CSAT Constraints, Seller would reasonably be expected to achieve Commercial Operations, or partial commissioning, prior to the end of the current calendar year (or Seller's then current tax year), then Company may, under the parameters specified above, accept delivery of Test Energy and Company shall compensate Seller, for a period no longer than thirty (30) Days, for Test Energy delivered during Seller commissioning (post-Acceptance Test and pre-CSAT) at a rate of fifty percent (50%) of the Unit Price/kWh. This limited circumstance upon which Company may compensate Seller for Test Energy shall not apply to any acceptance of Test Energy for subsequent partial commissionings after completion by Seller of the first Post-CSAT Partial Installation. The sum of all payments from Company to Seller for Test Energy pursuant to this Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) (the "Total Test Energy Payment") shall be deducted to the maximum extent possible from the first monthly Lump Sum Payment (and, to the extent necessary, subsequent Lump Sum Payment(s)), until the Lump Sum Payments paid to Seller by Company have been reduced, in the aggregate, by the Total Test Energy Payment.

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. Subject to the provisions of Section 2 (Lump Sum Payment), 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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) 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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).

- (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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS);

- (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 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 claim, or enable its investors to claim, 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 claim 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 claimed;
  
  - (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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS);

(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 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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). 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 the amount equal to the maximum Hawai'i Renewable Energy Tax Credit available for the Project at such time. 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) the amount set forth in the preceding sentence is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 5(d) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS)

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 a credit against any amounts due by Company to Seller 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 claimable tax credits. If, based on such efforts, Seller determines that either said Section 5(b) or Section 5(c) would result in a larger Net Amount of claimable 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 claimable 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 claimable 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 Pricing 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) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) 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 5(g) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Company shall pay the fees and expenses of the Independent Tax Expert and Seller shall promptly reimburse Company for one-half of such fees and expenses.

- (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

<b>Guaranteed Project Milestone Date</b>	<b>Description of Each Guaranteed Project Milestone</b>
<b>[SPECIFY DATE CERTAIN]</b>	<u>Construction Financing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by <b>[insert same date certain as in left column]</b> or (ii) the financial capability to construct the Facility (" <u>Construction Financing Closing Milestone</u> ").
<b>[SPECIFY DATE CERTAIN]</b>	<u>Permit Application Filing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: <b>[List All Discretionary Permits]</b>
<b>[SPECIFY DATE CERTAIN]</b>	<u>Guaranteed Commercial Operations Date</u> .

ATTACHMENT K-1  
SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES

SELLER'S CONDITIONS PRECEDENT

<b>Seller's Conditions Precedent Date</b>	<b>Description of Each of Seller's Conditions Precedent</b>
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(ii)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(iii)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.
	Seller's EPC Contractor shall obtain grading permit.
	Seller shall provide a list of long-lead time materials for the Company-Owned Interconnection Facilities, including but not limited to, control house (if applicable) and metering CTs and PTs.
	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.
	Seller's EPC Contractor shall complete Seller's engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).
<b>No later than three (3) months prior to the commencement of</b>	Seller shall provide backup station service power.

<p><b>the Acceptance Test</b></p>	
<p><b>No later than three (3) months prior to the commencement of the Acceptance Test</b></p>	<p>Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.</p>
<p><b>[specify date] ("<u>COIF Construction Completion Date</u>")</b></p>	<p>Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>
<p><b>[specify date] ("<u>Test Ready Deadline</u>")</b></p>	<p>Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(f)(ii) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>
	<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

COMPANY MILESTONES

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

<b>Company Milestone Date</b>	<b>Description of Each Company Milestone</b>
Two months after COIF Construction Completion Date and ten (10) Business Days after Test Ready Deadline	Company shall, subject to Seller's continued satisfaction of the requirements set forth in <u>Section 2(f)(ii)</u> and <u>Section 2(f)(iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
Fourteen (14) Days following successful completion of Acceptance Test, unless any portion of this period falls within the last twenty-one (21) days of December, in which case, on January 15th of the following year.	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

ATTACHMENT L  
REPORTING MILESTONES

<b>Reporting Milestone Date</b>	<b>Description of Each Reporting Milestone</b>
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction <u>agreement and</u> <del>or</del> other general contractor agreements, <u>which shall each include a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities</u> . Under no circumstances shall redactions conceal information that is necessary for Company to verify <u>its Company's rights or Seller's obligations</u> under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Seller shall provide Company with copies, as applicable of executed Facility operating agreements
[Date]	Building Permit: Seller or Seller's EPC Contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site, tested and mechanically complete.

ATTACHMENT M  
FORM OF LETTER OF CREDIT

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT M IS SUITABLE FOR BOTH  
PV+BESS AND WIND+BESS]**

**[Bank Letterhead]**

**[Date]**

**Beneficiary:**     **[Hawaiian Electric Company, Inc.]**  
                  **[Maui Electric Company, Limited]**  
                  **[Hawai'i Electric Light Company, Inc.]**

**[Address]**

**[Bank's Name]**

**[Bank's Address]**

Re:   **[Irrevocable Standby Letter of Credit Number]**

Ladies and Gentlemen:

We hereby establish, in your favor, our irrevocable standby Letter of Credit Number \_\_\_\_\_ (this "Letter of Credit") for the account of **[Applicant's Name]** and **[Applicant's Address]** in the initial amount of \$ \_\_\_\_\_ **[dollar value]** and authorize you, **[Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.]** ("Beneficiary"), to draw at sight on **[Bank's Name]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Power Purchase Agreement dated as of \_\_\_\_\_ between **[Project Entity Name]** and Beneficiary (the "Power Purchase Agreement").

This Letter of Credit is issued with respect to the following obligations: to pay all amounts due to Beneficiary under Article 14 of the Power Purchase Agreement.

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 one of the following statements signed by a representative of Beneficiary as follows:

The undersigned hereby certifies that: (i) I am duly authorized to execute this document on behalf of **[Hawaiian Electric Company, Inc.] [Hawai'i Electric Light Company, Inc.] [Maui Electric Company, Limited.]**; and (ii) the amount of the draft accompanying this certification is due and owing to **[Hawaiian Electric Company, Inc] [Hawai'i Electric Light Company, Inc.] [Maui Electric Company, Limited]** under the terms of the Power Purchase Agreement dated as of \_\_\_\_\_, between \_\_\_\_\_, and **[Hawaiian Electric Company, Inc] [Hawai'i Electric Light Company, Inc.][ Maui Electric Company, Limited]**.

or

The undersigned hereby certifies that: (i) I am duly authorized to execute this document on behalf of **[Hawaiian Electric Company, Inc.] [Hawai'i Electric Light Company, Inc.] [Maui Electric Company, Limited.]**; and (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 Article 14 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, by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank, or by email transmission of documents in PDF format to **[Bank Email Address]** or other such email address as specified from time to time by the bank. If presentation is made by facsimile transmission or email 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 or email, original documents are not required.

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\* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

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:

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and to

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And a copy to Applicant at:

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We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Note - insert State of bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

**[Bank's Name]:**

By: \_\_\_\_\_  
**[Authorized Signature]**

ATTACHMENT N  
ACCEPTANCE TEST GENERAL CRITERIA

**[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]**

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test shall include, but not be limited to, the following:

1. Interconnection.

- (a) Based on manufacturer's specification, test the local operation of the Facility's [REDACTED] kV breakers, [For Maui and Hawaii Island: generator breaker(s) and inter-tie breaker(s), and other breaker(s), as relevant] which connect the Facility to Company System - must open and close locally using the local controls remotely from Company's Emergency Management System (EMS) and SCADA. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (b) 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.
- (c) All [REDACTED] kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).

- (d) Interconnection Facilities inspections - The Interconnection Facilities 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 Interconnection Facilities may be tested to make sure there is adequate grounding of equipment.
- (e) 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.
- (f) 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 [REDACTED] kV breakers, if any, open as they are designed to open. (Back up relay testing).
- (g) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of Company meters.

2. Communication.

- (a) Confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Confirm that the Facility operators can sufficiently reach Company System Operator.

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.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O  
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

**[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND  
DESIGN OF THE FACILITY AND RESULTS OF THE IRS]  
[ALL ISLANDS]**

1. The Control System Acceptance Test ("CSAT") shall be conducted following installation of any Pre-CSAT Partial Installation, if applicable, and the Facility in its entirety. The CSAT shall be conducted in accordance with criteria set forth herein. The CSAT 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 (or Pre-CSAT Partial Installation, as applicable), including Company-Owned Interconnection Facilities, comply with the provisions of Article 8 (Company Dispatch) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller). The CSAT is to be successfully completed prior to the Commercial Operations Date.

(a) Seller will provide an estimate of the earliest date for the Control System Acceptance Test at least ninety (90) Days before such earliest CSAT date. No Control System Acceptance Test will be scheduled during the final twenty-one (21) Days of a calendar year, and no new Control System Acceptance Test can commence until an in-progress Control System Acceptance Test is completed (or earlier terminated by mutual agreement).

(b) CSAT 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. The Control System and Telemetry and Control List is necessary for the effective operation of the Company System and will be tested during the CSAT.

(c) When the Facility is ready for the CSAT, 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.

(d) The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule.

(e) The CSAT procedures for the Facility will be mutually agreed upon between Seller and Company prior to conducting the test.

(f) 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 (Technical and Operational Requirements) 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.

(ii) Loss-of-Communications responses

(iii) Retention of data for controller power cycles Droop characteristic and change of frequency control / response modes (if applicable).

(1) Real power delivery under remote Company Dispatch, Active Power Dispatch.

(2) Accurate provision of limits for Minimum and Maximum Dispatch.

(3) Ramp Rates.

(4) Voltage regulation.

(5) Grid forming and blackstart (if applicable).

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

(g) Testing of primary and redundant communications between Company System Operator and Facility Operator.

(h) 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 Facility equipment and controls. During the commissioning the following will be required:

ARTICLE 2A 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.

ARTICLE 3 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 and PSCAD program.

ARTICLE 4 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.

- (i) Examples of the type of tests conducted to meet the aforementioned objectives may include, but are not limited to the following:
  - (a) Functional Tests:
    - (i) 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.
    - (ii) Dispatch Test to verify if the Facility's active power limit and setpoint 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 and appropriate limiting of the Facility's real power output.
    - (iii) 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 Section 3(a)(i) (Reactive Amount) and Section 3(b) (Active Power Control and Capacity Available for Dispatch Performance) of Attachment B (Facility Owned by Seller) to this Agreement.

- (iv) 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).
- (v) Loss-of-Communication Test to verify the Facility will properly respond to the various singular and combined disconnection and reconnection of the communication systems relied upon to properly protect and control the Facility. Test is generally conducted by simulating a communications failure and observing the proper response of the Facility. [If DTT required for the Project.]
- (vi) Round trip efficiency test, as described in Attachment W (BESS Tests) to verify that the round trip efficiency of the BESS is not less than the percentage stated as the RTE Performance Metric.
- (vii) BESS Capacity Test to verify the BESS Capacity Ratio.

- (viii) Self-Energization Test to verify the Facility will properly self-energize and synchronize to the Company System.
  - (ix) Blackstart Test (as applicable).
  - (x) Demonstration of the Facility functions either by direct control of the Facility or manipulation of other system conditions to prove functionality.
- (b) Monitoring Test:
- (i) The monitoring test requires the Facility to operate as it would in normal operations and in accordance with the provisions of this Agreement.
  - (ii) 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 Net Nameplate Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.
    - (B) For solar or wind facilities, the recorded renewable energy resource at the Facility is above [600 W/m<sup>2</sup>, solar] [9 m/s, wind] for at least eight (8) hours in any continuous 48-hour CSAT period.
    - (C) 14 continuous Days from the start or restart of the monitoring tests.
- (j) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the 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.
- (k) 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 Control System Acceptance Test. The Parties understand and agree that a successful completion of the test does not constitute a waiver of any of the technical and operational requirements 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 Technical and Operational Requirements in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller).

ATTACHMENT P  
SALE OF FACILITY BY SELLER

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT P IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

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 the Parent Entity or an entity controlled by the 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 the 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) of Attachment P (Sale of Facility by Seller) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity

which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving documentation from Seller establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; and (ii) has experience in the ownership and at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of power generation and BESS facilities; provided, however, that Company shall be deemed to have consented to the assignment if, within ten (10) Business Days of receiving from Seller the documentation establishing that the assignee meets all the foregoing criteria, Company does not either (y) deliver the required consent to Seller, or (z) notify Seller which of the foregoing criteria is not established by such documentation. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

- (e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) shall apply

if (i) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller).) Seller shall notify Company in writing of an offer that triggers this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and otherwise consistent with this Attachment P (Sale of Facility by Seller). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.

- (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.
- (b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Seller, the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller) and a price equal to the Offer Price as presented by Seller in accordance with the procedures identified in Section 1(a)(i) through (v) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.
- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase

and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).

- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

- (a) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 24.5 (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to Section 3(c) of this Attachment P (Sale of Facility by Seller). Each of

Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

- (b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.
- (c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter, the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by AAA 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. In no event shall the Appraised Fair Market Value of the Facility or the fair market value of the Facility (in the event appraisers are not required) be determined to be less than Facility Debt. In the event such value is less than the Facility Debt, the Company agrees and understands that the liens on the Facility associated with such Facility Debt will remain until the Company has paid such debt in full.

4. Purchase and Sale Agreement. The purchase and sale agreement ("PSA") concluded by the Parties pursuant to this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:

(a) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(b) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;

(c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;

- (e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;
- (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;
- (g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;
- (h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;
- (i) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;
- (j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the

Facility to Company, the Facility has been operated by Seller in conformity with all Laws;

- (k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller);
- (l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease; and
- (m) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Seller), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

- 5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations

thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

- (a) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.
- (b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information

to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- (c) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.
  
- (d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to Section 24.5 (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the twelve (12) month period. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-

Appealable Order from the PUC shall constitute and be referred to as "PUC Approval" for purposes of this Attachment P (Sale of Facility by Seller).

- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Seller), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
- (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Seller), either
  - (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or
  - (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

6. Make Whole Amount. For purposes of Section 24.5 (Consolidation), the "Make Whole Amount" shall be equal to the sum of the following: (a) Seller's book value (including depreciation on a twenty (20) 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  
[PV]CALCULATION OF CERTAIN METRICS

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT Q IS SUITABLE FOR PV+BESS]**

1. Calculation of the PV System Equivalent Availability Factor.

A PV System Equivalent Availability Factor shall be calculated for each PV System EAF Assessment Period using the equation set forth below and the data set compiled from the twelve (12) then-most-recent calendar months:

$$\begin{array}{l} \text{PV System Equivalent} \\ \text{Availability} \\ \text{Factor} \end{array} = 100\% \times \frac{AH-EDH}{PH}$$

where, for the 12 calendar months used to calculate the PV System Equivalent Availability Factor for the PV System EAF Assessment Period in question:

Period Hours (PH) is the total number of hours in the 12 calendar months used to calculate the PV System Equivalent Availability Factor for the PV System EAF Assessment Period in question, counting twenty-four (24) hours per Day. If, for example, the 12 calendar months in question include 365 Days, PH = 8,760.

Available Hours (AH) is the number of hours that the PV System is not on Outage. It is the sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

An "Outage" exists whenever the entire PV System is not online producing electric energy and is not in a Reserve Shutdown state.

Service Hours (SH) is the number of hours the PV System is online and producing electric energy to meet Company Dispatch and/or to maintain the BESS State of Charge. For avoidance of doubt, SH includes all periods of PV System Deratings.

Reserve Shutdown Hours (RSH) is the number of hours the PV System was available to the Company System but not providing electric energy or is offline at the Company's request for

reasons other than Seller-Attributable Non-Generation, or is offline due to insufficient irradiance levels based on the inverter manufacturer's minimum irradiance level for production. All hours between 7:00 pm and 6:00 am will be considered RSH. The PV System will be considered RSH in these hours, even if the system would otherwise be in an outage or derated state. For purposes of calculating the PV System Equivalent Availability Factor, any hours during which the PV System or any portion thereof is unavailable due to Force Majeure shall be deemed to be RSH for the calendar month in question.

A "PV System Derating" exists if the Facility is available for Company Dispatch, but at less than full potential output for the given irradiance conditions, including derations due to Seller-Attributable Non-Generation or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). For avoidance of doubt, (i) if there is a PV System Outage occurring, there cannot also be a PV System Derating, (ii) when the PV is in RSH, the PV cannot be considered derated and (iii) a derating shall fall into only one of the three categories of derated hours (ESADH, EPDH, and EUDH).

Equivalent Derated Hours (EDH) is the sum of ESADH, EPDH, and EUDH. For the avoidance of doubt, if there is a PV System Derating, it can only exist exclusively in one of the deration categories. For deratings due to PV System inverter unavailability, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the number of inverters in the PV System unavailable and dividing by the total number of inverters in the PV System. For deratings that do not impact the availability of an entire inverter or set of entire inverters, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW) divided by the Contract Capacity.

Equivalent Seller-Attributable Derated Hours (ESADH): A Seller-Attributable Derating occurs when a derating exists due to Seller-Attributable Non-Generation or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). Each individual derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

Equivalent Planned Derated Hours (EPDH) includes Planned Deratings (PD) and Maintenance Deratings (D4). A Planned Derating is when the PV System experiences a derating scheduled

well in advance and for a predetermined duration. A Maintenance Derating is a derating 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 Derating (PD). Each individual Derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

Equivalent Unplanned Derated Hours (EUDH): An Unplanned Derating (Forced Derating) occurs when the PV System experiences a derating that requires a reduction in availability before the end of the nearest following weekend. Each individual Unplanned Derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

EXAMPLE: The following is an example of a PV System Equivalent Availability Factor calculation and is included for illustrative purposes only. Assume the following:

1. PV System has 10 inverters and the Facility has a Contract Capacity of 30 MWs.
2. The 12 calendar months used to calculate the PV System Equivalent Availability Factor for the PV System EAF Assessment Period in question include exactly 365 Days.
3. PV System was online and producing electric energy for 4,000 hours and was available but not producing electric energy due to lack of sufficient irradiance for production (i.e., not Seller-Attributable Non-Generation) for 500 hours.
4. 3 Inverters were offline for 100 hours due to a Planned Derating while not otherwise in RSH.
5. 2 Inverters were offline for 50 hours due to an Unplanned Derating while not in RSH.
6. The PV System had a 3 MW derating for 100 hours due to Seller-Attributable Non-Generation while not otherwise in RSH.

The PV System Equivalent Availability Factor would be calculated as follows:

$$PH = 8,760 \text{ hours in 12 calendar months} = 8,760 \text{ hours}$$

$$SH = 4,000 \text{ hours}$$

$$RSH = 500 \text{ hours} + (11 \text{ hours/day} \times 365 \text{ days}) = 4,515 \text{ hours}$$

$$AH = SH + RSH = 4,000 \text{ hours} + 4,515 \text{ hours} = 8,515 \text{ hours}$$

$$ESADH = 100 \text{ hours} \times \left( \frac{3 \text{ MW}}{30 \text{ MW}} \right) = 10 \text{ hours}$$

$$EPDH = 100 \text{ hours} \times \left( \frac{3 \text{ inverters}}{10 \text{ inverters}} \right) = 30 \text{ hours}$$

$$EUDH = 50 \text{ hours} \times \left( \frac{2 \text{ inverters}}{10 \text{ inverters}} \right) = 10 \text{ hours}$$

$$EDH = ESADH + EPDH + EUDH = 10 \text{ hours} + 30 \text{ hours} + 10 \text{ hours} = 50 \text{ hours}$$

$$EAF = 100\% \times \frac{8,515 - 50}{8,760} = 96.6\%$$

2. Calculation of Measured Performance Ratio.

- (a) The Measured Performance Ratio ("MPR") represents the PV System's measured AC power output compared to its theoretical DC power output as adjusted for the plane of array irradiance and weather conditions measured at the Site. The net PV System output in MW will be measured at such points mutually agreed to by the Parties on the Facility's single-line diagram to be attached to this Agreement as Attachment E (Single-Line Drawing and Interface Block Diagram).
- (b) Following the close of each MPR Assessment Period, the MPR shall be calculated for such MPR Assessment Period (using the previous 12 months of data) as follows:

$$MPR_{corr} = \frac{\sum_i P_{AC,i}}{\sum_i \left[ P_{DC,STC} \left( \frac{G_{POA,i}}{G_{STC}} \right) \left( 1 - \frac{\delta}{100} (T_{cell\_typ\_avg} - T_{cell,i}) \right) \right]}$$

Where:

$i$  = each 15-minute interval during the MPR Assessment Period where the conditions set forth in Section 2(c) of this Attachment Q (Calculation of Certain Metrics) are met.

$P_{AC_i}$  is the measured AC power output of the PV System measured at the Point of Interconnection and BESS AC input averaged over time period  $i$  in MW.

$G_{STC}$  = plane of array irradiance at the standard condition of 1,000  $W/m^2$ .

$P_{DC_{STC}}$  is the DC rated capacity of the PV System at the standard test conditions of 1,000  $W/m^2$  and 25°C (MW), (i.e., the DC power rating of the PV panels at standard test conditions multiplied by the number of PV panels in the Facility).

$G_{POA_i}$  is the measured plane of array irradiance averaged over time period  $i$  ( $W/m^2$ ).

$T_{cell_i}$  = cell temperature computed from measured meteorological data averaged over time period  $i$  using the equation provided below. (°C)

$T_{cell\_type\_avg}$  = annual average irradiance-weighted cell temperature computed from one year of weather data using the GPR Performance Metric weather file and the equation below. (°C) Calculated once for each GPR Performance Metric.

$\delta$  = temperature coefficient for power (%/°C, negative in sign) that corresponds to the installed photovoltaic modules.

$$T_{cell\_typ\_avg} = \frac{\sum_j [G_{POA\_typ\_j} \times T_{cell\_typ\_j}]}{\sum_j G_{POA\_typ\_j}}$$

Where:

$j$  = each hour of the year in the GPR Performance Metric weather file (hours 1-8760).

$G_{POA\_typ\_j}$  = Plane of array irradiance for each hour of the year determined from the GPR Performance Metric weather file and tracker orientation. This irradiance is zero (0) when the sun is not up. ( $W/m^2$ ).

$T_{cell\_typ\_j}$  = calculated cell operating temperature for each hour of the year computed using the GPR Performance Metric weather file for the weather variables in the equation for  $T_{cell\_i}$  below.

$$T_{cell\_i} = G_{POA_i} \times e^{(a+b \times WS_i)} + T_{a\_i} + \left( \frac{G_{POA_i}}{G_{STC}} \times dT_{cond} \right)$$

Where:

$T_{a\_i}$  = the measured ambient temperature averaged over time period  $i$  [ $^{\circ}$ C]

$WS_i$  = the measured wind speed corrected to a measurement height of 10 meters (using the anemometer height and proper Hellmann coefficient) averaged over time period  $i$  [m/s]

$a$  = empirical constant reflecting the increase of module temperature with sunlight as presented in Table 2 below.

$b$  = empirical constant reflecting the effect of wind speed on the module temperature as presented in Table 2 below [s/m]

$e$  = Euler's constant and the base for the natural logarithm.

$dT_{cond}$  = conduction temperature coefficient from module to cell as presented in Table 2 below.

<b>Table 2. Empirical Convective Heat Transfer Coefficients</b> <b>Module Type</b>	<b>Mount</b>	<b>a</b>	<b>b</b>	<b><math>dT_{cond}</math></b>
Glass/cell/glass	Open rack	-3.47	-0.0594	3
Glass/cell/glass	Close-roof mount	-2.98	-0.0471	1
Glass/cell/polymer sheet	Open rack	-3.56	-0.0750	3
Glass/cell/polymer sheet	Insulated	-2.81	-0.0455	0

	back			
Polymer/thin-film/steel	Open rack	-3.58	-0.1130	3

- (c) The time periods used in the foregoing calculation shall be only periods during which, for the entire 15-minute interval, the PV System output is allowed to convert all irradiance to AC power (whether directed to the BESS or Point of Interconnection) and the plane of array irradiance is not less than 600 W/m<sup>2</sup>. Data points that will be excluded are limited to data points where: (A) the G<sub>POA</sub> is below 600 W/m<sup>2</sup>; (B) G<sub>POA</sub> is above the maximum threshold; (C) the PV System is in Reserve Shutdown; (D) when the PV System has a Planned or Unplanned Derating; (E) the PV System was not allowed to convert the full DC output to AC energy to deliver to the BESS and Point of Interconnection due to Company Dispatch being less than the PV System potential at the measured irradiance and the BESS reaching its maximum State of Charge; (F) there is a PV System Outage; (G) the BESS is discharging or; (H) there is a Force Majeure affecting the PV System. The aforementioned 15-minute intervals are fixed intervals that commence, in sequence, at the top of each hour and at 15, 30 and 45 minutes past the hour. At the end of each month, Seller shall provide Company a report that lists all hours when such excluded data points occur (from the Facility's SCADA system as necessary) to validate the exclusion of any data points from the calculation set forth in Section 2(b) above. This information shall be validated on a monthly basis.
- (d) MPR Test. In the event that the set of operational data points under Section 2(c) of Attachment Q (Calculation of Certain Metrics) that is available for any month to calculate the MPR 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 MPR, the Company shall have the right to perform a test ("MPR Test") to collect the data points for such month to be used to calculate the MPR in lieu of the use of operational data for such month. The Company shall retain sole discretion as to when to conduct the MPR Test and the MPR 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 16 data points available during such month, provided that Company will provide Seller three (3) Business Days' notice prior to conducting the MPR Test. The MPR 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 Section 2(c) of Attachment Q (Calculation of Certain Metrics), subject to the limitation set forth in the last sentence of this Section 2(d) (MPR Test) of Attachment Q (Calculation of Certain Metrics). To the extent possible, the Company shall schedule the MPR Test for a period where all inverters in the PV System and BESS are fully available and weather conditions are expected to be optimum allowing the PV System to generate at full capacity for the duration of the MPR Test (if possible). However, if Company chooses a period where some of the Facility inverter(s) are unavailable,  $P_{DCSTC}$  shall be adjusted to account for any reduction in capability to accept energy from the PV System due to the unavailable inverter(s).

- (e) For each MPR Assessment Period that includes one or more months for which a MPR Test was performed, the data points collected during said MPR Test for such month(s) shall be used together with the data points for months for which an MPR Test was not conducted to calculate the MPR for the MPR Assessment Period in question using the formula set forth in Section 2(b) above. The result of the calculation based on the MPR Test shall be the MPR for the MPR Assessment Period in question.
  
- (f) EXAMPLE: The following is an example of a Measured Performance Ratio calculation and is included for illustrative purposes only. Assume the following:
  - 1. Facility with 120,000 panels with a standard test condition rating of 300 W
  
  - 2.  $P_{DCSTC} = 120,000 \times 300 \text{ W} = 36 \text{ MW}$
  
  - 3. For illustrative purposes only, 4 hours of data which met the criteria specified in Section 2(c) of Attachment Q (Calculation of Certain

Metrics) have been recorded over the MPR Assessment Period. It should be noted that all available operational data that meets the criteria specified in Section 2(c) of Attachment Q (Calculation of Certain Metrics) shall be included in the actual calculation:

Time Period	Average Measured Plane of Array Irradiance (W/m <sup>2</sup> )	Average Measured Net AC Power at POI and BESS AC Input (MW)	Average Measured Ambient Temperature (°C)	10 Meter Elevation Average Measured Wind Speed (m/s)
1	690	16	27	3
2	850	11	26	8
...	...	...	...	...
i	750	19	29	7

$$MPR_{corr} = \frac{\sum_i P_{AC,i}}{\sum_i \left[ P_{DCSTC} \left( \frac{G_{POA_i}}{G_{STC}} \right) \left( 1 - \frac{\delta}{100} (T_{cell\_type\_avg} - T_{cell,i}) \right) \right]}$$

where:

$$T_{cell,i} = G_{POA_i} \times e^{(a+b \times WS_i)} + T_{a,i} + \left( \frac{G_{POA_i}}{G_{STC}} \times dT_{cond} \right)$$

Assuming:

The temperature coefficient ( $\delta$ ) of the installed modules is  $-0.4\%/^{\circ}\text{C}$

The average irradiance-weighted cell temperature ( $T_{cell\_typ\_avg}$ ) has been calculated as  $28^{\circ}\text{C}$

The installed modules are a glass/cell/polymer sheet module type using an open rack mount. ( $a = -3.56$ ;  $b = -0.0750$ ;  $dT_{cond} = 3$ )

$$\sum_i P_{AC,i} = 16 \text{ MW} + 11 \text{ MW} + \dots + 19 \text{ MW} = \mathbf{305\text{MW}}$$

$$\sum_i \left[ P_{DCSTC} \left( \frac{G_{POA_i}}{G_{STC}} \right) \left( 1 - \frac{\delta}{100} (T_{cell\_type\_avg} - T_{cell,i}) \right) \right] = 36 \text{ MW} \times \left[ (690/1000) \times (1 - (-0.4/100) \times (28 - \dots)) \right]$$

$$\begin{aligned}
& ((690 \times e^{(-3.56-0.075 \times 3)} + 27) + ((690/1000) \times 3)) + \\
& (850/1000) \times (1 - (-0.4/100)) \times (28 - \\
& ((850 \times e^{(-3.56-0.075 \times 8)} + 26) + ((850/1000) \times 3)) + \\
& \dots + \\
& (750/1000) \times (1 - (-0.4/100)) \times (28 - \\
& ((750 \times e^{(-3.56-0.075 \times 7)} + 29) + ((750/1000) \times 3))) ] \\
& = \mathbf{374.76 \text{ MW}}
\end{aligned}$$

$$\text{MPR} = 305 \text{ MW} / 374.76 \text{ MW} = \mathbf{0.814}$$

3. Determination of GPR Performance Metric.

- (a) Benchmark Performance Ratio. The "Benchmark Performance Ratio" is the representation, in connection with the IE Energy Assessment Report, the Initial OEPR and each Subsequent OEPR, of the PV System's power output compared to its theoretical DC power output, as adjusted for plane of array irradiance and weather conditions at the Site.
- (b) Upon Commencement of Commercial Operations. If a copy of the IE Energy Assessment Report is not provided to the Company in accordance with Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential), the GPR Performance Metric for the period commencing on the Commercial Operations Date through the end of the calendar month during which the Initial OEPR is issued shall be **0.85**. If a copy of the IE Energy Assessment Report together with the supporting data (plane of array irradiance, ambient temperature, windspeed and corresponding power output) is provided to Company in accordance with Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential), the GPR Performance Metric shall be the Benchmark Performance Ratio set forth in the IE Energy Assessment provided that such Benchmark Performance Ratio is justified by such supporting data. In the event that the IE Assessment Report includes the supporting data (plane of array irradiance, ambient temperature, windspeed and corresponding power output) relied upon in arriving at the NEP IE Estimate, but does not set forth a Benchmark Performance Ratio, the Benchmark Performance Ratio shall be calculated using such supporting data and the Measured Performance

Ratio formula in Section 2(b) of this Agreement. Within 30 Days of Company's receipt of the IE Energy Assessment Report together with the aforementioned supporting data, Company shall provide written notice to Seller of either (aa) the Benchmark Performance Ratio derived from such supporting data, in which case the GPR Performance Metric shall be such Benchmark Performance Ratio, or (bb) Company's inability to reasonably derive a Benchmark Performance Ratio from such supporting data, in which case the GPR Performance Metric shall be **0.85**.

(c) Commencing With Initial OEPR. For the period commencing with the first Day of the calendar month following the establishment of the NEP OEPR Estimate for the Initial OEPR (as provided in Section 2 (Initial OEPR), Section 4(g) (Review of the First OEPR Evaluator Report) and Section 4(h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement) through the end of the calendar month during which the NEP OEPR Estimate for the first Subsequent OEPR is established as provided in Section 3 (Subsequent OEPRs), and Section 4(g) (Review of the First OEPR Evaluator Report) and Section 4(h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, the GPR Performance Metric shall be the Benchmark Performance Ratio as established through the Initial OEPR process as aforementioned. If no Benchmark Performance Ratio has been established through the Initial OEPR process, the GPR Performance Metric shall be **0.85**.

(d) Commencing With the First Subsequent OEPR and Thereafter. Commencing with the establishment of the NEP OEPR Estimate for the first Subsequent OEPR as provided in Section 3 (Subsequent OEPRs), Section 4(g) (Review of the First OEPR Evaluator Report) and Section 4(h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, for each period commencing with the first Day of the calendar month following the establishment of the NEP OEPR Estimate for a Subsequent OEPR (including but not limited to the first Subsequent OEPR) through the end

of the calendar month during which the NEP OEPR Estimate is established for the next Subsequent OEPR, the GPR Performance Metric shall be the Benchmark Performance Ratio established for the applicable Subsequent OEPR. If no Benchmark Performance Ratio has been established through the then applicable Subsequent OEPR process, the GPR Performance Metric shall be **0.85**.

ATTACHMENT Q  
[WIND]CALCULATION OF CERTAIN METRICS

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT Q IS SUITABLE FOR WIND+BESS]**

1. Calculation of the Modified Pooled OMC Equipment Availability Factor.

A Modified Pooled OMC Equivalent Availability Factor ("MPXEEAF") shall be calculated for each MPXEEAF Assessment Period using the equation set forth below and the data set compiled from the twelve (12) then-most-recent calendar months subsequent to the Commercial Operations Date.

NERC formula

$$\begin{aligned} \text{OutageHrs} &= (FTH + MTH + PTH) \\ \text{DeratedHrs} &= (EFDTH + EMDTH + EPDTH) \\ \text{OMCHrs} &= (oFTH + oMTH + oPTH) \\ \text{DeratedOMCHrs} &= (oEFDTH + oEMDTH + oEPDTH) \end{aligned}$$

$$PXEEAF = \frac{\sum[ACTH - (\text{OutageHrs} + \text{DerateHrs}) + (\text{OMCHrs} + \text{DeratedOMCHrs})]}{\sum ACTH} * 100$$

Modified Pooled OMC Equipment Equivalent Availability Factor

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

Modifications made to the NERC formula are:

- a. Deleted impact due to Derated Hrs. Derations will be assessed using the Performance Index Metric.
- b. Modified Outside Management Control definition to exclude events of Seller-Attributable Non-Generation.

Where:

**Active Turbine Hours (ACTH)** is the sum of all turbine-hours that the turbines are in an active state.

**Contact Turbine Hours (CTH)** is the sum of all turbine-hours that the turbines are synchronized to the Company System. It is the turbine-hours that the main contactors are closed and generation is connected to the Company System. The term is similar to service hours used in conventional generation.

**Forced Turbine Hours (FTH)** is the sum of all turbine-hours that the turbine is off-line due to forced events, including due to Seller-Attributable Non-Generation. 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). FTH includes OMC Forced Turbine Hours (oFTH).

**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. For purposes of calculating the Modified Pooled OMC Equivalent Availability Factor, any hours during which a turbine is unavailable due to Force Majeure affecting such turbine or the BOP shall be deemed to be a oFTH for such turbine.

**Maintenance Turbine Hours (MTH)** is the sum of all turbine-hours that the turbine is off-line due to a Maintenance Event. 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. MTH includes OMC Maintenance Turbine Hours (oMTH).

**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. PTH includes OMC Planned Turbine Hours (oPTH).

**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 Derated 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 Derated Turbine Hours (EPDTH)** is the equivalent planned turbine hours when turbine output is reduced for a planned issue.

**OMC Equivalent Planned Derated Turbine Hours (oEPDTH)** are OMC equivalent planned hours when turbine output is reduced for OMC planned issues. This is a subset of EPDTH.

**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 Company System constraints, such as transmission/distribution maintenance or switching. OMC events do not include Seller-Attributable Non-Generation events.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a MPXEEAF calculation and is included for illustrative purposes only:

A	B	C	D	E	F	G	H
TID	ACTH	FTH	MTH	PTH	OFTH	OMTH	OPTH
Turbine1	100.00	5.05	6.20	3.75	4.00	4.25	3.05
Turbine2	100.00	5.05	6.15	3.75	4.00	4.25	3.05

Turbine3	100.00	5.05	6.20	3.75	4.00	4.25	3.05
<b>SUM</b>	<b>300.00</b>	<b>15.15</b>	<b>18.55</b>	<b>11.25</b>	<b>12.00</b>	<b>12.75</b>	<b>9.15</b>

$$\text{MPXEEAF} = \{ [B - (C + D + E) + (F + G + H)] / B \} * 100$$

$$\text{MPXEEAF} = 96.3$$

2. Calculation of Performance Index.

- (a) The Performance Index represents the efficiency of the WTG's conversion of the wind resource to electricity by comparing the calculated Expected Generation at the WTGs to the measured Actual Generation at the WTGs during Contact Turbine Hours excluding periods where the operational state is categorized as oEFDTH, oEMPTH or oEPDTH.
- (b) Following the close 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(c) (Performance Index Calculation) of this Attachment Q (Calculation of Certain Metrics) of this Agreement.
- (c) Performance Index Calculation.
  - (i) Performance Index will not be calculated or assessed for the first eleven months of the first Contract Year. The first time the Performance Index will be calculated or assessed will be as of the close of the concluding calendar month of the initial Contract Year based upon the twelve (12) calendar months of the initial Contract Year. The twelve (12) calendar months of the initial Contract Year shall constitute the initial PI Assessment Period.
  - (ii) 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 and the Density-Adjusted Wind Speed is greater than the manufacturer's specified cut-in wind speed, excluding periods where the WTG's operational state is categorized

as oEFDTH, oEMDTH or oEPDTH. Data sets shall be based on 10-minute increments derived from contiguous measured data.

- (iii) Seller shall use the equation set forth below to calculate the Performance Index for each PI Assessment Period.

$$PI_{Facility} = \sum_{i=1}^N \frac{Actual\ Generation_{WTG_i} [MWh]}{Expected\ Generation_{WTG_i} * (1 - 0.001 * (Applicable\ Contract\ Year - 1)) [MWh]}$$

- (iv) 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.
- (v) PI Test. In the event that the set of operational data points under Attachment Q (Calculation of Certain 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 24 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 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 (Calculation of Certain Metrics). 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.

- (vi) 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 equation set forth in Section 2 (Calculation of Performance Index) of Attachment Q (Calculation of Certain Metrics) to this Agreement. The result of the calculation based on the PI Test shall be the PI for the PI Assessment period in question.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a Performance Index Calculation and is included for illustrative purposes only:

	A	B	C	D	E	F
1	<b>ACTUAL GENERATION [MWH]</b>					<b>B-(C+D+E)</b>
2	<b>TID</b>	<b>CTH</b>	<b>OEFDTH</b>	<b>OEMPTH</b>	<b>OEPDTH</b>	
3	Turbine1	900.00	10.00	15.00	5.00	870.00
4	Turbine2	1,000.00	10.00	15.00	5.00	970.00
5	Turbine3	1,200.00	10.00	15.00	5.00	1,170.00
6	Sum	3,100.00	30.00	45.00	15.00	3,010.00
7						
8	<b>EXPECTED GENERATION [MWH]</b>					<b>B-(C+D+E)</b>
9	<b>TID</b>	<b>CTH</b>	<b>OEFDTH</b>	<b>OEMPTH</b>	<b>OEPDTH</b>	
10	Turbine1	945.00	15.00	20.00	10.00	900.00
11	Turbine2	1,115.00	15.00	25.00	10.00	1,065.00
12	Turbine3	1,300.00	18.00	21.00	10.00	1,251.00
13	Sum	3,360.00	48.00	66.00	30.00	3,216.00
	F6/F13*100					
	<b>Performance Index</b>					
	<b>93.6</b>					

3. Calculation of Density-Adjusted Wind Speed. For purposes of calculating Density-Adjusted Wind Speed for each WTG for each PI Assessment Period, the 10-minute averaged wind speed measurement from the nacelle anemometer for such turbine shall be adjusted for the 10-minute averaged ambient air temperature and the 10-minute averaged ambient air pressure (both as measured by the field measurement devices located at approximately "hub height" on the Facility's MMTs) by calculating the Density-Adjusted Wind Speed for such turbine for each 10-minute increment as follows:

$$V_n = V_{obs} \left( \frac{\rho_{calc}}{\rho_0} \right)^{1/3}$$

where:

$V_n$  = Density-Adjusted Wind Speed [m/s]

$V_{obs}$  = Measured Wind Speed (10-minute averaged) [m/s]

$\rho_0$  = 1.225 kg/m<sup>3</sup>

$\rho_{calc}$  = Calculated Air Density (10-minute averaged) [kg/m<sup>3</sup>]

$$= \frac{B_{obs}}{R_0 * T_{Kobs}}$$

where:

$B_{obs}$  = Measured Ambient Air Pressure (10-minute averaged) [Pa]

$R_0$  = specific gas constant for dry air (287.057 J/kg\*K)

$T_{Kobs}$  = Measured Ambient Air Temperature (10-minute averaged) [K]

For unit conversion purposes:

$$1 \text{ Pa} = 0.01 \text{ mbar}$$

$$T_{Kelvin} = T_{Celsius} + 273.15$$

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

4. Determination of Measured Power Curve. During the first Contract Year, the Seller shall collect data to create a Measured Power Curve for each WTG that will be used for the remainder of the Initial Term to calculate the Expected Generation. The Measured Power Curve for each WTG will not be updated.

To develop the Measured Power Curve for each WTG, Seller shall use data for such WTG during periods when such WTG is in the operational state categorized as CTH excluding periods where the WTG's operational state is categorized as EFDTH, EMDTH, EPDTH, oEFDTH, oEMDTH, or oEPDTH.

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<sup>3</sup> 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. For each calendar month, the Expected Generation for each WTG for all periods where WTG's operational state is categorized as CTH and the Density-Adjusted Wind Speed is greater than the manufacturer's specified cut-in wind speed, excluding periods where the WTG's operational state is categorized as oEFDTH, oEMDTH or oEPDTH, shall be based on (i) the Density-Adjusted Wind Speed for such turbine for each 10-minute increment or portion thereof 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).

ATTACHMENT R  
REQUIRED INSURANCE

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT R IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

(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 Hawai'i State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident -	\$1,000,000	each Accident
Bodily Injury by Disease -	\$1,000,000	each Employee
Bodily Injury by Disease -	\$1,000,000	policy limit

2. General Liability Insurance.

- (a) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (i) Premises, operations, and mobile equipment,
- (ii) Products and completed operations,
- (iii) Claims resulting from alleged sudden and accidental damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
- (iv) Blanket contractual liability,
- (v) Broad form property damage (including completed operations),

- (vi) No exclusion for (XCU) explosion, collapse and underground hazard,
- (vii) Personal injury liability, and
- (viii) 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.

(b) Limits of liability for Bodily Injury & Property Damage shall be:

\$10,000,000 combined single limit per occurrence; and  
\$20,000,000 aggregate annually

(c) Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned (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, named 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, named 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. Project Liability Errors and Omissions. Seller shall obtain adequate protection against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors, and subcontractors involved in the design and/or construction of the Facility.
8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.
9. Pollution Liability Insurance. This insurance shall provide coverage for losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Facility, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. The coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates. Such policy shall have minimum limits of \$5,000,000 each occurrence; and \$5,000,000 annual aggregate.

ATTACHMENT S  
FORM OF MONTHLY PROGRESS REPORT

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT S IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

**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 Dispatchable Generation by and between [\_\_\_\_\_] ("Seller"), and [Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.], a Hawai'i corporation, dated \_\_\_\_\_, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(a) 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.

(b) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially

threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(c) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(d) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(e) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

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.

Please provide a copy of the current version of the overall Facility schedule in MS Project in a format acceptable to Company. Include all major activities and milestones for Governmental Approvals for development, design and engineering, procurement, construction, interconnection and testing.

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project and Facility (provide details in subsequent sections of this report):

Project Name:		Guaranteed Commercial Operations Date
Size:	Technology:	RFP: Stage 3
<b>PPA Status</b>	PPA Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX
	Overhead Line Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX

	PPA Amendment	Filed on XXXXX XX, XXXX		
<b>System Impact Study</b>				
<b>Facility Study</b>				
<b>Engineering/Design</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>	
	Seller	Generation facility		
	Seller	Step up Substation		
	Seller	COIF <sup>3</sup>		
	Company	COIF - Transmission line		
	Company	COIF - Telecom		
	Company	Remote Work		
	Company	Inter-dependent system		
General Comments	•			
<b>Permits</b>	<b>Agency / Jurisdiction</b>	<b>Approval / Permit</b>	<b>Date of Approval</b>	<b>Status Summary</b>
	LUC	Amendment/Restatement of State Land Use Boundary Amendment		
	County	Conditional Use Permit		
	County	Waiver Permit		
	County	Grading/NPDES Permit (Solar/Battery)		
	County	Grading/NPDES Permit (Substation)		
	County	Building Permit (Solar/Battery)		
	County	Building Permit (Substation)		
	County	Building Permit (Switchyard)		

<sup>3</sup> Capitalized terms used but not defined in this update have the meaning given to them in the PPA.

	General Comments			
<b>Land Rights</b>	<b>Type</b>	<b>Status</b>		<b>(Estimated) Receipt Date</b>
	COIF/SOIF: Right of Entry			
	COIF/SOIF: Easement			
	General Comments			
<b>Procurement</b>	<b>Responsible Party</b>	<b>Type of equipment</b>	<b>Order date</b>	<b>(Estimated) Arrival date</b>
	Seller	PV Modules		
	Seller	Inverters		
	Seller	Energy Storage		
	Seller	Racking		
	Seller	GSU transformer		
	Seller	Circuit Breakers		
	Seller	Instrument transformers		
	Seller	Control Building		
	Company	Revenue meter		
	Company	T&D Poles, Conductors		
	General Comments			
<b>Construction</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>	
	Seller	Generation facility		
	Seller	SOIF		
	Seller	COIF		
	Company	COIF - Transmission line		
	Company	COIF - Telecom		
	Company	Remote Work		
	Company	Inter-dependent system		
	General Comments			
<b>Testing</b>	Acceptance Test			

	CSAT	
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**APPENDIX A**  
**GUARANTEED PROJECT MILESTONES AND SELLER'S CONDITIONS PRECEDENT**

*Please list all Guaranteed Project Milestones and Seller's Conditions Precedent specified in Attachment K and K-1 and state the current status of each.*

<b>Construction Guaranteed Project Milestone</b>	<b>Milestone Date Specified in the Agreement</b>	<b>Date Completed</b>	<b>Status</b> (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
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 <b>[insert same date certain as in right column]</b> or (ii) the financial capability to construct the Facility ("Construction Financing Closing Milestone")			
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: <b>[List All Discretionary Permits]</b>			
Guaranteed Commercial Operations Date.			

<b>Seller's Conditions Precedent</b>	<b>Date Specified in the Agreement</b>	<b>Date Completed</b>	<b>Status</b> (e.g., on schedule, delayed due to [specify reason]; current expected completion date)

Seller shall make payment to Company of the amount required under <u>Section 3(b) (ii)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)			
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: <b>[List All Discretionary Permits]</b>			
Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).			
Seller shall make payment to Company of the amount required under <u>Section 3(b) (iii)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)			
Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.			
Seller's EPC Contractor shall obtain grading permit.			
Seller shall provide a list of long-lead time materials for the Company-Owned Interconnection Facilities, including but not limited to, control house (if applicable) and metering CTs and PTs.			

<p>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.</p>			
<p>Seller's EPC Contractor shall complete Seller's engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>			
<p>Seller shall provide backup station service power.</p>	<p>No later than three (3) months prior to the commencement of the Acceptance Test</p>		
<p>Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.</p>	<p>No later than three (3) months prior to the commencement of the Acceptance Test</p>		
<p>Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>			

<p>Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(f)(ii) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>			
<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>			

**APPENDIX B**  
**REPORTING MILESTONES**

Please list all Reporting Milestones specified in Attachment L and state the current status of each.

Reporting Milestone Date	Milestone Specified in the Agreement	Date Completed	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction <del>agreement and</del> other general contractor agreements, <u>which each shall include a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities</u> . Under no circumstances shall redactions conceal information that is necessary for Company to verify <u>Company's <del>its</del> rights or Seller's obligations</u> under the Agreement.		
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.		
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements		
[Date]	Building Permit: Seller or Seller's EPC Contractor shall obtain building permit		
[Date]	Construction Start Date (defined as the start of civil work on Site).		
[Date]	Seller shall have laid the foundation for all Facility buildings, generation facilities and step-up transformer facilities.		

[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.		
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**APPENDIX C**  
**SITE CONTROL SCHEDULE**

*If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).*

Activity	Expected Completion Date	Actual Completion Date
Negotiate Leases - Site		
Execute all land agreements		

**APPENDIX D**  
**LAND RIGHTS SCHEDULE FOR COIF**

*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 COIF (e.g., purchase, lease).*

Activity	Expected Completion Date	Actual Completion Date
ROE to HECO		
HECO executes Lease for COIF		

**APPENDIX E**  
**MAJOR EQUIPMENT TO BE PROCURED**

*Please list all major equipment to be procured by Seller or the EPC Contractor:*

Equipment Description	Manufacturer	Quantity Ordered	Quantity Made	Quantity On site	Quantity Installed	Quantity Tested	Expected Installation Date	Actual Installation Date
Modules								
Racking								
PV Inverters								
BESS								

**APPENDIX F**  
**INTERCONNECTION ACTIVITIES**

*Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.*

Activity	EPC Contractor / Subcontractor / Seller	Expected Completion Date	Actual Completion Date
IRS Prelim Facility Study	Company		
IRS Sys Impact Study	Company		
IRS Report - Final Facility Study	Company		
IRS amendment to PUC	Company, Seller		

**APPENDIX G**  
**FINANCING**

*Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.*

Activity (e.g., obtain \$xx for yy stage from zz)	Expected Completion Date	Actual Completion Date
Confidential information memorandum (CIM)		
Independent engineering study		
Financial closing		

**APPENDIX H**  
**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.*

<b>Activity</b>	<b>EPC Contractor / Subcontractor / Seller</b>	<b>Expected Completion Date</b>	<b>Actual Completion Date</b>

**APPENDIX I**  
**CERTIFICATION**

I, **[Representative]**, on behalf of and as an authorized representative of **[Company]**, do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By:	
Name:	
Title:	
Date:	

ATTACHMENT T  
[PV]MONTHLY REPORTING AND DISPUTE  
 RESOLUTION BY INDEPENDENT AF EVALUATOR

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT T IS FOR PV+BESS ONLY]**

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, 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 the "PV System 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 and any liquidated damages assessments for each Performance Metric LD Period ending with such calendar month as set forth below. Seller shall deliver such Monthly Report to Company by the tenth (10<sup>th</sup>) 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.

### PV System Monthly Report

NAME OF IPP FACILITY: [Facility Name]

MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the information for each Force Majeure event effecting the PV System during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of devices for item (D), total number of devices is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of effect (MW) or Number of devices that are offline (D)	Contract Capacity or Total number of devices in the affected system (E)	Equivalent Hours (hrs) (C x D)/E

...					

Calendar hours in the reporting period: \_\_\_\_\_

Total equivalent hours for the reporting period (from above): \_\_\_\_\_

Omit any periods where Force Majeure was the sole cause of the Outage or Deration in the reporting areas below as those periods will be counted in their entirety as RSH pursuant to Section 1 (PV System Annual Equivalent Availability Factor) of Attachment Q (Calculation of Certain Metrics) this Agreement.

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 2 decimal places.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: \_\_\_\_\_

Total Outage hours for the reporting period (from above): \_\_\_\_\_

Available Hours (AH) in the reporting period: \_\_\_\_\_

AH from the last eleven (11) reporting periods: \_\_\_\_\_

AH for the last twelve (12) reporting periods: \_\_\_\_\_

Enter the information for each Seller Attributable Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, Contract Capacity (MW) and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating (MW) or Number of Inverters (D)	Contract Capacity (MW) or Total number of PV System Inverters (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total Equivalent Seller Attributable Derated hours (ESADH) for the reporting period: \_\_\_\_\_

ESADH from the last eleven (11) reporting periods: \_\_\_\_\_

ESADH for the last twelve (12) reporting periods: \_\_\_\_\_

Enter the information for each Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, Contract Capacity (MW), and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating (MW)(D)	Contract Capacity (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: \_\_\_\_\_

EPDH from the last eleven (11) reporting periods: \_\_\_\_\_

EPDH for the last twelve (12) reporting periods: \_\_\_\_\_

Enter the information for each Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, Contract Capacity (MW) and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating (MW) or Number of Inverters Unavailable (D)	Contract Capacity or Total number of PV System Inverters (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: \_\_\_\_\_

EUDH from the last eleven (11) reporting periods: \_\_\_\_\_

EUDH for the last twelve (12) reporting periods: \_\_\_\_\_

Period Hours (PH) is: \_\_\_\_\_ (8760 hours if no 29<sup>th</sup> day in February in that last twelve months otherwise 8784 hours).

Enter the Available Hours, ESADH, EPDH, and EUDH for the last twelve (12) reporting periods as calculated above.

AH (A)	ESADH (B)	EPDH (C)	EUDH (D)	PV System Annual Equivalent Availability Factor 100% x (A – B – C – D)/PH

Enter the following properties for the facility’s PV panels that are used in the calculation of the Measured Performance Ratio. Refer to Article 2.6 for the definitions of terms.

DC rated capacity of the system at standard test conditions ( $P_{DCSTC}$ ): \_\_\_\_\_

Temperature coefficient of power in % / °C ( $\delta$ ): \_\_\_\_\_

Temperature empirical constant ( $a$ ): \_\_\_\_\_

Wind speed empirical constant ( $b$ ): \_\_\_\_\_

Conduction temperature coefficient ( $dT_{cond}$ ): \_\_\_\_\_

Annual average irradiance-weighted cell temperature ( $T_{cell\_typ\_avg}$ ) \_\_\_\_\_

For the reporting period, provide the 15-minute interval averaged site data for the following measurements in .csv format (refer to Article 2.6 for the definitions of terms). The data set should include an indication of whether each interval is included or excluded in the calculation of the Measured Performance Ratio and the reason for exclusion (refer to article 2.6 for data requirements).

Measured data:

- $P_{AC\_i}$  is the active power output of the PV System measured at the POI and BESS AC Input averaged over time period  $i$  (MW)
- $G_{POA\_i}$  is the measured plane of array irradiance averaged over time period  $i$  ( $W/m^2$ )
- $T_{a\_i}$  = the measured ambient temperature averaged over time period  $i$  [°C]
- $WS_i$  = the measured wind speed corrected to a measurement height of 10 meters (using the anemometer height and proper Hellmann coefficient) averaged over time period  $i$  [m/s]

Calculated data:

- Computed cell temperature ( $T_{cell\_i}$ )

Using the data provided above, enter the calculated values for Measured Performance Ratio rounded to the third decimal place (0.001).

Measured Performance Ratio for the reporting period: \_\_\_\_\_

Measured Performance Ratio for this reporting period and the previous eleven (11) reporting periods: \_\_\_\_\_

Enter the Applicable Contract Year and calculated Degradation Factor for the reporting period. Refer to Article 2.6(c) for how these should be calculated.

Applicable Contract Year: \_\_\_\_\_

Degradation Factor: \_\_\_\_\_

## BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period. This can either be from the most recent BESS Capacity Test performed during the period or taken from operating data reflecting the net output of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the applicable information to demonstrate satisfaction of the BESS Round Trip Efficiency Performance Metric during the reporting period. This can either be from the most recent BESS RTE Test performed during the period or taken from operational data reflecting the charging/discharging of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	Charging Energy (MWh) (B)	BESS RTE Ratio 100% x (A ÷ B)

Enter the information for each Force Majeure event affecting the BESS during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Calendar hours in the reporting period: \_\_\_\_\_

Total equivalent hours for the reporting period (from above): \_\_\_\_\_

Omit any periods where Force Majeure was the sole cause of the Outage or Deration in the reporting areas below pursuant to Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Enter the information for each BESS Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: \_\_\_\_\_

Total Outage hours for the reporting period (from above): \_\_\_\_\_

Available Hours (AH) in the reporting period: \_\_\_\_\_

AH from the last three (3) reporting periods: \_\_\_\_\_

AH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Seller Attributable Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total Equivalent Seller Attributable Derated hours (ESADH) for the reporting period: \_\_\_\_\_

ESADH from the last three (3) reporting periods: \_\_\_\_\_

ESADH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: \_\_\_\_\_

EPDH from the last three (3) reporting periods: \_\_\_\_\_

EPDH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E);

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: \_\_\_\_\_

EUDH for the last three (3) reporting periods: \_\_\_\_\_

EUDH for the last four (4) reporting periods: \_\_\_\_\_

Period Hours (PH) is : \_\_\_\_\_ (8760 hours if no 29th day in February in that last twelve months; otherwise, 8784 hours).

Enter the Available Hours, ESADH, EPDH and EUDH for the last four (4) reporting periods as calculated above.

AH (A)	ESADH (B)	EDDH (C)	EUDH (D)	BESS Annual Equivalent Availability Factor 100% x (A – B – C – D)/PH

Enter the information for each Unplanned (Forced) Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period (from above): \_\_\_\_\_

FOH from the last three (3) reporting periods: \_\_\_\_\_

FOH for the last four (4) reporting periods: \_\_\_\_\_

Enter the FOH, ESADH, and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	ESADH (C)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B + C) / 8760$

## 2. Monthly Report Disagreements.

- (a) Notice of Disagreement With Monthly Report. Within ten (10) Business Days following the close of each calendar month, Seller shall provide to Company the Monthly Report for such calendar month and for the rolling 12-month period ending with such calendar month. 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 PV System Equivalent Availability Factor for the PV System EAF Assessment Period ending with such calendar month, (ii) the MPR for the MPR Assessment Period ending with such calendar month, or (iii) any of the BESS Capacity Ratio, the RTE Ratio, the BESS Annual Equivalent Availability Factor or the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period (if any) ending with such calendar month ("Notice of Monthly Report Disagreement").

Together with any such Notice of Monthly Report Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Monthly Report 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) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Monthly Report Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Monthly Report 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 PV System Equivalent Availability Factor, the MPR, the BESS Capacity Ratio, the RTE Ratio, 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. If, within five (5) Business Days following the expiration of said 10-Business Day period, neither Party has submitted such Monthly Report Disagreement to an Independent AF Evaluator, the data and calculations set forth in the Notice of Disagreement in question shall be deemed to be accepted by Seller and shall no longer be subject to dispute by Company or Seller.

3. [RESERVED]

4. Independent AF Evaluator Process.

- (a) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved Monthly Report 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(b) (Submission of Monthly Report Disagreement to Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by 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 for 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 to by the Parties in writing:
    - (i) for a Monthly Report Disagreement concerning the PV System Equivalent Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) for the calendar month in question, the correct values for AH, ESADH, EPDH, EUDH and PH to be used in calculations under Section 1 (PV System Equivalent Availability Factor; Liquidated Damages; Termination Rights) of this Agreement as determined by such Independent AF Evaluator if any such values were in dispute and (bb) for the PV System EAF Assessment Period ending with the calendar month in question, the PV System Equivalent Availability Factor for such PV System EAF Assessment Period as determined by such Independent AF Evaluator if such PV System Equivalent Availability Factor was in dispute;
    - (ii) for a Monthly Report Disagreement concerning the MPR, the written decision of the Independent AF

Evaluator shall set forth (aa) the correct data points from the operational data set for the calendar month in question to be used in the calculation of MPR under Section 2 (Calculation of Measured Performance Ratio) of Attachment Q (Calculation of Certain Metrics) for the MPR Assessment Periods that include such calendar month if any such data points were in dispute, (bb) if a MPR Test was conducted during the month in question, the correct data points from such MPR Test to be used in the calculation of MPR under Section 2 (Calculation of Measured Performance Ratio) of Attachment Q (Calculation of Certain Metrics) of this Agreement for the MPR 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 MPR Assessment Period ending with the calendar month in question, the Measured Performance Ratio if such Measured Performance Ratio was in dispute;

- (iii) for a Monthly Report 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;
- (iv) for a Monthly Report 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, ESADH, 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; and
- (v) for a Monthly Report 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.

- (e) Sequence for Resolving Interrelated Disagreements. If 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) there are one or more other unresolved Monthly Report Disagreements concerning the same Performance Metric and the same Performance Metric LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other Monthly Report Disagreement(s) is necessary to the resolution of the Monthly Report 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 Monthly Report Disagreement shall be tolled until such pending Monthly Report Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance 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 Monthly Report Disagreements. Without limitation to the generality of the preceding sentence, the decision of the

Independent AF Evaluator as to each Monthly Report 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 Metrics. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metrics under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metrics calculations in this Agreement shall be mutually agreed to by both Seller and Company.
6. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT T  
[WIND]MONTHLY REPORTING AND DISPUTE  
 RESOLUTION BY INDEPENDENT AF EVALUATOR

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT T IS FOR WIND+BESS ONLY]**

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, 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 "WTG 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 and any liquidated damages assessments for each Performance Metric LD Period ending with such calendar month as set forth below. Seller shall deliver such Monthly Report to Company by the tenth (10<sup>th</sup>) 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.

### WTG Monthly Report

NAME OF IPP FACILITY: [Facility Name]

MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the information for each Force Majeure event effecting the WTGs during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of devices for item (D), total number of devices is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of effect (MW) or Number of devices that are offline (D)	Contract Capacity or Total number of devices in the affected system (E)	Equivalent Hours (hrs) (C x D)/E

...					

Calendar hours in the reporting period: \_\_\_\_\_

Total equivalent hours for the reporting period (from above): \_\_\_\_\_

Enter the total number of hours for each WTG and state during the reporting period (to 2 decimal places).

TID	ACTH	FTH	MTH	PTH	OFTH	OMTH	OPTH
Turbine1							
Turbine2							
Turbine3							
...							

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

TID	CTH	OEFDTH	OEMPTH	OEPDTH
Turbine1				
Turbine2				
Turbine3				
...				

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

TID	CTH	OEFDTH	OEMPTH	OEPDTH
Turbine1				
Turbine2				
Turbine3				
...				

Calculated Pooled OMC Equipment Equivalent Availability Factor  
for the reporting period: \_\_\_\_\_

Calculated Performance Index for the reporting period: \_\_\_\_\_

## BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period. This can either be from the most recent BESS Capacity Test performed during the period or taken from operating data reflecting the net output of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the applicable information to demonstrate satisfaction of the BESS Round Trip Efficiency Performance Metric during the reporting period. This can either be from the most recent BESS RTE Test performed during the period or taken from operational data reflecting the charging/discharging of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	Charging Energy (MWh) (B)	BESS RTE Ratio 100% x (A ÷ B)

Enter the information for each Force Majeure event affecting the BESS during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C)=(B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Calendar hours in the reporting period: \_\_\_\_\_

Total equivalent hours for the reporting period (from above): \_\_\_\_\_

Omit any periods where Force Majeure was the sole cause of the Outage or Deration in the reporting areas below pursuant to Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Enter the information for each BESS Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: \_\_\_\_\_

Total Outage hours for the reporting period (from above): \_\_\_\_\_

Available Hours (AH) in the reporting period: \_\_\_\_\_

AH from the last three (3) reporting periods: \_\_\_\_\_

AH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Seller Attributable Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C)=(B-A)	Size of reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total Equivalent Seller Attributable Derated hours (ESADH) for the reporting period: \_\_\_\_\_

ESADH from the last three (3) reporting periods: \_\_\_\_\_

ESADH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity

(MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C)=(B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: \_\_\_\_\_

EPDH from the last three (3) reporting periods: \_\_\_\_\_

EPDH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C)=(B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: \_\_\_\_\_

EUDH for the last three (3) reporting periods: \_\_\_\_\_

EUDH for the last four (4) reporting periods: \_\_\_\_\_

Period Hours (PH) \_\_\_\_ (8760 hours if no 29<sup>th</sup> day in February in that last twelve months; otherwise, 8784 hours).

Enter the Available Hours, ESADH, EPDH and EUDH for the last four (4) reporting periods as calculated above.

AH (A)	ESADH (B)	EPDH (C)	EUDH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C - D)/PH

Enter the information for each Unplanned (Forced) Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period (from above): \_\_\_\_\_

FOH from the last three (3) reporting periods: \_\_\_\_\_

FOH for the last four (4) reporting periods: \_\_\_\_\_

Enter the FOH, ESADH, and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	ESADH (C)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B + C)/8760$

## 2. Monthly Report Disagreements.

- (a) Notice of Disagreement With Monthly Report. Within ten (10) Business Days following the close of each calendar month, Seller shall provide to Company the Monthly Report for such calendar month and for the rolling 12-month period ending with such calendar month. 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 MPXEEAF Assessment Period ending with such calendar month, (ii) the PI for the PI Assessment Period ending with such calendar month, or (iii) any of the BESS Capacity Ratio, the RTE Ratio, the BESS Annual Equivalent Availability Factor or the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period (if any) ending with such calendar

month ("Notice of Monthly Report Disagreement"). Together with any such Notice of Monthly Report Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Monthly Report 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) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Monthly Report Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Monthly Report 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 Capacity Ratio, the RTE Ratio, 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. If, within five (5) Business Days following the expiration of said 10-Business Day period, neither Party has submitted such Monthly Report Disagreement to an Independent AF Evaluator, the data and calculations set forth in the Notice of Disagreement in question shall be deemed to be accepted by Seller and shall no longer be subject to dispute by Company or Seller. Notwithstanding anything to the contrary in this Section 2(b) (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 (Other Disagreements) 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.

3. Other Disagreements.

- (a) Notice of Disagreement With Determination of Measured Power Curve. Within ten (10) Business Days after the first day of the second Contract Year, Seller shall provide written notice to Company of the Measured Power Curve for each WTG as provided in Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) together with supporting data and calculations. Within thirty (30) Days after Company's receipt of Seller's written notice of the Measured Power Curve for each WTG, Company shall provide written notice to Seller of any disagreement with any such determination ("MPC Disagreement"). Together with any such notice of disagreement ("Notice of MPC Disagreement"), the Company shall include its own calculations and other support of its position. If Company fails to provide a Notice of MPC Disagreement within said 30-Day period, the Measured Power Curve for each WTG as calculated by the Seller pursuant to the aforesaid Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.
- (b) Submission of MPC Disagreement to Independent AF Evaluator. Upon issuance of a Notice of MPC Disagreement, the Parties shall review the Measured Power Curve(s) in question together with such Notice of MPC Disagreement and attempt to resolve such MPC Disagreement. If the Parties are able to agree on a resolution of such MPC Disagreement, the resulting

Measured Power Curve for each WTG shall be set forth in a writing executed by both Parties, following which such Measured Power Curve for such WTG shall be deemed to be the Measured Power Curve for such WTG under this Agreement and shall no longer be subject to dispute by either Party. If the Parties are unable to agree on a written resolution of such MPC Disagreement within thirty (30) Days after Company's issuance of such notice of disagreement, either Party may submit the unresolved MPC Disagreement to an Independent AF Evaluator for resolution. If, within five (5) Business Days following the expiration of said 30-Day period, neither Party has submitted such MPC Disagreement to an Independent AF Evaluator, the Measured Power Curve for each WTG as calculated by Seller pursuant to Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

4. Independent AF Evaluator Process.

- (a) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved Monthly Report Disagreement or an unresolved MPC 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 whichever of the following time periods is applicable:
- (i) for any Monthly Report Disagreement, within the 5-Business Day period provided in Section 2(b) (Submission of Monthly Report Disagreement to Independent AF Evaluator) of this Attachment T

(Monthly Reporting and Dispute Resolution by Independent AF Evaluator); and

- (ii) for any MPC Disagreement, within the 5-Business Day period provided in Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by 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 for 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 Monthly Report 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 (Calculation of the 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 MPXEEAF Assessment Period ending with the calendar month in question, the Modified Pooled OMC Equipment Availability Factor for such MPXEEAF Assessment Period as determined by such Independent AF Evaluator if such Modified Pooled OMC Equipment Availability Factor was in dispute;
- (ii) for a Monthly Report Disagreement concerning the Performance Index, 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 (Calculation of 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) ([GPR or GPI] Performance Metric and Liquidated Damages) 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;

- (iii) for a Monthly Report 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;
- (iv) for a Monthly Report 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, ESADH, 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;
- (v) for a Monthly Report 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
- (vi) for a MPC Disagreement, the written decision of the Independent AF Evaluator shall set forth the Measured Power Curve for the WTG in question.

(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 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) there are one or more other unresolved Monthly Report Disagreements concerning the same Performance Metric and the same Performance Metric LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other Monthly Report Disagreement(s) is necessary to the resolution of the Monthly Report 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 Monthly Report Disagreement shall be tolled until such pending Monthly Report Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance 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 the Measured Power Curve,

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 Monthly Report Disagreements and/or Measured Power Curve Disagreements. Without limitation to the generality of the preceding sentence, the decision of the Independent AF Evaluator as to each Monthly Report Disagreement and each Measured Power Curve 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 Metrics. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metrics under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metrics calculations in this Agreement shall be mutually agreed to by both Seller and Company.
6. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U  
[PV] CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT U IS FOR PV+BESS]**

1. Net Energy Potential.

(a) Net Energy Potential and the Intent of the Parties.

The essence of this Agreement is that Company is paying to Seller a Lump Sum Payment in exchange for Company's right to dispatch the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a 95% probability of exceedance ("P95") for annual Net Energy that could be produced by the Facility based on a Renewable Resource Baseline and estimated losses and uncertainties over a period of ten years, excluding losses due to Company Dispatch; (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.

(i) The Net Energy Potential shall be calculated using the Renewable Resource Baseline for the site, the most current construction design and equipment specifications (see loss factors below), and industry-accepted energy simulation models (i.e. PVSyst); this will be expected to result in a P50 value at the point of interconnection ("POI P50"). The P50 should then have an uncertainty analysis applied -as follows:.

(A) Uncertainty Analysis. The uncertainty analysis should consider the following sources of uncertainty:

**i.** solar resource uncertainty  
(measurement accuracy, irradiance model, period of record, spatial, albedo),

**ii.** modeling uncertainty,

- iii. combined design uncertainty, and
- iv. interannual variability in a 10 year period.

The total combined uncertainty should be determined using the root sum squares method for combining the individual uncertainty factors. The P95 when the total combined uncertainty is applied to the POI P50 will constitute the Net Energy Potential as defined and subject to the adjustments mentioned above. The uncertainty factors should be determined using industry best practices and standard assumptions.

- (B) Loss factors shall include, and shall be limited to:
  - (1) Shading (far and near),
  - (2) electrical losses:
    - (aa) DC wiring,
    - (bb) AC wiring,
    - (cc) medium-voltage transformer efficiency
    - (dd) high voltage transformer efficiency
    - (ee) transmission line to POI efficiency,
  - (3) Station Service,
  - (4) Generation System Aux Loads,
  - (5) a PV System Equivalent Availability Factor of 98%
  - (6) PV conversion (non-STC irradiance and temperature performance),
  - (7) incident angle,

- (8) soiling,
  - (9) initial light induced degradation,
  - (10) module quality and mismatch,
  
  - (11) inverter limitation,
  - (12) inverter efficiency,
  - (13) degradation.
  - (14) Bifacial factors as applicable
- (D) Loss factors will exclude losses due to Company Dispatch.
- (ii) In the case of the Initial OEPR and any Subsequent OEPR evaluation, the Net Energy Potential shall also consider historical operational and meteorological data further described in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (iii) 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:
- (A) 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:
    - (1) 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;
    - (2) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and

delivering such electric energy to the Point of Interconnection as Seller had assumed when it submitted its RFP Proposal; and

(3) if the Facility's level of operational efficiency is below the standard of comparable facilities;

(B) 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)): 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. Company relied on Seller's NEP RFP Projection in deciding to contract with Seller in lieu of other developers. Seller shall be permitted a one-time option to raise the NEP RFP Projection no more than five percent (5%) of the NEP RFP Projection submitted with Seller's RFP Proposal ("Revised NEP RFP Projection"). Seller's Revised NEP RFP Projection must be provided to Company prior to completion of the NEP IE Estimate. The Lump Sum Payment shall be calculated in accordance with the Revised NEP RFP Projection, but in no event shall the Unit Price change. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Seller if (i) the IE Energy Assessment Report 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 and the Renewable Resource Baseline data including global horizontal and plane of array irradiance, ambient air temperature, and wind speed, loss factors, and corresponding power output used in arriving at the POI P50, and the Benchmark Performance Ratio and the uncertainty analysis applied to the POI P50 to arrive at the NEP IE Estimate ("IE Estimate Supporting Data"). The Benchmark Performance Ratio is established from the Renewable Resource Baseline, POI P50 data set, and adjusted for the considerations of the MPR calculation provided for in Sections 2(i), (ii), and (iii) of Attachment Q (Calculation of Certain Metrics) of this Agreement. 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 including the IE Estimate Supporting Data used in arriving at the NEP IE Estimate and the Benchmark Performance Ratio 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 only to ministerial 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 and the Benchmark Performance Ratio that is consistent with the requirements of this Agreement in all material respects, or if the IE Estimate Supporting Data used in arriving at the NEP IE Estimate and the Benchmark Performance Ratio is not provided, 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 and the IE Estimate Supporting Data used in arriving at the NEP IE Estimate, 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 or equal to 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(b) (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 Initial OEPR or Subsequent OEPR that Company reasonably determines require an updated OEPR, then Seller shall 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 12 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(c) (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) of Attachment U (Calculation and Adjustment of Net Energy Potential), an independent engineering firm from the firms listed on the OEPR Consultants List (the "OEPR Evaluator") to prepare an operational energy production report ("OEPR"). In no event shall the OEPR Evaluator be the same consultant or firm that prepared the initial NEP IE Estimate or the NEP RFP Projection. Each party shall select the names of two (2) firms from the OEPR Consultants List. If there is mutual agreement on one or both of the named firms, then the Seller shall select one of the firms named by both Parties 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 as identified in Section 4(j) (Acceptable Persons and Entities) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no

event shall there be less than three (3) names on the OEPR Consultants List.

- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured meteorological and operational 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 operational 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. No later than five (5) Days 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. 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 95% probability of exceedance for annual Net Energy that could be produced by the Facility; (ii) the Renewable Resource Baseline file including data on global horizontal and plane of array irradiance, ambient air temperature, and wind speed, loss factors, and corresponding power output used in arriving at the POI P50, and the Benchmark Performance Ratio; (iii) the uncertainty analysis applied to the POI P50 to arrive at the aforementioned single P95 NEP OEPR Estimate; and (iv) 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 Benchmark Performance Ratio, the following is a general description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to primarily utilize observed operational data and performance to calculate a NEP OEPR Estimate and Benchmark Performance Ratio. The results of the OEPR will then be appropriately 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.

At a high level, the analysis relies on reported Actual Output (i.e., energy produced by the Facility and delivered to the Point of Interconnection) during the OEPR Period of Record and gross generation 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 that may not be representative of future energy generation are assessed and removed from the record where appropriate. Values for resource potential energy are then calculated from the reported gross energy production by adjusting for 100% availability and undispached energy. Suitable long-term reference data sets are then identified by analyzing the reference for renewable resource and the normalized values for potential gross energy production over the OEPR Period of Record. Relationships between selected long-term reference renewable resource sets and normalized values for potential energy production of the conversion equipment are used to calculate long-term values for such on a monthly and annual basis to determine appropriate adjustments to the Renewable Resource Baseline, loss factors, and uncertainty factors. The OEPR Period of Record adjusted Renewable Resource Baseline and loss factors are used to determine an OEPR POI P50 and Benchmark Performance Ratio; OEPR Period of Record adjusted uncertainty factors are applied to the OEPR POI P50 in order to calculate the P95 OEPR NEP Estimate in accordance with the process described in Section 1 (Net energy Potential) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If a copy of the IE Energy Assessment Report and/or any previous OEPR is available to the OEPR Evaluator, the OEPR Evaluator should review such Report(s) 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 and/or any previous OEPR.

OEPR analysis shall include at minimum the following operational data from the OEPR Period of Record:

SCADA Telemetered, minimum 15-minute resolution:

- PV inverters available (Quantity)
- Plane of Array (POA) Irradiance ( $W/m^2$ )
- Wind Speed (m/s)
- Global Horizontal Irradiance ( $W/m^2$ )
- Back of panel temperature (Degrees C)
- Ambient temperature (Degrees C)
- Wind speed (m/s)
- Energy delivered by each inverter (kWh)
- Energy delivered to BESS (kWh)
- Energy delivered to the POI (kWh)
- Energy delivered from the BESS (kWh)
- Power Reference Setpoint (MW)

Revenue Meter at POI:

- Actual Output

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to provide, for Party review, a draft OEPR that shall include a NEP OEPR Estimate and a Benchmark Performance Ratio within 30 Days following the Applicable NEP Verification Date ("First OEPR"). The OEPR Evaluator shall be required to provide its completed OEPR within thirty (30) Days following the end of the Parties' 45-Day review period under Section 4(d) (Participation of Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential). For avoidance of doubt, the OEPR Evaluator shall designate as "FINAL" its completed OEPR. An OEPR may only be acknowledged and accepted by an officer of Company. 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 Benchmark Performance 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 Benchmark Performance Ratio, 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 Benchmark Performance Ratio, 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 Benchmark Performance Ratio, 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 Benchmark Performance Ratio, 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 Benchmark Performance Ratio, 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 Benchmark Performance Ratio or 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 Benchmark Performance Ratio. Without limitation to the generality of the preceding sentence, the determination of the NEP OEPR Estimate and/or the Benchmark Performance Ratio 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, provided that Company's acknowledgment and acceptance of a completed OEPR is made by a Company officer and delivered to Seller. Company and Seller 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 engineering firms listed below, subject to such additions or deletions effectuated by the Parties as provided in Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential):

DNV GL  
UL  
Black & Veatch

Leidos Engineering

ATTACHMENT U  
[WIND]CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT U IS FOR WIND+BESS]**

1. Net Energy Potential.

(A) Net Energy Potential and the Intent of the Parties. The essence of this Agreement is that Company is paying to Seller a Lump Sum Payment in exchange for Company's right to dispatch the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a 95% probability of exceedance ("P95") for annual Net Energy that could be produced by the Facility based on a Renewable Resource Baseline and estimated losses and uncertainties over a period of ten years, excluding losses due to Company Dispatch; (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.

(i) The Net Energy Potential shall be calculated Renewable Resource Baseline for the site, the most current construction design and equipment specifications (see loss factors below), and industry-accepted energy simulation models (i.e. WindSys); this will be expected to result in a P50 value at the point of interconnection ("POI 50"). The P50 should have an uncertainty analysis applied. (A) Uncertainty Analysis. The uncertainty analysis should consider the following resources of uncertainty:

- i. wind resource uncertainty  
(measurement accuracy, wind model,  
period of record, spatial),
- ii. modeling uncertainty, combined  
design uncertainty, and

**iii. iii. interannual variability in a  
10 year period**

The total combined uncertainty should be determined using the root sum squares method for combining the individual uncertainty factors. The P95 when the total combined uncertainty is applied to the POI P50 will constitute the Net Energy Potential as defined and subject to the adjustments mentioned above. The uncertainties should be determined using industry best practices and standard assumptions.

(B) Loss factors shall include, and shall be limited to:

**(1)** Wake Effects (internal and external),

a. electrical losses:

(aa) DC Wiring,

(bb) AC wiring,

(cc) medium-voltage transformer  
efficiency

(dd) high voltage transformer  
efficiency

(ee) transmission line to POI  
efficiency,

(15) Station Service,

(16) Generation System Aux Loads,

(17) Modified Pooled OMC Equipment  
Availability Factor of 97%

(18) Turbine Performance:

- (aa) Sub-optimal operation,
- (bb) Power curve adjustment,
- (cc) High wind control hysteresis,
- (dd) Blade degradation,

(E) Loss factors will exclude losses due to Company Dispatch.

(a) Loss factors shall include, but not be limited to, electrical losses, Station Service, Generation System Aux Loads, wind power conversion losses, Modified Pooled OMC Equipment Availability Factor of 97%. Loss factors will exclude losses due to Company Dispatch. In the case of the Initial OEPR and any Subsequent OEPR evaluation, the Net Energy Potential shall also consider historical operational data further described in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential). It is the intent of the Parties that the estimate of Net Energy Potential, as calculated and adjusted as foresaid, should reflect the following risk allocation between the Parties under this Agreement:

(i) Seller has assumed the risk of downward adjustment to the Net Energy Potential (and hence the Lump Sum Payment) to account for any of the following circumstances:

(aa) if the Renewable Resource Baseline (as estimated on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is lower than Seller had assumed when it submitted its RFP Proposal;

(bb) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and delivering such electric energy to the Point of Interconnection as Seller had assumed when it submitted its RFP Proposal; and

- (cc) if the Facility's level of operational efficiency is below the standard of comparable facilities;
- (ii) Company has assumed the risk of the following (i.e., the following are to be disregarded for purposes of estimating Net Energy Potential (and hence the Lump Sum Payment)): 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. Company relied on Seller's NEP RFP Projection in deciding to contract with Seller in lieu of other developers. Seller shall be permitted a one-time option to raise the NEP RFP Projection no more than five percent (5%) of the NEP RFP Projection submitted with Seller's RFP Proposal ("Revised NEP RFP Projection"). Seller's Revised NEP RFP Projection must be provided to Company prior to completion of the NEP IE Estimate. The Lump Sum Payment shall be calculated in accordance with the Revised NEP RFP Projection, but in no event shall the Unit Price change. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Seller if (i) the IE Energy Assessment Report 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 and the

Renewable Resource Baseline data including hub height density and temperature adjusted wind speed and corresponding power output used in arriving at the POI P50, and the Benchmark Performance Ratio and the uncertainty analysis applied to the POI P50 to arrive at the NEP IE Estimate ("IE Estimate Supporting Data"). The Benchmark Performance Ratio is established from the Renewable Resource Baseline, POI P50 data set, and adjusted for the considerations of the MPR calculations provided for in Section 2(i), (ii), and (iii) of Attachment Q (Calculation of Certain Metrics) of this Agreement. 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 including the IE Estimate Supporting Data used in arriving at the NEP IE Estimate and the BOP IE Benchmark Estimate 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 only to ministerial 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 and the BOP IE Benchmark Estimate that is consistent with the requirements of this Agreement in all material respects, or if the IE Estimate Supporting Data used in arriving at the NEP IE Estimate and the Benchmark Performance Ratio is not provided, 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 and the IE Estimate Supporting Data used in arriving at the NEP IE Estimate and the BOP IE Benchmark Estimate, to designate such Company-Designated NEP Estimate and Company-Designated BOP Benchmark 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 and Company-Designated BOP Benchmark, 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 and Company-Designated BOP Benchmark 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 and Company-Designated BOP Benchmark, the NEP RFP Projection shall constitute the First NEP Benchmark and 0.97 shall be the BOP Benchmark, unless the Parties agree in writing on a lower First NEP Benchmark and/or an alternative BOP Benchmark.

- (d) NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right. If the NEP IE Estimate is higher than or equal to 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(b) (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 Initial OEPR or Subsequent OEPR ) that Company reasonably determines require an updated OEPR, then Seller shall 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(c) (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) of Attachment U (Calculation and Adjustment of Net Energy Potential), an independent engineering firm from the firms listed on the OEPR Consultants List (the "OEPR Evaluator") to prepare an operational energy production report ("OEPR"). In no event shall the OEPR Evaluator be the same consultant or firm that prepared the initial NEP IE Estimate or the NEP RFP Projection. Each party shall select the names of two (2) firms from the OEPR Consultants List. If there is mutual agreement on one or both of the named firms, then the Seller shall select one of the firms named by both Parties 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 as identified in Section 4(j) (Acceptable Persons and Entities) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured

meteorological and operational 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 operational 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. No later than five (5) Days 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. 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 95% probability of exceedance for

annual Net Energy that could be produced by the Facility; (ii) the Renewable Resource Baseline file including data on hub height density and temperature adjusted wind speed and corresponding power output used in arriving at the POI P50, and the Benchmark Performance Ratio; (iii) the uncertainty analysis applied to the POI P50 to arrive at the aforementioned single P95 NEP OEPR Estimate; and (iv) 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, the following is a general description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to primarily utilize observed operational data and performance to calculate a NEP OEPR Estimate and Benchmark Performance Ratio. The results of the OEPR will then be appropriately 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.

At a high level, the analysis relies on reported Actual Output (i.e., energy produced by the Facility and delivered to the Point of Interconnection) during the OEPR Period of Record and gross generation 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 that may not be representative of future energy generation are assessed and removed from the record where appropriate. Values for resource potential energy are

then calculated from the reported gross energy production by adjusting for 100% availability and undispached energy. Suitable long-term reference data sets are then identified by analyzing the reference for renewable resource and the normalized values for potential gross energy production over the OEPR Period of Record. Relationships between selected long-term reference renewable resource sets and normalized values for potential energy production of the conversion equipment are used to calculate long-term values for such on a monthly and annual basis to determine appropriate adjustments to the Renewable Resource Baseline, loss factors, and uncertainty factors. The OEPR Period of Record adjusted Renewable Resource Baseline and loss factors are used to determine an OEPR Period of Record adjusted certainty factors are applied to the OEPR POI P50 in order to calculate the P95 OEPR NEP Estimate in accordance with the process described in Section 1 (Net energy Potential) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If a copy of the IE Energy Assessment Report and/or any previous OEPR is available to the OEPR Evaluator, the OEPR Evaluator should review such Report(s) 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 and/or any previous OEPR.

OEPR analysis shall include at minimum the following operational data from the OEPR Period of Record:

SCADA Telemetered, minimum 15-minute resolution:

- WTGs available (Quantity)
- Wind speed at each nacelle and MMT (m/s)
- Wind direction at each nacelle and MMT (Degrees)
- Ambient air temperature at hub height for each WTG and MMT (Degrees C)

- Ambient air pressure at hub height for each WTG and MMT (mbar)
- Energy delivered by each WTG (kWh)
- Energy delivered to BESS (kWh)
- Energy delivered to the POI (kWh)
- Energy delivered from the BESS (kWh)
- Power Reference Setpoint (MW)

Revenue Meter at POI:

- Actual Output

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to provide, for Party review, a draft OEPR that shall include a NEP OEPR Estimate and a BOP Benchmark within 30 Days following the Applicable NEP Verification Date ("First OEPR"). The OEPR Evaluator shall be required to provide its completed OEPR within thirty (30) Days following the end of the Parties' 45-Day review period under Section 4(d) (Participation of Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential). For avoidance of doubt, the OEPR Evaluator shall designate as "FINAL" its completed OEPR. An OEPR may only be acknowledged and accepted by an officer of Company. 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 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, 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, 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, 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, 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, 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 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. Without limitation to the generality of the preceding sentence, the determination of the NEP OEPR Estimate and/or the BOP Benchmark 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, provided that Company's acknowledgment and acceptance of a completed OEPR is made by a Company officer and delivered to Seller. Company and Seller 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 engineering firms listed below, subject to such additions or deletions effectuated by the Parties as provided in Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential):

DNV GL  
UL  
Black & Veatch  
Leidos Engineering

ATTACHMENT V  
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED  
IN PRIOR CALENDAR YEAR

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT V IS SUITABLE FOR BOTH  
PV+BESS AND WIND+BESS]**

(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

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT W IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

Prior to achieving Commercial Operations, and in each BESS Measurement Period, unless waived by Company, Seller shall demonstrate that the BESS satisfies the (1) BESS Capacity Performance Metric, and (2) RTE Performance Metric, each as defined and further described below.

BESS Capacity Performance Metric

The BESS Capacity Performance Metric reflects the net energy output of the BESS as delivered to the Point of Interconnection, which considers electrical losses including, but not limited to, Station Service and BESS Aux Loads. The BESS Capacity Performance Metric can be demonstrated with data recorded over any period of time, within the applicable BESS Measurement Period, that meets the requirements of a BESS Capacity Performance Demonstration, described below.

The "BESS Capacity Performance Metric" shall be deemed to be satisfied where the BESS Capacity Ratio is not less than **100%** for an applicable BESS Measurement Period. The "BESS Capacity Ratio" shall be the number, expressed as a percentage, equal to the total energy stored and subsequently delivered to the Point of Interconnection during a time period which meets the requirements of a BESS Capacity Performance Demonstration, divided by the BESS Available Capacity (MWh). The "BESS Available Capacity" shall be defined as the total energy storage capacity in MWh of BESS components online and available to charge or discharge energy. The best or highest BESS Capacity Ratio achieved at the highest BESS Available Capacity in the applicable BESS Measurement Period shall be used to determine satisfaction of the BESS Capacity Performance Metric, or assessment of liquidated damages, for that BESS Measurement Period, in accordance with Section 2.8 (BESS Capacity; Liquidated Damages; Termination Rights).

*BESS Capacity Performance Demonstration*

A "BESS Capacity Performance Demonstration" shall be defined as a continuous time period, not longer than twelve (12) hours in duration, wholly contained within the applicable BESS

Measurement Period, during which the BESS dispatch meets the following additional requirements:

- (a) BESS Available Capacity (1) must be the same at the beginning and end of the demonstration time period and (2) must not increase above the BESS Available Capacity at the beginning of the demonstration time period. For this requirement, BESS Available Capacity shall not be considered to be reduced for portions of the BESS that are no longer "available" solely due to being fully discharged.
- (b) At the beginning of the demonstration time period, the available portions of the BESS shall be fully charged, as demonstrated by no longer accepting additional energy.
- (c) The Company, or Seller under direction of the Company, may vary the output of the BESS; provided, however, the BESS shall be dispatched in such a way that the active power reference setpoint is at or above 1 MW during the demonstration time period (i.e., only discharging).
- (d) The demonstration time period shall end when the level of charge available to be discharged from the BESS to the Point of Interconnection is no longer capable of maintaining the 1 MW output being commanded by the active power reference setpoint.

BESS Available Capacity must not be manipulated or reduced solely for the purpose of increasing the BESS Capacity Ratio.

#### RTE Performance Metric

The RTE Performance Metric reflecting the efficiency of the charging/discharging of the BESS can be demonstrated with data recorded over any period of time, within the applicable BESS Measurement Period, that meets the requirements of a BESS RTE Performance Demonstration, described below.

For the purposes of evaluating satisfaction of the RTE Performance Metric, the "RTE Ratio" shall be the number, expressed as a percentage, equal to the total Discharge Energy delivered to the Point of Interconnection, divided by the Charging Energy measured at the BESS AC input.

The formula for the RTE Ratio is as follows:

$$\text{RTE Ratio} = 100\% \times (\text{MWh discharge}) / (\text{MWh charge})$$

The RTE Performance Metric will be deemed to have been "passed" or "satisfied" to the extent the RTE Ratio is not less than the RTE Performance Metric set forth in Section 2.11(a) (RTE and Liquidated Damages). The best or highest RTE Ratio achieved at the highest BESS Available Capacity in the applicable BESS Measurement Period shall be used to determine satisfaction of the RTE Performance Metric and assessment of liquidated damages for that BESS Measurement Period.

#### *BESS RTE Performance Demonstration*

Demonstration of the RTE Performance Metric requires measurement of Charging Energy (MWh charge) at the BESS AC input, followed by measurement of the Discharge Energy (MWh discharge) delivered to the Point of Interconnection from the BESS. The exact point of measurement for Charging Energy shall be as set forth on the Facility's single-line diagram attached hereto as Attachment E (Single-Line Drawing and Interface Block Diagram). In order to be used for demonstration of the RTE Performance Metric, Charging Energy and Discharge Energy must be calculated using data recorded during a single time period which meets the requirements of a BESS RTE Performance Demonstration.

A BESS RTE Performance Demonstration shall be defined as a continuous time period, not longer than twenty-four (24) hours, wholly contained within the applicable BESS Measurement Period, comprised of a Charging Period followed by a Discharging Period, during which the BESS dispatch meets the following additional requirements:

- (a) BESS Available Capacity must be the same at the beginning and end of the charging period. During the charging period, the BESS Available Capacity must not decrease below the BESS Available Capacity at the beginning of the charging period.
- (b) BESS Available Capacity must be the same at the beginning and end of the discharging period. During the discharging period, the BESS Available Capacity must not increase above the BESS Available Capacity at the beginning of the discharging period. For this requirement, BESS Available Capacity shall not be considered to be reduced for portions of the BESS that

are no longer "available" solely due to being fully discharged during the discharging period.

- (c) At the beginning of the demonstration time period, the available portions of the BESS shall be charged no more than 10%. The energy stored in the available portions of the BESS at the beginning of the charging period, expressed in MWh, shall be defined as the "Initial Energy" (MWh).
- (d) During the charging period, the Company, or Seller under direction of the Company, may vary the active power setpoint; provided, however, the Facility shall be dispatched in such a way that the active power measured at the BESS AC input is only flowing in the charging direction.
- (e) The charging period shall end when the available portions of the BESS are at least 90% charged. The total amount of energy delivered to the BESS, measured in MWh at the BESS AC input, between the beginning and end of the charging period shall be defined as the "Charging Energy" (MWh).
- (f) The start of the discharge period may be delayed after the end of the charging period, as long as the discharge period has concluded within the 24-hour continuous time period. During the discharge period, the Company, or Seller under direction of the Company, may vary the output of the BESS; provided, however, the BESS shall be dispatched in such a way that the active power setpoint is at or above 1 MW for the entire discharge period (i.e., only discharging).
- (g) The discharge period shall last no longer than 12 hours.
- (h) The "Discharge Energy" shall be calculated as the energy delivered to the POI from the BESS, between the beginning of the discharge period and the time at which the charge remaining in the available portions of the BESS, expressed in MWh, is closest to the Initial Energy.

BESS Available Capacity must not be manipulated or reduced solely for the purpose of increasing the RTE Ratio.

#### BESS Test Procedures

During each BESS Measurement Period, Seller shall be responsible for selecting data from a valid time period (or time periods) meeting the requirements of a BESS Capacity Performance Demonstration and a BESS RTE Performance Demonstration (each, a "BESS Performance Demonstration" and collectively, the "BESS Performance Demonstrations"), and for providing such data that was used to assess the satisfaction of the BESS Capacity Performance Metric and the BESS RTE Performance Metric to Company for comparison and verification purposes ("Valid Data"). The Valid Data used to calculate such Performance Metrics are expected to be of normal SCADA quality and sample rate, and historical Company EMS data may be used to verify calculations.

In the event the dispatch of the BESS produces Valid Data with respect to either, or both, of the BESS Performance Demonstrations by end of the second month of the applicable BESS Measurement Period, Seller shall notify Company in writing of the existence of Valid Data for such BESS Performance Demonstration(s), in which case, no BESS Capacity Test and/or RTE Test (each a "BESS Test" and collectively, the "BESS Tests"), as applicable, will be required of Company. In the event the dispatch of the BESS has not produced Valid Data with respect to either, or both, of the BESS Performance Demonstrations by end of the second month of the applicable BESS Measurement Period, Seller shall notify Company in writing of the lack of Valid Data and request a BESS Test for the applicable Performance Metric(s) lacking Valid Data. Notwithstanding the foregoing, Seller shall not be entitled to a BESS Test when Valid Data exists for such Performance Metric(s).

A BESS Test occurs when Company intentionally attempts to dispatch the BESS in a manner which meets the requirements of one or both BESS Performance Demonstrations for the purposes of collecting Valid Data to determine the BESS Capacity Ratio and/or RTE Ratio, as applicable. When either BESS Test is requested by Seller, Company shall schedule and make reasonable efforts to perform the requested BESS Test before the end of the BESS Measurement Period and shall notify Seller in writing of the time period meeting the associated BESS Performance Demonstration requirements once the BESS Test has been performed. When both BESS Tests are validly requested, for convenience, Company shall attempt to adjust dispatch such that charging and subsequent discharging time periods will meet requirements for both BESS Performance Demonstrations to be calculated. If the Company is unable to perform the requested BESS Test(s) or the dispatch of the BESS does not otherwise meet

the requirements of the necessary BESS Performance Demonstration(s) by the end of the BESS Measurement Period, the associated BESS Performance Metric shall be deemed to have "passed" for that BESS Measurement Period. However, if after the end of the second month of the applicable BESS Measurement Period, Seller fails to timely notify Company in writing of the lack of Valid Data for either, or both, of the associated BESS Performance Demonstration(s), and Valid Data is not obtained by the end of the BESS Measurement Period, data from the next BESS Measurement Period will be used to determine the BESS's satisfaction of the applicable Performance Metric(s), or assessment of liquidated damages, for both BESS Measurement Periods.

If, during a BESS Measurement Period, one demonstration time period exists which satisfies the requirements for either, or both, BESS Performance Demonstrations (i.e., a single instance of Valid Data), the satisfaction of the associated Performance Metric(s), or assessment of liquidated damages, shall be evaluated with the data recorded during such single demonstration time period. If multiple time periods exist which satisfy the requirements for either, or both, BESS Performance Demonstrations, the satisfaction of the associated Performance Metric(s), or assessment of liquidated damages, will be based on the best or highest Performance Metric(s) achieved at the highest BESS Available Capacity calculated using the multiple instances of Valid Data collected during the BESS Measurement Period.

ATTACHMENT X  
BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT X IS SUITABLE FOR BOTH PV+BESS, WIND+BESS, OR STANDALONE BESS]**

For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Availability Factor shall be calculated using the equation, data set and interim assumptions as provided in this Attachment X (BESS Annual Equivalent Availability Factor).

"BESS Annual Equivalent Availability Factor" shall be calculated as follows:

$$\begin{array}{l} \text{BESS Annual} \\ \text{Equivalent} \\ \text{Availability} \\ \text{Factor} \end{array} = 100\% \times \frac{AH-EDH}{PH}$$

Where, for the 12 calendar months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question:

Period Hours (PH) is the total number of hours in the 12 calendar months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question, counting twenty-four (24) hours per Day. If, for example, the 12 calendar months in question include exactly 365 Days, PH = 8,760.

Available Hours (AH) is the number of hours that the BESS is not on Outage. AH = PH-OH, as defined in this Attachment X (BESS Annual Equivalent Availability Factor).

A "BESS Outage" measured in Outage Hours (OH), exists whenever the entire BESS is offline and unable to charge or discharge electric energy and not due to Force Majeure or OMC. These outage hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

BESS Outside Management Control (bOMC): are events (other than Seller-Attributable Non-Generation events) that occur beyond the Facility boundaries or are caused by abnormal weather exceeding ambient conditions required for operation. bOMC events can be

Planned, Maintenance, Forced Outage, or Derating Events. bOMC events can be due to Company System constraints, such as transmission or substation maintenance or switching. bOMC events do not include Seller-Attributable Non-Generation events.

A "BESS Derating" exists when the BESS is available but at less than BESS Contract Capacity (MW/MWh), including deratings due to Seller-Attributable Non-Generation or those by Company pursuant to Section 8.3 (Company Rights of Dispatch). For the avoidance of doubt, (1) if there is a BESS Outage occurring, there cannot also be a BESS Derating, (2) BESS outages and deratings required for testing the Performance Metrics as defined and required by this Agreement shall not be deemed BESS Outages or BESS Deratings for purposes of calculating the BESS Annual Equivalent Availability Factor, and (3) BESS outages and deratings that do not reduce the availability of the BESS below the BESS Contract Capacity shall not be deemed BESS Outages or BESS Deratings for purposes of calculating the BESS Annual Equivalent Availability Factor.

Equivalent Derated Hours (EDH) is the sum of ESADH, EPDH, and EUDH. For the avoidance of doubt, if there is a BESS Derating, it can only exist exclusively in one of the deration categories. The equivalent outage hour(s) (ESADH, EPDH, and EUDH) are calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW/MWh) and dividing by the BESS Contract Capacity (MW/MWh). An EDH is to be calculated using MW and MWh for each time period, and the larger calculated EDH is to be used in the calculation of the BESS EAF pursuant to this Attachment X (BESS Annual Equivalent Availability Factor). These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods. Deratings due to Force Majeure or OMC are excluded from the Equivalent Derated Hours, which is the sum of ESADH, EPDH and EUDH.

Equivalent Seller-Attributable Derated Hours (ESADH): A Seller-Attributable Derating occurs when a derating exists due to Seller-Attributable Non-Generation or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). Each individual derating is transformed into equivalent full outage hour(s).

EPDH is the equivalent planned derated hours, including Planned Deratings (PD) and Maintenance Deratings (D4). A Planned Derating is when the BESS experiences a derating scheduled well in advance and for a predetermined duration. A Maintenance

Derating is a derating 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 Derating (PD).

EUDH is the equivalent unplanned derated hours. An Unplanned Derating (Forced Derating) occurs when the BESS experiences a derating that requires a reduction in availability before the end of the nearest following weekend.

The following examples are provided as illustrative examples only:

*Example A:* The BESS was continuously available, with no BESS Outages or BESS Deratings during the 12 months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question. In this case AH = 8760 hours, EDH = 0 hours as ESADH, EPDH, and EUDH each = 0 hours

$$\text{BESS EAF} = 100\% \times \frac{8,760-0}{8,760} = 100\%$$

*Example B:* During the 12 months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question: (a) The BESS was online and charging from the [PV System or WTG(s)] or discharging electric energy to the Company System for 8,534 hours and was available but not discharging electric energy due to lack of stored energy (i.e., not Seller-Attributable Non-Generation) for 226 hours; (b) The BESS experienced a Planned Derating of 7.2 MWs relative to the BESS Contract Capacity for 100 hours for maintenance that was scheduled a month in advance; (c) The BESS also experienced an Unplanned Derating of 6.2 MW relative to the BESS Contract Capacity for 100 hours as the derating could not be deferred to beyond the nearest following weekend. (d) The BESS did not experience any outage or derating due to Seller-Attributable Non-Generation during this period.

The BESS Contract Capacity (MW) is 10 MW.

$$\text{PH} = 8,760 \text{ hours in 12 calendar months}$$

$$\text{AH} = \text{PH} - \text{OH} = 8,760 - 0 = 8,760 \text{ hours}$$

$$\text{ESADH} = 0$$

$$\text{EPDH} = 100 \text{ hours} \times 7.2 \text{ MW}/10 \text{ MW} = 72 \text{ hours}$$

(Planned Maintenance)

$$\text{EUDH} = 100 \text{ hours} \times 6.2 \text{ MW} / 10 \text{ MW} = 62 \text{ hours}$$

(Unplanned Deration (Forced Derating))

$$\text{EDH} = \text{ESADH} + \text{EPDH} + \text{EUDH} = 0 + 72 \text{ hours} + 62 \text{ hours} = 134 \text{ hours}$$

$$\text{BESS EAF} = 100\% \times \frac{8,760 - 134}{8,760} = 98.5\%$$

Requisite Data Set. Using the equation set forth on page X-1, the BESS Annual Equivalent Availability Factor shall be calculated as of the close of each BESS Measurement Period based on the data set compiled from the twelve (12) then-most-recent calendar months subsequent to the Commercial Operations Date. A consequence of requiring a 12-month data set subsequent to the Commercial Operations Date is that, during the initial Contract Year such data set will not be available. During that period, the BESS Annual Equivalent Availability Factor shall be calculated as provided in the paragraph immediately below captioned "Interim Assumptions."

Interim Assumptions. Until such time as there are twelve (12) calendar months subsequent to the Commercial Operations Date, the calculation of the BESS Annual Equivalent Availability Factor using the equation set forth at page X-1 shall be made on the basis of the data available as of the close of each BESS Measurement Period as supplemented and limited by the following assumptions and limitations:

- (a) Assumed Availability During Initial Contract Year. For the first three BESS Measurement Periods of the initial Contract Year (i.e., through the ninth (9<sup>th</sup>) full calendar month of the initial Contract Year), the calculation of the BESS Annual Equivalent Availability Factor as of the end of each of these three BESS Measurement Periods shall assume that the BESS is one hundred percent (100%) available during the calendar months remaining between the close of such BESS Measurement Period and the end of the initial Contract Year; and
- (b) Disregarding Data For Period Prior to First Calendar Month of Initial Contract Year. If the Commercial Operation Date occurs on a day that is not the first day of a calendar month, the period between the

Commercial Operations Date and the first day of the first calendar month following the Commercial Operations Date is not included in the first BESS Measurement Period and the data from this excluded period shall not be used in the calculation of the BESS Annual Equivalent Availability Factor.

ATTACHMENT Y  
BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT Y IS SUITABLE FOR BOTH PV+BESS AND WIND+BESS]**

$$EFOF = 100\% \times \frac{(FOH + EUDH + ESADH)}{8760}$$

Where:

Equivalent Unplanned (Forced) Derated Hours (EUDH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Equivalent Seller Attributable Derated Hours (ESADH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Forced Outage Hours (FOH) = Sum of all hours the BESS experienced an Unplanned (Forced) Outage during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

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, including those caused by Seller-Attributable Non-Generation or those imposed by Company pursuant to Section 8.3 (Company Rights of Dispatch).

EXAMPLE CALCULATION:

Assume a 50 MW BESS that for the BESS Measurement Period in question was completely out of service for 50 hours. For the BESS Measurement Period in question, it also had the following deratings:

Duration of Derating	MW Size Reduction
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding BESS Measurement Periods, the BESS had a total of 150 Forced Outage Hours and a total of 100 Equivalent Forced Derated Hours.

FOH = 50 hours + 150 hours = 200 hours

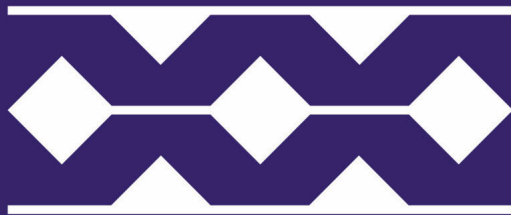
EUDH = ((100 x 25) ÷ 50) + ((20 x 20) ÷ 50) + ((50 x 5) ÷ 50))  
+ 100 = 163 hours

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$

**REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**  
**ALL ISLANDS**

~~May 2~~June 6, 2025

*Appendix L – Model Firm PPA*



**Hawaiian  
Electric**

This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of electric energy and capacity to be executed with [Hawaiian Electric Company, Inc./Hawaii Electric Light Company, Inc./Maui Electric Company, Limited] The terms and conditions that may be offered by [Hawaiian Electric Company, Inc./Hawaii Electric Light Company, Inc./Maui Electric Company, Limited] in this contract 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.

**[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 Firm Capacity Renewable Dispatchable Generation

THIS POWER PURCHASE AGREEMENT FOR FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION (“Agreement”) is made on \_\_\_\_\_, \_\_\_\_\_ (“Execution Date”), by and between [Hawaiian Electric Company, Inc./Hawaii Electric Light Company, Inc./Maui Electric Company, Limited], (hereinafter referred to as “Company”), a Hawai‘i corporation, with principal offices in [Honolulu/Hilo/Kahului], State of Hawai‘i, and \_\_\_\_\_ (hereinafter referred to as “Seller”), a \_\_\_\_\_, with principal offices in \_\_\_\_\_, and doing business in \_\_\_\_\_, State of Hawai‘i.

W I T N E S S E T H:

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

WHEREAS, the Company operates the Company System as an independent power grid and must maximize system reliability for its customers by ensuring that sufficient generation is available and that its system (including transmission and distribution) meets the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Company desires to minimize fluctuations in its purchased power costs by acquiring firm renewable dispatchable generation at a fixed energy price; and

WHEREAS, Seller desires to build, own, and operate a renewable firm capacity and dispatchable energy facility that is capable of producing renewable electrical energy as defined by Hawai‘i’s Renewable Portfolio Standards Law codified as HRS sections 269-91 through 269-95 (the “RPS Law”); and

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

WHEREAS, the Facility will be located at [INSERT LOCATION], County of [Honolulu/Hawai‘i/Maui], State of Hawai‘i, and is more fully described in Attachment A (Facility Description) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company electric capacity and energy generated by the Facility, and Company, at its dispatch and subject to PUC approval, agrees to purchase such capacity and energy from Seller, upon the terms and conditions set forth herein;

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

## ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following capitalized terms shall have the meanings as set forth below:

“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 Procedures) of Attachment G (Company-Owned Interconnection Facilities), to determine conformance with Attachment B (Facility Owned 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.

“Agreement” – Shall have the meaning set forth in the first paragraph of the first page of this agreement.

“Appeal Period” – Shall have the meaning set forth in Section 25.12(B) (Non-appealable PUC Approval Order).

“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).

“Attachments” – Shall have the meaning set forth in Section 25.21 (Attachments).

“Available Capacity Factor” – Shall have the meaning set forth in Section 1(B)(4) (Available Capacity Factor Formula) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Available Capacity” – The maximum amount of net energy export available to the Company at the Point of Interconnection from the Facility. The Facility will provide the Available Capacity via telemetry and will be used as the upper dispatch limit.

“Average Available Capacity” – Shall mean the average Available Capacity for the period reported using the telemetry measured levels provided from the Facility for the period being measured. Average Available Capacity for any particular month shall be one of the data requirements of Seller required pursuant to Section 6.1 (Monthly Invoice). Available Capacity during an annual maintenance overhaul period shall be excluded from any calculation of Average Available Capacity.

“BAFO Capacity Charge Rate” – Shall be as described in Section 1(B) (Capacity Charge) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Base Heat Rate Curve” – Shall have the meaning set forth in Section 3(w) (Heat Rate Curve) of Attachment B (Facility Owned by Seller).

“Bulk Energy Generating Resource” – A firm capacity resource designed to provide energy under normal operating conditions, to meet routine energy demands. Such a facility may operate continuously or allow for limited offline cycling. Typical examples include biomass and geothermal resource. A Bulk Energy Generating Resource will be required to follow company dispatch for load-following and balancing (i.e.; the island systems cannot support base load operation).

“Business Day” – Any Day other than a Saturday, Sunday or legal holiday of either the United States or the State of Hawai‘i.

“Calendar Month” – The period commencing at 12:00 a.m. on the first Day of any month and terminating at 11:59 p.m. on the last Day of the same month.

“Capacity Charge” – The amount to be paid by Company to Seller pursuant to Section 5.1(D) (Capacity Charge) of this Agreement for the capacity made available to the Company System from the Facility.

“Capacity Test” – The test performed by Seller in accordance with Section 5.1(E) (Capacity Test) and Attachment W (Capacity Test Procedures) to determine Demonstrated Firm Capacity.

“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 and/or ownership interest in Seller which is eligible to claim a Refundable Tax Credit or Non-Refundable Tax Credit in a given year.

“Closing Date” – The date on which the closing of long-term construction financing of the Facility under the Financing Documents occurs.

“COD Delay LD Period” – Shall have the meaning set forth in Section 2.4(D)(1)(b) (Daily Delay Damages).

“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) satisfactory completion of the Facility Conditions Precedent and the requirements of Section 5.1(E) (Capacity Test) and Attachment W (Capacity Test Procedures), (ii) the Acceptance Test has been passed, (iii) the Transfer Date has occurred, (iv) Seller has complied with the Required Models requirements of Section 6 (Modeling) 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 based on actual operation of the Facility at an electric output level of at least [ninety percent (90%)] of the Contract Firm Capacity, and (bb) the Commercial Operations Date will occur within 24 hours.

“Commercial Operations Date” or “COD” – The date on which the Facility first achieves Commercial Operations.

“Company” – Shall mean [Hawaiian Electric Company, Inc./Hawai‘i Electric Light Company, Inc./Maui Electric Company, Limited], a Hawai‘i corporation.

“Company Dispatch” – Company’s right, through supervisory equipment or otherwise, to direct or control the energy output of the Facility Resource(s) consistent with this Agreement. This includes net MW output (active power) from the minimum dispatch limit to Available Capacity, reactive power, voltage target, the droop setting, the Ramp Rate, and other characteristics of such electric energy output whose parameters are normally controlled or accounted for in a utility dispatching system. The Company shall also provide a determination to cycle the Facility offline or restart the Facility, in whole or in part, in accordance with the terms of this Agreement.

“Company-Owned Interconnection Facilities” – Shall have the meaning set forth in Section 1(A) (General) of Attachment G (Company-Owned Interconnection Facilities).

“Company Request” – Each Technical and Operational Requirements Information Request and each Resilience Requirements Information Request.

“Company Site Representative” – Company’s representative as described in Section 10.5 (Company Site Representative).

“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 individual(s) designated by job position(s) as Company’s representative(s) to act on behalf of Company on all issues regarding the daily dispatch of all generation being supplied to the Company System.

“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 Decision & Order No. 23121.

“Consent to Assignment” – Shall have the meaning in Section 20.2 (Company’s Consent and Acknowledgment).

“Construction Milestones” – The Reporting Milestones set forth in Attachment L (Reporting Milestones) and the Guaranteed Milestones set forth in Attachment K (Guaranteed Project Milestones).

“Consumer Advocate” – The Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii which represents the interests of consumers in proceedings involving the Company.

“Consumer Price Index” – The Consumer Price Index for All Urban Consumers (CPI-U).

“Contract Firm Capacity” – [REDACTED] kW, which represents the anticipated net dependable active power for export at the Point of Interconnection of the Facility upon Commercial Operations as proposed by Seller in its RFP Proposal.

“Contract Year” – A twelve (12) Calendar Month period which begins on the first Day of the month coincident with or (in the event the Commercial Operations Date is not the first Day of a Calendar Month) next following the Commercial Operations Date and, thereafter during the Term, each anniversary thereof; provided, however, that, in the event the Commercial Operations Date is not the first Day of the Calendar Month, the initial Contract Year shall also include the Days from the Commercial Operations Date to the first Day of the succeeding month.

“Control System Acceptance Test(s)” or “CSAT” – Shall mean the 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 SCADA 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, running/stopped, etc.
- Seller’s generation data (analog values) – generators, voltage, current, MW, MVAR, etc.
- Seller’s generation performance (status and/or analog values) – available Ramp Rate, generator frequency, etc.
- Dispatch Active Power control interface – MW setpoint (or Raise/Lower), Available Capacity, Minimum dispatch limit, etc.

- Reactive Power control interface – reactive power mode (AVR, PF, constant MVAR), voltage kV setpoint feedback, voltage raise/lower, etc.

This Control System Telemetry and Control List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

“Covered Entities”: Shall mean the International Brotherhood of Electrical Workers, Local 1260, the Bricklayers & Allied Craftworkers, Local Union 1, the Operating Engineers, Local Union 3, District Council 50 (Local Union 1791, Local Union 1889, Local Union 1926, and Local Union 1944), the Elevator Constructors, Local Union 126, the Heat & Frost Insulators & Allied Workers, Local Union 132, the United Union of Roofers, Waterproofers & Allied Workers, Local Union 221, the International Association of Sheet Metal, Air, Rail & Transportation Workers, Local Union 293, the Laborers International Union of North America, Local Union 368, the Iron Workers, Local Union 625, the International Brotherhood of Boilermakers, Local Union 627, the Operative Plasterers and Cement Masons, Local Union 630, the Plumbers and Fitters, Local Union 675, the Hawaii Teamsters & Allied Workers, Local Union 996, and the International Brotherhood of Electrical Workers, Local Union 1186.

“Daily Delay Damages” – Shall have the meaning set forth in Section 2.4(D)(1)(b) (Daily Delay Damages).

“Day” – A calendar day.

“Demonstrated Firm Capacity” – The amounts of capacity that Seller demonstrates for the Facility in accordance with Section 5.1(E) (Capacity Test) and in accordance with the procedures set forth in Attachment W (Capacity Test Procedures), but not to exceed the Contract Firm Capacity.

“Development Period Security” – Shall have the meaning set forth in Section 7.1(B) (Development Period Security).

“Disconnection Event” – Shall have the meaning set forth in Section 4(a) of Attachment B (Facility Owned by Seller) to this Agreement.

“Dispatch Range” – The range of real power output through which the Facility Resource(s) can be dispatched by remote control under Company’s EMS, in accordance with and as described in Section 3.3(A) (Dispatch of Facility Power). Notwithstanding anything to the contrary, the Dispatch Range shall be provided between     MW and the Available Capacity of the Facility.

“Dispute” – Shall have the meaning set forth in Section 17.1 (Good Faith Negotiations).

“DoH” – The State of Hawai‘i Department of Health.

“Dollars” – The lawful currency of the United States of America.

“EAF” or “Equivalent Availability Factor” – The ratio (in percent) calculated in accordance with the formula, terms and concepts defined by NERC GADS, as set forth in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS), based on the Net Maximum Capacity of the Facility, unless otherwise defined in this Agreement.

“Effective Date” – The same date as the Non-appealable PUC Approval Order Date.

“EFOF” or “Equivalent Forced Outage Factor” – The ratio (in percent) calculated in accordance with the formula, terms and concepts defined by NERC GADS, as set forth in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS), based on the Net Maximum Capacity of the Facility, unless otherwise defined in this Agreement.

“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. The EMS 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, and 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 Charge” – The amount to be paid by Company to Seller pursuant to Section 5.1(C) (Energy Charge) of this Agreement for the Net Electric Energy Output.

“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.

“Environmental Credits” – Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the fact that Facility is a non-fossil fuel facility. Such Environmental Credits shall include, but not be limited to, 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 any existing and future tax credits (however those tax credits may be styled, including, without limitation, energy, production, investment and other such tax credits or abatements or any other or similar tax benefits under federal, state or local tax laws), including any cash grants available in lieu of tax credits.

“Environmental Policy” – Shall mean, collectively, that certain Hawaiian Electric Companies' Procurement of Biofuel from Sustainably Produced Feedstock (prepared by Hawaiian Electric and NRDC, dated August 2013) and the Roundtable on Sustainable Biofuels (RSB) Principles and Criteria for Sustainable Biofuel Production (prepared by the Roundtable on Sustainable Biofuels 2010) (RSB reference code: [RSB-STD-01-001 (Version 2.0)]).

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

“Escrow Agent” – Shall have the meaning set forth in Section 7.1(I) (L/C Proceeds Escrow).

“Event of Default” – An event or occurrence specified in Section 8.1(A) (Default by Seller) or Section 8.1(B) (Default by Company).

“Exclusive Negotiation Period” – Shall have the meaning set forth in Section 2(B) (Negotiations) of Attachment P (Sale of Facility by Seller).

“Execution Date” – The date referred to in the first paragraph of the first page of this Agreement.

“Facility” – **[THE FINAL WORDING OF THIS DEFINITION WILL BE BASED ON THE LOCATION OF THE FACILITY, INTERCONNECTION POINT AND RELATED FACTORS]** – Seller’s renewable **[IDENTIFY TYPE OF GENERATION]** electric energy generating facility that is the subject of this Agreement and as more fully described in Attachment A (Facility Description), including the Seller-Owned Interconnection Facilities, Seller’s Fuel supply facilities (including all facilities required for importation, receipt, storage and handling of Fuel and other necessary consumables, waste collection, interim and final waste disposal, cooling water and any other facilities necessary for proper operation of the Facility), the Fuel, the Site, the Land Rights and all other real property, equipment, fixtures and personal property owned, leased, controlled, operated or managed in connection with the production and delivery of electric energy by Seller to the Company System. **[IF THE AGREEMENT CONTAINS A PROVISION FOR THERMAL ENERGY SALES, FACILITY DEFINITION SHOULD REFER TO EQUIPMENT FOR STEAM SALES AND THAT SHOULD ALSO BE REFERENCED IN ATTACHMENT A.]**

“Facility Conditions Precedent” – The conditions listed in Section 2.3(A) (Seller’s Facility Conditions Precedent).

“Facility Description” – Shall have the meaning set forth in Attachment A (Facility Description).

“Facility Lender” – Any and all lenders and equity investors providing the Financing Debt for the construction financing or permanent financing (including refinancing) for the Facility and any and all nominees, trustees and collateral agents associated therewith. For purposes of any notices herein required to be delivered by Company to the Facility Lender, it

shall be sufficient for Company to deliver such notices to the Party designated under the Financing Documents as the collateral agent, agent, trustee or nominee for such Facility Lender.

“FASB” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“FASB ASC 810” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“FASB ASC 842” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“Fast Start Generating Resource” – A generator resource designed to quickly respond to Company remote dispatch instructions and reach full output within a short time frame, a few to thirty (30) minutes. These resources are used by the Company when quick power availability is critical, such as for system black start and restoration, replacement reserves, peak demand, and supplemental capacity. This type of resource should provide for short minimum runtime and downtime, multiple starts per day, and a fast-ramping capability of at least 4 MW / minute.

“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.

“Financial Compliance Information” – Shall have the meaning set forth in Section 3.2(I)(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).

“Financing Cost Comparison”: Shall mean a cost comparison, confirmed as accurate by an officer of Seller (or other documentation reasonably acceptable to Company), and which illustrates the difference between the (1) financing costs Seller estimated for each of its construction financing and its long-term financing, as applicable, when it submitted its BAFO, consistent with the indicative costs and fees and any other documentation Seller received from potential lenders and financing parties (and submitted as part of its RFP Proposal) supporting such estimated financing costs, and (2) Seller’s actual financing costs for its construction financing or long-term financing, as applicable, as supported by executed financing agreements and/or other documentation of costs paid by Seller to lenders or other financing parties to complete the Construction Financing Closing Milestone or to close on long-term financing, as applicable.

“Financing Debt” – The financing 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.

“Financing Documents” – The loan and credit agreements, notes, indentures, security agreements and other agreements, documents and instruments relating to the Financing Debt for the construction financing and permanent financing (including refinancing and amendments) entered into by Seller for the Facility, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Fixed O&M Component Rate” – Shall have the meaning set forth in Section (B)(2) (Fixed O&M Component Rate) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Force Majeure” – An event that satisfies the requirements of Section 18.1 (Definition of Force Majeure), is consistent with Section 18.2 (Events That Could Qualify as Force Majeure) but not excluded by Section 18.3 (Exclusions From Force Majeure).

“Fossil Fuel” – Shall mean the fossil fuel designated in Section 1(A) (Designation of Renewable Fuel and Fossil Fuel) of Attachment DD (Fuel Designation and Switching) to be used at the Facility as an alternative to the Renewable Fuel.

“Fuel” – The fuel for the Facility shall be a source of cost-effective renewable energy as defined by HRS 269-91 and shall be subject to PUC approval, either: **[TYPE OF FUEL TO BE INSERTED AS APPROPRIATE FOR THE SPECIFIC PROJECT. EXAMPLES INCLUDE: (1) FALLING WATER; (2) BIOGAS, INCLUDING LANDFILL AND SEWAGE-BASED DIGESTER GAS; (3) GEOTHERMAL; (4) OCEAN WATER, CURRENTS, AND WAVES, INCLUDING OCEAN THERMAL ENERGY CONVERSION; (5) BIOMASS, INCLUDING BIOMASS CROPS, AGRICULTURAL AND ANIMAL RESIDUES AND WASTES, AND MUNICIPAL SOLID WASTE AND OTHER SOLID WASTE; (6) BIOFUELS (LIQUID OR GASEOUS FUELS PRODUCED FROM ORGANIC SOURCES SUCH AS BIOMASS CROPS, AGRICULTURAL RESIDUES AND OIL CROPS, SUCH AS PALM OIL, CANOLA OIL, SOYBEAN OIL, WASTE COOKING OIL, GREASE, AND FOOD WASTES, ANIMAL RESIDUES AND WASTES, AND SEWAGE AND LANDFILL WASTES); OR (7) HYDROGEN PRODUCED FROM RENEWABLE ENERGY SOURCES.]** The type of Fuel to be used in the Facility shall be specified in Seller’s Fuel report. The Fuel shall be suitable for the operation of the Facility in accordance with this Agreement, the Company’s Environmental Policy, applicable Governmental Approvals and equipment manufacturer specifications relating to the Facility. **[COMPANY AND SELLER WILL DISCUSS FUEL CERTIFICATION REQUIREMENTS IF APPROPRIATE FOR THE SPECIFIC PROJECT.]** Seller shall communicate the proposed fuel’s renewable certifications at the time of proposal. **For evaluation purposes, the Company recognizes EPA certification. Fuels without EPA**

certification may be considered if compliant with the Environmental Policy. The Company may disqualify Proposals lacking adequate renewable certifications at its discretion.

“Fuel Blend” – Shall mean a blend of the Renewable Fuel and the Fossil Fuel as described in Section 1(A) (Designation of Renewable Fuel and Fossil Fuel) of Attachment DD (Fuel Designation and Switching) to be used at the Facility.

“Fuel Change” – Shall mean an agreement by and between Company and Seller to designate a Fuel other than the Renewable Fuel or Fossil Fuel that may be used at the Facility, as may be necessary or desirable over the Term to allow flexibility with respect to fuels, fuel storage, and fuel inventory to meet changing needs, greenhouse gas reduction requirements, or State of Hawai‘i energy policy objectives that may arise due to new technology or other changed circumstances, and as described in Section 3(A) (Fuel Change Option) of Attachment DD (Fuel Designation and Switching).

“Fuel Change Amendment” – Shall mean the agreement between Seller and Company as described in Section 3(B)(3) (Discussion of Fuel Change Proposal) of Attachment DD (Fuel Designation and Switching) specifying a Fuel Change and setting forth the changes to the Agreement necessary to implement such Fuel Change, including changes to Energy Charge provisions and changes to performance guarantees and Liquidated Damages, if appropriate.

“Fuel Change Option” – Shall mean Company’s option to designate a Fuel other than the Renewable Fuel or the Fossil Fuel that may be used at the Facility, and as described in Section 3(A) (Fuel Change Option) of Attachment DD (Fuel Designation and Switching).

“Fuel Change Proposal” – Shall mean Seller’s proposal responsive to Company’s NOI as described in Section 3(B)(2) (Fuel Change Proposal) of Attachment DD (Fuel Designation and Switching) that includes, at minimum, a Fuel Change implementation plan and schedule, Fuel Change pricing impact, Fuel Change contracting plan and requirements, any operations and maintenance revisions, and a verification procedure to confirm that the Fuel Change meets all applicable laws, permits and other administrative requirements, including the RPS Law.

“Fuel Component” – Shall have the meaning set forth in Section (A)(1) (Energy Charge Formula) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Fuel Emergency” – Shall mean the condition defined in Section 2(B) (Seller-Requested Fuel Switch) of Attachment DD (Fuel Designation and Switching).

“Fuel Report” – The annual Fuel plan which shall be delivered in a format acceptable to Company pursuant to Section 2.3(A)(2) (Executed Project Documents) and which demonstrates that Seller has secured sufficient Fuel and other necessary consumables to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term. Where the Fuel for the Facility is biomass, the Fuel Report shall include but not be limited to, as applicable, a forestry development plan, crop rotation plan, harvesting and regeneration rates and schedule, description of silviculture practices in-place, and tree condition inventory. Where the Fuel for the Facility is biogas, biofuel, or hydrogen produced from renewable energy

sources, the Fuel Report shall include but not be limited to, as applicable, any and all Fuel supply agreements and/or agreements for the supply of the raw material required to produce the Fuel.

“Fuel Supply Agreements” – The agreements, a copy of which are delivered to Company pursuant to Section 2.3(A)(2) (Executed Project Documents), under which Seller obtains Fuel for the Facility.

“Fuel Switch” – Shall mean the change from the Fuel currently being used at the Facility as directed by Company, at any time, in its sole discretion, and as described in Section 2(A) (Company’s Option to Fuel Switch) of Attachment DD (Fuel Designation and Switching).

“GDPIPD” or “Gross Domestic Product Implicit Price Deflator” – Shall mean the index value shown in the United States Department of Commerce, Bureau of Economic Analysis (“BEA”) publication entitled “Implicit Price Deflators for Gross Domestic Product”, Table 1.1.9, Line 1, for each quarter of the calendar year (BEA Interactive Data Application), or a successor publication or index, which may be used to adjust the BAFO Capacity Charge Rate.

“GDPIPD<sub>BAFO Submission</sub>” – □, which represents the GDPIPD as of the calendar quarter in which Seller submitted its BAFO Capacity Charge Rate.

“GDPIPD<sub>PUC Approval</sub>” – Shall mean the latest GDPIPD released as of the PUC Approval Order Date.

“GDPIPD Compare Rate” – Shall have the meaning set forth in Section 5.1(D)1 (BAFO Capacity Charge Rate Adjustment).

“GHG Letter Agreement” – Shall mean the letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the greenhouse gas emissions analysis to be completed in connection with the application with the PUC for regulatory approval of this Agreement.

“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, and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

1. Adequate materials, resources and supplies, including Fuel and necessary consumables, are available to meet the Facility’s needs under normal conditions and reasonably foreseeable abnormal conditions.

2. 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.
3. Preventive, predictive, 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.
4. Appropriate monitoring and testing is done to ensure that equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
5. Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as steam pressure, temperature, moisture content, chemical content, quality of make-up water, operating voltage, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.
6. Facility design and operation meets the Contract Firm Capacity under natural conditions reasonably anticipated to occur during the life of this Agreement including consideration of probable seismic events, tropical storms, hurricanes, and volcanic eruptions.

"Governmental Approvals" – All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required to fulfill its obligations under this Agreement, including 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.

"Guaranteed Commercial Operations Date" or "GCOD" – The date specified as such in Attachment K (Guaranteed Project Milestones), which is the date Seller guarantees that it will achieve Commercial Operations of the Facility.

"Guaranteed Milestones" – Each of the events described as Guaranteed Milestones in Attachment K (Guaranteed Project Milestones).

“Guaranteed Procurement Payment Date” – The date specified in Attachment K-1 (Seller’s Conditions Precedent and Company 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).

“Hawai‘i General Excise Tax” – The tax on gross income codified under HRS Chapter 237 and administered by the State of Hawai‘i Department of Taxation and all other similar taxes imposed by any Governmental Authority with respect to payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, but excluding federal or state net income tax.

“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.

“Heat Rate” – The amount of energy used to generate one kilowatt-hour (kWh) of electricity, used to measure the efficiency of a generating unit at a given MW output. Heat Rate is expressed in British thermal units (BTU) per kWh.

“Heat Rate Curve” – A polynomial equation that describes the relationship between the heat input and the power input of an individual generating unit by plotting the amount of heat energy (BTU) required to produce one unit of electrical output (MWh) (i.e., the Heat Rate) as a function of the generating unit’s net output (MW) at the point of interconnection. Company may, in its sole discretion, use a generating unit’s gross output (MW) based on factors such as Facility configuration and/or resource type, and/or model a Heat Rate Curve as a composite or combination of generating units. The Heat Rate Curve(s) are intended to represent the expected efficiency of the Facility generating units in actual operation at the Site as opposed to ideal conditions.

“Heat Rate Test” - The test performed in accordance with the requirements of Section 3(w) (Heat Rate Curve) of Attachment B (Facility Owned by Seller), and used to develop or demonstrate the Heat Rate Curve(s). Heat Rate Tests shall be conducted with the Facility in its normal operational configuration.

“HEI” – Hawaiian Electric Industries, Inc., a Hawai‘i corporation.

“HERA” – The Hawaii Electric Reliability Administrator.

“HERA Law” – Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawaii 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 Hawaii electricity reliability surcharge to be collected by Hawaii'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 Hawaii 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 Hawaii electric system, or other person, business, or entity, considered by the PUC to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system.

“HST” – Hawai‘i Standard Time.

“HRS” – Means the Hawai‘i Revised Statutes, as may be amended.

“Indemnified Company Party” – Shall have the meaning set forth in Section 13.1(A) (Indemnification Against Third Party Claims).

“Indemnified Seller Party” – Shall have the meaning set forth in Section 13.2(A) (Indemnification Against Third Party Claims).

“Independent Engineering Assessment” – The determination and recommendations made by a Qualified Independent Engineering Company regarding the operation and maintenance practices of Seller at the Facility pursuant to Section 3.3(B)(1) (Implementation of Independent Engineering Assessment).

“Independent Evaluator” – The person selected to resolve a dispute under Section 24.10 (Dispute).

“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 Fuel” – Shall mean the Fuel (or Fuel Blend) designated by Company to be used at the Facility upon the Commercial Operations Date.

“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 the PUC’s General Order No. 7, Company tariffs, operational practices and planning criteria), such as, but not limited to, transmission lines, transformers, switches, circuit breakers and telecommunication, as may be further described in the Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities). Interconnection Facilities includes Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities.

“Investment Grade Capacity Charge Rate” – Investment Grade Capacity Charge Rate (\$/kW/month) amount provided by Seller in its Best and Final Offer, as defined in the RFP.

“Investment Grade Status” – A credit rating for the Company’s senior unsecured long-term debt obligations or an issuer credit rating for the Company, in each case, without regard for third-party credit enhancements, from at least two out of three of the following:

- (1) BBB- or higher for S&P Global Ratings, or any successor by law;
- (2) BAA3 or higher by Moody's Investor Services, Inc., or any successor by law; or
- (3) BBB- or higher by Fitch Ratings, Inc., or any successor by law.

“IPP Bill” – H.B. 974 and S.B. 1501 from the 2025 Hawai‘i State Legislative Session or a subsequent similar bill.

“IRS” – The interconnection requirements study, performed in accordance with the terms of the IRS Letter Agreement and with Section 1.c (IRS) of Attachment G (Company-Owned Interconnection Facilities) to assess, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Technical and Operational Requirements of the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

“IRS Letter Agreement” – The letter agreement and any written, signed amendments thereto, between Company and Seller that describes the scope, schedule, and payment arrangements for the IRS.

“Interface Block Diagram” – The visual representation of the signals between Seller and Company, including but not limited to, RTU points, digital fault recorder settings, telecommunications and protection signals.

“kVA” – KiloVar(s).

“kVARh” – Kilovarhour(s).

“kW” – Kilowatt(s). Unless expressly provided otherwise, all kW values stated in this Agreement are alternating current values and not direct current values.

“kWh” – Kilowatthour(s).

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

“Laws” – Shall have the meaning set forth in Section 3.2(E) (Compliance with Laws).

“Liquidated Damages” – Any of the damages provided for in Article 9 (Liquidated Damages), Attachment B (Facility Owned by Seller) and Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“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.

“Major Generating Equipment Overhaul” – Overhaul, replacement or other major scheduled maintenance of the major generating equipment component of the Facility, e.g., combustion turbine, internal combustion engine, electrical generator conducted (i) in accordance with the equipment manufacturer’s recommendations or (ii) otherwise in the judgment of Seller in accordance with Good Engineering and Operating Practices.

“Malware” – Computer software, code or instructions that: (a) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) without functional purpose, self-replicate without manual intervention; (c) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

“Management Meeting” – Shall have the meaning set forth in Section 17.1 (Good Faith Negotiations).

“Metering Point(s)” – The physical point(s) located on the high voltage side of the step up transformer(s), as depicted in Attachment E (Single-Line Diagram And Interface Block

Diagram), at which Company’s metering is connected to the Facility for the purpose of measuring the output of the Facility in kW, kWh, kVAr and kVArh.

“Milestone Date(s)” – The date(s) in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones) for completion of the applicable Construction Milestone(s).

“Milestone Date Delay LD Period” – Shall have the meaning set forth in Section 2.4(D)(1)(A) (Milestone Delay Damages).

“Milestone Delay Damages” – Shall have the meaning set forth in Section 2.4(D)(1)(A) (Milestone Delay Damages).

“Modification Pricing Impact”: Each Technical and Operational Requirements Pricing Impact and Resilience Requirements Modification Pricing Impact, as applicable.

“Monthly Invoice” – Shall have the meaning set forth in Section 6.1 (Monthly Invoice).

“Monthly Progress Report” – Shall have the meaning set forth in Section 3.2(A)(7) (Monthly Progress Reports).

“MVAR” – Megavar(s).

“MW” – Megawatt(s).

“MWh” – Megawatthour(s).

“NERC GADS” or “North American Electric Reliability Council Generating Availability Data System” – The data collection system called “Generating Availability Data System” which is utilized by the North American Electric Reliability Council, a voluntary organization formed by the electric utility industry to promote the reliability and adequacy of the bulk power supply of the electric utility systems in North America. For purposes of this Agreement, the most current version of NERC GADS (selected portions of which are attached hereto as Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS)) shall be used whenever reference is made to NERC GADS. In the event that the definition of a term contained in this Article 1 (Definitions) is inconsistent with the definition of the term under NERC GADS, the definition contained in this Article 1 (Definitions) shall control.

“Net Amount” – Shall mean, with respect to any Hawai‘i Renewable Energy 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 Energy 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 Energy Tax Credit.

“Net Electric Energy Output” – For any period of time, the total electric energy output of the Facility in kWh (net of auxiliaries and transformer losses) delivered to Company as measured at the Metering Point of the Facility.

“Net Maximum Capacity” – The maximum capacity the Facility can sustain over a specified period of time when not restricted by seasonal or other deratings less capacity utilized for the Facility’s station service or auxiliaries and less transformer losses, as measured at the Metering Point.

“Non-appealable PUC Approval Order” – Shall have the meaning set forth in Section 25.12(B) (Non-appealable PUC Approval Order).

“Non-appealable PUC Approval Order Date” – Shall have the meaning set forth in Section 25.12(D) (Non-appealable PUC Approval Order Date).

“Non-Investment Grade Capacity Charge Rate” – Non-Investment Grade Capacity Charge Rate (\$/kW/month) amount provided by Seller in its Best and Final Offer, as defined in the RFP.

“Non-Refundable Tax Credit” – Shall mean any U.S. Federal Tax Credit and State of Hawai‘i Tax Credit (including both a Hawai‘i Investment Tax Credit and a Hawai‘i Production Tax Credit) for which the federal government or State of Hawaii is not required to refund any tax credit which exceeds the tax payments due to the federal government or State of Hawai‘i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

“Notice of Intent” or “NOI” – Shall mean the written notice of intent as described in Section 3(B)(1) (Notice of Intent to Exercise Fuel Change Option) of Attachment DD (Fuel Designation and Switching) and delivered by Company to Seller to exercise the Company’s Fuel Change Option, which shall specify the relevant desired parameters of the Fuel Change, which shall include type of fuel and/or mix of fuels, fuel storage capability, level of fuel inventory, volumetric range for the fuel, and rate of fuel deliveries.

“Operating Period Security” – Shall have the meaning set forth in Section 7.1(D) (Operating Period Security).

“Party” – Each of Seller or Company.

“Parties” – Seller and Company, collectively.

“Per Hour Variable Component” – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Per kWh Variable Component” – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Point of Interconnection” – The point of delivery of energy output supplied by Seller to Company, depicted on Attachment E (Single-Line Diagram and Interface Block Diagram) based on the results of the IRS, where the facilities owned by Seller interconnect with the facilities owned by Company. Seller shall own and maintain the facilities from the Facility to the Point of Interconnection. Company shall own and maintain the facilities from the Point of Interconnection to the Company System.

“Post-COD Termination Damages” – Shall have the meaning set forth in Section 9.3(B) (Post-COD Termination Damages).

“Pre-COD Termination Damages” – Shall have the meaning set forth in Section 9.3(A) (Pre-COD Termination Damages).

“Pre-CSAT Partial In-Service Date”: Each date from which a Pre-CSAT Partial Installation has been placed into service by commencing the Control System Acceptance Test by delivering Test Energy to the Point of Interconnection in accordance with this Agreement.

“Pre-CSAT Partial In-Service Notice”: Shall have the meaning set forth in Section 2 (Partial Commissioning) of Attachment O (Control System Acceptance Test Criteria).

“Pre-CSAT Partial Installation”: Any partial installation approved in accordance with Section 2 (Partial Commissioning) of Attachment O (Control System Acceptance Test Criteria), aggregated with the most recent Post-CSAT Partial Installation (in MW), of the Facility’s total Contract Capacity which has commenced (but not yet completed) the Control System Acceptance Test.

“Prime Rate” – The United States "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.

“Project Documents” – This Agreement, any ground lease or other lease in respect of the Site and/or Land Rights, all construction contracts to which Seller is or becomes a party, Fuel Supply Agreement to which Seller is or becomes a party, 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 and the Security Documents, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Proprietary Rights” – Shall have the meaning set forth in Section 25.17 (Proprietary Rights).

“PUC” or “Public Utilities Commission” – Shall mean the State of Hawai‘i Public Utilities Commission.

“PUC Application Period” – Shall have the meaning set forth in Section 2.2(F)(2) (Time Period for PUC Approval).

“PUC Approval Order” – Shall have the meaning set forth in Section 25.12(A) (PUC Approval Order).

“PUC Approval Order Date” – Shall have the meaning set forth in Section 25.12(C) (Company’s Written Statement).

“PUC Fuel Change Order” – Shall mean the decision and order described in Section 3(C)(1) (Approval of the Fuel Change Amendment) of Attachment DD (Fuel Designation and Switching) from the PUC approving the application or motion by the Parties seeking (i) approval of the Fuel Change and the associated Fuel Change Amendment, (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 Revision Order” – The decision and order of the PUC (i) approving the application or motion by the Parties seeking (a) approval of each Technical and Operational Requirements Revision and each Resilience Requirements Revision in question (if applicable) and (b) approval of Revision Document in question, (ii) finding that the impact of the changes to the Contract Pricing on Company's revenue requirements is reasonable (if applicable), and (iii) approving the inclusion of the costs arising out of pricing changes in Company's Energy Cost Recovery Clause and/or Company's Purchased Power Adjustment Clause (or equivalent).

“PUC RPS Order” – Shall have the meaning set forth in Section 4 (RPS Modifications Document) of Attachment AA (Renewable Portfolio Standards) to this Agreement.

“PUC Submittal Date” – The date of submittal of Company’s complete application or motion for approval of this Agreement pursuant to Section 2.2(C) (PUC Approval).

“Purchased Power Adjustment Clause” – The Company’s cost recovery mechanism incorporated into Company’s tariff rules as approved by the PUC in Docket No. 2009-0164, Decision and Order No. 30168 (filed February 8, 2012) (or such successor provision that may be established from time to time), which permits Company to recover all capacity, operations and maintenance, and other non-energy payments incurred by the Company pursuant to a purchased power agreement.

“Qualified Independent Engineering Company” – Any company listed on Attachment D (Consultants List - Qualified Independent Engineering Companies), as such list is amended from time to time.

“Qualified Independent Engineers List” – The list of Qualified Independent Engineering Companies attached hereto as Attachment D (Consultants List - Qualified Independent Engineering Companies) and created and modified from time to time pursuant to Section 3.3(B)(2) (Qualified Independent Engineering Companies).

“Ramp Rate” – The rate at which the active power output of the online Facility is changed in a constant manner over a fixed time in units of MW/minute. The ramp should be a constant slope over the duration of the change in output, and not a step change(s). See Attachment B (Facility Owned by Seller) for the specifications and limits to the Facility Ramp Rate. [NOTE: RAMP RATE CAPABILITIES MAY VARY BY RESOURCE TYPE.]

“Recipient” – Shall have the meaning set forth in Section 3.2(I)(2) (Confidentiality).

“Reference Year” – Shall refer to the base year specifically referred to within the Agreement as the starting point for escalation as set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Refundable Tax Credit” – Shall mean any U.S. Federal Tax Credit or State of Hawai‘i Tax Credit (including both a Hawai‘i Investment Tax Credit and a Hawai‘i Production Tax Credit) for which the federal government or State of Hawai‘i is required to refund any tax credit which exceeds the tax payments due to the federal government or State of Hawaii by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

“Remote Terminal Unit” or “RTU” – The interface between Company’s SCADA and the physical equipment at the Facility.

“Renewable Energy Source” – Shall mean a source enumerated in the definition of “Renewable energy” in the RPS Law.

“Renewable Fuel” – Shall mean the Fuel to be used at the Facility as the designated renewable fuel satisfying the requirements to be deemed a “biofuel” under the RPS Law.

“Reporting Milestones” – Each of the events identified as Reporting Milestones in Attachment L (Reporting Milestones).

“Required Model” – Shall have the meaning set forth in Section 6.a. (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller).

“Resilience Requirements” – The various standards for the Facility and the Company-Owned Interconnection Facility specified in Section 1(b)(iii)(I) (Resilience Requirements) of Attachment B (Facility Owned by Seller) and Section 2(A)(3) of Attachment G (Company-Owned Interconnection Facility), as such standards may be revised from time to time pursuant to Article 24 (Process for Addressing Revisions to Certain Requirements) of this Agreement.

“Resilience Requirements Information Request” – A written notice from Company to Seller proposing revisions to one or more of the Resilience Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

“Resilience Requirements Modification” – For each Resilience Requirements 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 requirements of such Resilience Requirements Revision that exceed the requirements of any applicable Laws.

“Resilience Requirements Modification Pricing Impact” – Any reimbursement as may be necessary to specifically reflect the recovery of the net costs specifically attributable to any Resilience Requirements 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 Resilience Requirements Modification is made effective following a PUC Revision Modification 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) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Resilience Requirements Modification.

“Resilience Requirements Proposal” – A written communication from Seller to Company detailing the following with respect to a proposed Resilience Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Resilience Requirements Revision and the basis therefor; (ii) the Resilience Requirements Modifications proposed by Seller to comply with the Resilience Requirements 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 Resilience Requirements Modification 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, that would be commercially reasonable under the circumstances, for failure to comply with the Resilience Standard Revision; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Resilience Requirements Proposal may be issued either in response to a Resilience Requirements Information Request or on Seller's own initiative; provided, however, that, in accordance with Section 23.3 (Seller Proposal), Company shall have no obligation to evaluate a Resilience Requirements Proposal submitted at Seller's own initiative.

“Resilience Requirements Revision” – A revision, as specified in a Resilience Requirements Information Request or a Seller-initiated Resilience Requirements Proposal, to the Resilience Requirements in effect as of the date of such Request or Proposal.

“Resilience Requirements Revision Document” – A document specifying one or more Resilience Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Resilience Requirements Revision(s). A Resilience Requirements 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.

“Revenue Metering Package” – The primary revenue meter, backup revenue meter (if required by Company), revenue metering PTs and CTs, secondary wiring, terminal blocks, test switches and fuses for secondary wiring.

“Revision Document” – Each Technical and Operational Requirements Revision Document and Resilience Requirements Revision Document, as applicable.

“Revision Modification” – Each Technical and Operational Requirements Modification and Resilience Requirements Modification, as applicable.

“Right of First Negotiation Period” – Shall have the meaning set forth in Section 1(a) (Right of First Negotiation) of Attachment P (Sale of Facility by Seller).

“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 Law” – The Hawai‘i law that mandates that Company and its subsidiaries generate or purchase certain amounts of renewable electrical energy, excluding customer-sited, grid connected generation that does not produce renewable energy. The Renewable Portfolio Standards or “RPS” requirements of the RPS Law are currently codified as HRS §§ 269-91 through 269-95.

“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 4 (RPS Modifications Document) of Attachment AA (Renewable Portfolio Standards) to this Agreement.

“RPS Pricing Impact” – Any reimbursement, adjustment in rates for purchase set forth in Article 5 (Rates for Purchase) in \$/kWh and/or \$/kW per month and/or the calculation of Liquidated Damages, as may be 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 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; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Technical and Operational Requirements Modification; and (iv) an adjustment in pricing or warranties of performance under Section 3.2(B) (Warranties and Guarantees of Performance), as applicable, necessary to compensate Seller for reasonably expected reduction, if any, in the Capacity Charge or reasonably expected increases in Liquidated Damages directly related to the Technical and Operational Requirements Modification or Technical and Operational Requirements Revision.

“Second Notice” – Shall have the meaning set forth in Section 3.3(B)(1)(c).

“Security Funds” – Shall have the meaning set forth in Section 7.1(F) (Security Funds).

“Seller” – Shall have the meaning set forth in the first paragraph of the first page of this Agreement.

“Seller Proposal” – Each Technical and Operational Requirements Proposal and each Resilience Requirements Proposal.

“Seller-Requested Fuel Switch” – Shall mean a request made in writing by Seller to Company to implement a Fuel Switch in the event of a Fuel Emergency, as further described in Section 2(B) (Seller-Requested Fuel Switch) of Attachment DD (Fuel Designation and Switching).

“Seller’s Centralized Control System” – Shall have the meaning set forth in Section 2(A) (Seller’s Centralized Control System) of Attachment Y (Operation and Maintenance of the Facility).

“Seller’s General Manager” – The person appointed by Seller to act as the principal on-site person who is responsible for the Facility.

“Seller’s RPS Modifications Proposal” – Shall have the meaning set forth in Section 2.1(G) (Renewable Portfolio Standards).

“Seller-Owned Interconnection Facilities” – The Interconnection Facilities constructed and owned by Seller as described in Section 1 (The Facility) of Attachment B (Facility Owned by Seller).

“Single Point of Failure Violation” – Any loss of greater than [**142 MW – Oahu, 30 MW – Hawai‘i, 20 MW – Maui**] MW, or the total loss of Facility power output if the Facility Net Nameplate Capacity is less than or equal to [**142 MW – Oahu, 30 MW – Hawai‘i, 20 MW – Maui**], measured at the Point of Interconnection due to a common (single) cause, element or system event.

“Site” – The parcel of real property, or any portion thereof, 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 by Seller, as further described in Section 2.1(D) (Site) and Attachment A (Facility Description).

“SOX 404” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“Start-up” – **[START-UP DEFINITION MAY BE REFINED BASED ON THE TECHNOLOGY USED BY SELLER. FACILITIES WITH FAST-STARTING FLEXIBLE RESOURCE(S) SUCH AS FOR REPLACEMENT RESERVES OR PEAKING USE ARE DESIRED TO HAVE STARTUP WITHIN 30 MINUTES OR LESS AND ALLOW MULTIPLE STARTS PER DAY. RESOURCES THAT OPERATE FOR EXTENDED PERIODS AND/OR CONTINUOUSLY MAY NEED TO DEFINE A WARM AND COLD START]** The action of bringing the Facility resource(s) from non-operation to operation at the Minimum Load Capability of [ ]MW or Demonstrated Firm Capacity, whichever is lower.

“Start-up Failure” – An outage that results when a generating unit is unable to synchronize within a specified startup time following an outage or Reserve Shutdown.

“Subsequent Capacity Test” – A Capacity Test, requested by Seller and agreed to by Company in its sole and absolute discretion, or initiated by Company, that may be conducted (1) after the initial Capacity Test prior to the Commercial Operations Date which establishes the Demonstrated Firm Capacity, or (2) after a Capacity Test in which Demonstrated Firm Capacity is reduced pursuant to Section 8 (Permanent Reduction in Firm Capacity) of Attachment W (Capacity Test Procedures) or (3) under the circumstances described in Section 8 (Permanent Reduction in Firm Capacity) of Attachment W (Capacity Test Procedures). A Subsequent Capacity Test may be requested no earlier than one (1) year after such initial Capacity Test or later Capacity Test unless agreed to by Company in its sole and absolute discretion.

“Supervisory Control and Data Acquisition” or “SCADA” – 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.

“Technical and Operational Requirements” – The various performance standards for the operation of the Facility and the delivery of electric energy from the Facility to the Company specified in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 24 (Process for Addressing Revisions to Certain Requirements) of this Agreement.

“Technical and Operational Requirements Information Request” – A written notice from Company to Seller proposing revisions to one or more of the Technical and Operational Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

“Technical and Operational Requirements Modifications” – For each Technical and Operational Requirements 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 Technical and Operational Requirements Revision.

“Technical and Operational Requirements Pricing Impact” – Any reimbursement, adjustment in rates for purchase set forth in Article 5 (Rates for Purchase) in \$/kWh and/or \$/kW per month and/or the calculation of Liquidated Damages, as may be necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Technical and Operational Requirements Modification necessary to comply with a Technical and Operational Requirements 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 Technical and Operational Requirements Revision is made effective following a PUC Technical and Operational Requirements Revision Order through the end of the 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; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Technical and Operational Requirements Modification; and (iv) an adjustment in pricing or warranties of performance under Section 3.2(B) (Warranties and Guarantees of Performance), as applicable, necessary to compensate Seller for a reasonably expected reduction, if any, in the Capacity Charge or reasonably expected increases in Liquidated Damages directly related to the Technical and Operational Requirements Modifications or Technical and Operational Requirements Revision.

“Technical and Operational Requirements Proposal” – A written communication from Seller to Company detailing the following with respect to a proposed Technical and Operational Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Technical and Operational Requirements Revision and the basis therefor; (ii) the Technical and Operational Requirements Modifications proposed by Seller to comply with the Technical and Operational Requirements 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 Technical and Operational Requirements 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 Technical and Operational Requirements 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 Technical and Operational Requirements Proposal may be issued either in response to a Technical and Operational Requirements Information Request or on Seller's own initiative.

“Technical and Operational Requirements Revision” – A revision, as specified in a Technical and Operational Requirements Information Request or a Seller-initiated Technical and Operational Requirements Proposal, to the Technical and Operational Requirements in effect as of the date of such request or proposal.

“Technical and Operational Requirements Revision Document” – A document specifying one or more Technical and Operational Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Technical and Operational Requirements Revision(s). A Technical and Operational Requirements Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to Section 24.10 (Dispute) of this Agreement, in the absence of such written agreement.

“Term” – Shall have the meaning set forth in Section 2.2(A) (Term).

“Third Party” – Any person or entity other than Company or Seller, and includes, but is not limited to, any subsidiary or affiliate of Seller.

“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 25.12(E) (Unfavorable PUC Order).

“U.S. EPA” – The United States Environmental Protection Agency.

“Unit Trip” – The sudden and immediate removal from service of one of the Facility’s generators as a result of immediate mechanical/electrical/hydraulic control system trips or Facility operator-initiated action which causes a similar immediate removal from service or rapid and immediate reduction in power delivery at the Point of Interconnection.

“Variable O&M Component” – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“60-Month Schedule” – Shall have the meaning set forth in Section 8.a (60-Month Schedule) of Attachment Y (Operation and Maintenance of the Facility).

## ARTICLE 2 - SCOPE OF AGREEMENT

### 2.1 General Description of the Facility.

(A) Overview. Seller will design, construct, permit, own, operate and maintain the Facility to provide the Contract Firm Capacity at the point of Company interconnection, in compliance with the RPS Law (when producing renewable electrical energy as defined in the RPS Law) and the terms and conditions of this Agreement. The Demonstrated Firm Capacity and the Net Electric Energy Output of the Facility will be sold to Company under Company Dispatch for use in the Company System in accordance with the terms of this Agreement. Seller will carry out its obligations under this Agreement in all respects in a manner that gives full recognition to the fact that, in order for Company to meet its obligation under the RPS Law and to provide service to its customers, the Facility must be designed, constructed, operated, permitted, and maintained by Seller so energy produced by the Facility will comply with the RPS Law when the Facility operates using a Renewable Energy Source or Renewable Fuel, achieve the Commercial Operations Date by the Guaranteed Commercial Operations Date and thereafter be available for service in accordance with the terms of this Agreement.

(B) Facility Specifications. The Facility shall be designed and constructed in accordance with Good Engineering and Operating Practices and the RPS Law. The Facility Description is attached to this Agreement as Attachment A (Facility Description). The single-line diagrams in Attachment E (Single-Line Diagram and Interface Block Diagram) shall expressly identify the Point of Interconnection of the Facility to the Company System. The Facility shall be operated and maintained in accordance with the requirements of Attachment Y (Operation and Maintenance of the Facility).

(C) Interconnection Facilities. A description of the Interconnection Facilities and the terms and conditions related to the Interconnection Facilities shall be set forth in Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities).

(D) Site. The Site for the Facility is located at [REDACTED], Hawai'i.

(E) Requirements for Electric Energy Supplied by Seller. Electric energy supplied by Seller hereunder shall meet the specifications required by this Agreement. The Facility shall be designed to be available for continuous operation, and shall be designed to remain on-line and available to meet the requirements of Attachment B (Facility Owned by Seller) during events caused by natural forces, including but not limited to tropical storms, hurricanes, floods, earthquakes and volcanic eruptions, unless such events are of a severity as to exceed the specifications the Facility was designed to under Section 2.1(B) (Facility Specifications) except during planned outages, unplanned outages and outages pursuant to Article 4 (Suspension or Reduction of Deliveries). During events caused by natural forces, it is the intention of the Parties that the Facility shall be available for dispatch to Contract Firm Capacity to the greatest extent reasonably practicable within the then existing circumstances and conditions of operation and taking into account the Seller's determination, consistent with Good Engineering and

Operating Practices, of whether the continued operation of the Facility (1) is likely to endanger the safety of persons and or property, and (2) is likely to endanger the integrity of the Facility.

(F) Fuel and Other Consumables. Consistent with the terms and conditions of this Agreement, Seller will contract for, acquire or otherwise provide for a continuous reliable supply of the Renewable Energy Source or Fuel and other consumables necessary to operate the Facility for the Term of this Agreement. During the Term, Company may direct Seller to switch Fuel in accordance with the provisions of Attachment DD (Fuel Designation and Switching). No changes to the type of Fuel or the supply requirements of such Fuel and other necessary consumables as set forth herein shall be permitted without the prior written consent of Company.

(G) Renewable Portfolio Standards. If, as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as “renewable electrical energy,” Seller shall, at the request of Company, develop and recommend to Company a proposal of reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of “renewable electrical energy” (“Seller’s RPS Modifications Proposal”). Such Seller’s RPS Modifications Proposal shall be in accordance with the provisions of Attachment AA (Renewable Portfolio Standards).

(H) Parallel Operation. Company agrees to allow Seller to interconnect and operate the Facility to provide firm renewable dispatchable capacity 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 the Control System Acceptance Test in accordance with Good Engineering and Operating Practices.

## 2.2 Term; PUC Approval; Null and Void Rights and Company’s Option to Purchase Facility

(A) Term. The term of this Agreement shall commence on the Execution Date and shall remain in effect for thirty (30) years following the Commercial Operations Date (the “Term”), unless terminated earlier as provided herein. Upon expiration of the Term, the Parties hereto shall no longer be bound by the terms and conditions of this Agreement, except as set forth in Section 25.23 (Survival of Obligations).

### (B) Effectiveness of Certain Obligations.

(1) Upon the Execution Date and prior to the Guaranteed Commercial Operations Date, under this Agreement: (i) in no event shall Seller be obligated to sell capacity or electric energy to Company, or have any other obligations to Company other than those set forth in this Section 2.2 (Term; PUC Approval; Null and Void Rights and Company’s Option to Purchase Facility), Section 2.3(A) (Seller’s Facility Conditions Precedent), Section 3.2(A)(1) (General) (only as to obligations with respect to design

and acquiring Land Rights), Section 3.2(A)(2) (Milestone Dates), Section 3.2(A)(4) (Seller's Governmental Approvals and Land Rights), Section 3.2(A)(5) (Review of Facilities), Section 3.2(E) (Compliance with Laws), Article 7 (Credit Assurance and Security), Article 13 (Indemnification), Article 15 (Insurance), Article 17 (Dispute Resolution), Article 18 (Force Majeure), Article 20 (Transfers, Assignments and Financing Debt), Article 21 (Sale of Facility by Seller), Article 25 (Miscellaneous) and Section 1(D) (Seller Payment Obligations) of Attachment G (Company-Owned Interconnection Facilities); and (ii) in no event shall Company be obligated to make any payments provided for herein to Seller or have any other obligations to Seller other than those set forth in this Section 2.2 (Term; PUC Approval; Null and Void Rights and Company's Option to Purchase Facility), Section 2.3(B) (Failure of Seller's Facility Conditions Precedent), Section 3.2(A)(4) (Seller's Governmental Approvals and Land Rights), Section 3.2(A)(5) (Review of Facilities), Article 13 (Indemnification), Article 17 (Dispute Resolution), Article 18 (Force Majeure), Article 20 (Transfers, Assignments and Financing Debt), Article 21 (Sale of Facility by Seller), and Article 25 (Miscellaneous).

(C) PUC Approval.

(1) Notwithstanding any other provisions of this Agreement that might be construed to the contrary, Company's purchase of electric energy under this Agreement and Company's payment of the Capacity Charge, and any and all terms and conditions of this Agreement that are ancillary to that purchase and that payment, are all contingent upon obtaining the Non-appealable PUC Approval Order. Upon the execution of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a satisfactory PUC Approval Order that satisfies the requirements of Section 25.12(A) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurance 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 as information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether 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.

(2) 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 the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

(D) [RESERVED]

(E) 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:

(1) Seller implements a material change to the Facility without following the requirements of Section 5(f) of Attachment A (Facility Description).

(2) Seller is in material breach of any of its representations, warranties and covenants under the Agreement, which, in Company's reasonable judgment, has a material adverse effect on Seller's ability to perform its obligations under the Agreement or materially increases Company's operational, financial or reputational risk associated with this Agreement.

(3) Seller, subsequent to making the payment to Company required under Section 3(B)(2) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.

(F) Time Periods for PUC Submittal Date and for PUC Approval.

(1) Time Period for PUC Submittal Date. Company shall use commercially reasonable efforts to cause the PUC Submittal Date to occur within sixty (60) Days of the Execution Date. If the PUC Submittal Date has not occurred within one hundred twenty (120) Days of the Execution Date, or such longer period as Company and Seller may agree to by a subsequent written agreement, Company may, by written notice delivered within thirty (30) Days of the expiration of such period, declare the Agreement null and void if the reason the application has not been filed is (i) any one or more of the conditions set forth in Section 2.2(E) (Prior to Effective Date) or (ii) Seller's failure to provide in a timely manner information reasonably requested by Company to support such application.

(2) Time Period for PUC Approval. If the PUC issues an Unfavorable PUC Order or if a satisfactory 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 (the “PUC Application Period”), then Company or Seller may, by written notice delivered within one hundred 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 Application Period, as applicable, declare this Agreement null and void. If a PUC Approval Order or an Unfavorable PUC Order is issued within the PUC Application 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.

(G) Obligations of Parties Upon Declaration of the Agreement as Null and Void. If this Agreement is declared null and void pursuant to its terms, the Parties shall be free of all obligations hereunder, other than as provided in this in this Section 2.2(G) (Obligations of Parties Upon Declaration of the Agreement as Null and Void), Section 7.1(C) (Return of the Development Period Security) and in Section 25.23 (Survival of Obligations), to the extent such obligations are applicable at the time the Party exercises its right to declare this Agreement null and void. Notwithstanding the foregoing, 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, 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; provided, however, that nothing in this Agreement shall obligate Company to incur such costs and cost obligations unless and until Seller provides Company with security that is adequate, as determined by Company in its sole discretion, to secure Seller's obligation to pay Company for such costs and cost obligations as set forth herein.

(H) 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 Section 8.1 (Events of Default) shall remain in full force and effect.

(I) 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).

### 2.3 Facility Conditions Precedent.

(A) Seller's Facility Conditions Precedent. Company's obligation to purchase electric energy and/or capacity from Seller pursuant to this Agreement, and any and all obligations of Company which are ancillary to that purchase, are contingent upon the following (collectively, the “Facility Conditions Precedent”):

(1) Following the Execution Date. Within sixty (60) Days after the PUC Submittal Date, Seller shall submit to Company the then available detailed design materials and specifications for the Facility generally described in Attachment A (Facility Description) and Attachment B (Facility Owned by Seller), including but not limited to the prime mover(s), generator(s), main step-up transformer(s), condenser(s), resource handling equipment, electric energy storage equipment, as applicable, reasonably demonstrating to Company's satisfaction that the Facility, if constructed, operated and maintained pursuant to such design materials and in accordance with Good Engineering and Operating Practices, can be reasonably expected to have a useful life at least equal to the Term.

(2) Executed Project Documents. Within one hundred eighty (180) Days after the Effective Date, Seller shall submit to Company copies of the following executed Project Documents: (i) the initial fully executed Fuel Supply Agreements (with commercial terms redacted to protect suppliers' confidential information); (ii) the Fuel Report which shall be updated annually and submitted to Company on January 1 of each Calendar Year this Agreement is in force; and (iii) other contracts (if any) entered into by Seller for the purchase of critical materials and services necessary for the operation and maintenance of the Facility. If any one or more Fuel Supply Agreements are for a term less than the Term of this Agreement or expire prior to the termination of the Term of this Agreement, then not later than six (6) months prior to the stated expiration date of said Fuel Supply Agreements, Seller shall use commercially reasonable efforts to renew or replace, or cause the renewal or replacement of, such Fuel Supply Agreement with one or more replacement Fuel Supply Agreements, and shall provide a copy of such Fuel Supply Agreement at such time to Company (with commercial terms redacted to protect suppliers' confidential information);

(3) On or Before the Commencement of Construction. On or before the commencement of construction of all or any portion of the Facility, Seller shall submit to Company the following:

(a) Governmental Approvals and Land Rights - Construction.  
Documents or other evidence that Seller obtained all required Governmental Approvals and Land Rights needed to commence construction of the Facility.

(b) Governmental Approvals and Land Rights - Operations.  
Documents or other evidence that Seller has obtained all currently required Governmental Approvals and Land Rights needed to operate the Facility following completion of the Facility.

(c) Proof of Insurance. Copies of any and all then-required insurance policies (or binders as appropriate) procured by Seller in accordance with Article 15 (Insurance) relating to the construction and operations of the Facility, as the case may be.

(d) Officer's Certificate. A certificate executed by a duly authorized officer of Seller certifying that: (i) Seller has the right to locate the Facility at the

Site for the Term and that such right may be transferred or assigned to Company so as not to limit or interfere with Company's exercise of its rights under this Agreement; and (ii) Seller has obtained all then-required Governmental Approvals and Land Rights needed to commence construction of the Facility; and

(4) On or Before the Commercial Operations Date. On or before the Commercial Operations Date, which shall in no event be later than the Guaranteed Commercial Operations Date, Seller shall:

(a) Proof of Insurance. Submit to Company copies of any and all then-required insurance policies (or binders as appropriate) provided by Seller required pursuant to Article 15 (Insurance) to be in effect prior to operation of the Facility; and

(b) Officer's Certificate. Submit to Company a certificate executed by a duly authorized officer of Seller certifying that: (i) Seller has obtained all then-required Governmental Approvals and Land Rights needed to operate the Facility throughout the Term or, if one or more of such Governmental Approvals or Land Rights is not available at that time for the full Term, for such lesser period as is available; and (ii) construction of the Facility is substantially complete, that the Facility has been constructed substantially in compliance with the terms of this Agreement and with the information submitted pursuant to this Section 2.3(A) (Seller's Facility Conditions Precedent), and that all acceptance tests set forth in Section 2.3(A)(4)(c) (Acceptance Tests) have been satisfactorily accomplished and the Facility is ready to begin producing power on a commercial basis under the terms and conditions of this Agreement. Evidence required under this Section 2.3(A) (Seller's Facility Conditions Precedent) shall be submitted or made available by Seller during or upon the completion of each phase of development (for example, completion of detailed engineering, completion of as-built drawings and receipt of manufacturers' guarantee performance data). To allow Company to evaluate the information provided by Seller, Seller shall cooperate in such physical inspections of the Facility pursuant to Section 10.4 (Inspection of Facility Operation) of this Agreement as may be reasonably required by Company during and after completion of the Facility. In no event shall Company's technical review and inspection of the Facility be deemed to be an endorsement of the design thereof or as any warranty of the safety, durability or reliability of the Facility nor a waiver of any of Company's rights.

(c) Acceptance Tests. Cause the Facility to pass each of the following acceptance tests:

- (i) Interconnection Acceptance Test;
- (ii) Generator Acceptance Test; and

(iii) Control System Acceptance Test.

(5) On or Before Commencement of Capacity Charge Payments. On or before the commencement of Capacity Charge payments by Company, the Facility shall pass the Capacity Test.

(B) Failure of Seller's Facility Conditions Precedent.

(1) Seller's Remedial Action Plan. If Seller misses any of the submission deadlines required by the Facility Conditions Precedent in Section 2.3(A) (Seller's Facility Conditions Precedent), Seller shall, within ten (10) Business Days of such missed submission deadline, provide Company a remedial action plan which shall set forth a detailed description of Seller's course of action and plan to provide Company with the required submission and to meet all subsequent submission deadlines and the Guaranteed Commercial Operations Date; provided, that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent submission deadlines and the Guaranteed Commercial Operations Date.

(2) Seller's Certification Requirements. Not later than ninety (90) Days after the PUC Submittal Date, Seller shall submit to Company a certificate executed by a duly authorized officer of Seller declaring whether Seller considers that it has complied with the submission requirements of Section 2.3(A)(1) (Following the Execution Date), identifying with particularity the submissions on which such declaration relies, and certifying that such submissions are true and correct in all material respects and in no way materially misleading. On or before the Closing Date, Seller shall submit to Company a certificate executed by a duly authorized officer of Seller declaring whether Seller has determined that it has complied with the submission requirements of Section 2.3(A)(2) (Executed Project Documents), identifying with particularity the submissions on which such declaration relies, and certifying that such submissions are true and correct in all material respects and in no way materially misleading. Within thirty (30) Days of receiving each of Seller's certificates pursuant to this Section 2.3(B)(2) (Seller's Certification Requirements), Company shall provide Seller with either (i) a written statement that Seller has satisfied the submission requirements of Section 2.3(A)(1) (Following the Execution Date) and Section 2.3(A)(2) (Executed Project Documents) identified in such certificate, or (ii) a written statement setting forth the requirement(s) Company believes have not been met by Seller. Seller shall comply substantially with the requirements set forth in the Company's statement within thirty (30) Days of receiving Company's statement. Unless and until Seller substantially complies with the Company's requirements for satisfying the Facility Conditions Precedent in Section 2.3(A) (Seller's Facility Conditions Precedent) to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operations Date.

(C) Seller's Conditions Precedent. Seller shall complete the Seller's Conditions Precedent by the dates specified for such Seller's Conditions Precedent in Attachment K-1 (Seller's Conditions Precedent and Company Milestones). Such Seller's Conditions Precedent shall be a condition precedent to Company's obligation to complete the Company Milestones

by the dates specified for such Company Milestones in Attachment K-1 (Seller's Conditions Precedent and Company Milestones).

(D) 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 (Seller's Conditions Precedent and Company Milestones). 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 2.4(B) (Construction Milestones Extensions) and this Section 2.3(D) (Company Milestones); provided, however in the event Seller does not complete a Seller's Conditions Precedent on or before the applicable date set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) (each such date, a "Seller's Conditions Precedent Date"), subject to the extensions set forth in Section 2.4(B) (Construction Milestones Extensions), Company shall be entitled to an extension of affected Company Milestone Dates 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)(1) 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.

#### 2.4 Failure to Meet Milestone Dates.

(A) 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.

(B) Construction Milestones Extensions. Seller shall achieve each Construction Milestone by the Milestone Date, subject (to the extent applicable) to the following extensions/grace periods; provided that, any extension will run concurrently with (and not in addition to) any other extension permitted under this Agreement:

(1) PUC Approval Order Date. If the failure to achieve the Commercial Operations Date by the Guaranteed Commercial Operations Date is the result of the PUC Approval Order Date occurring more than one hundred eighty (180) Days after the Execution Date, Seller shall be entitled to an extension of the Guaranteed Commercial Operations Date equal to the lesser of (i) the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date, or (ii) the number of Days following the Guaranteed Commercial Operations Date that are reasonably necessary for Seller, using reasonable diligence to achieve the Commercial Operations Date in the shortest period of time, provided, however, that in no event shall the Guaranteed Commercial Operations Date be extended beyond [December 1, 2032 for Oahu] [December 1, 2031 for Hawai'i.];

(2) Force Majeure. If the failure to achieve the Guaranteed Milestone by the applicable Milestone Date is the result of Force Majeure (which, for purposes of this Section 2.4(B)(2) (Force Majeure) excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 2.4(B)(1) (PUC Approval Order

Date) above), and if and so long as the conditions set forth in Section 18.4(A) are satisfied, Seller shall be entitled to an extension of the applicable Milestone Date equal to the lesser of two hundred seventy (270) Days or the duration of the delay caused by the Force Majeure.

(3) Company's Untimely Performance. If the failure to achieve the Guaranteed Milestone by the applicable 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 2.4(B) (Construction Milestones Extensions) and Section 2.3(D) (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 (Seller's Conditions Precedent and Company Milestones), be entitled to an extension of the applicable Guaranteed 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 2.4(B)(3) (Company's Untimely Performance), 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.

(C) Reporting Milestones. If Seller fails to achieve any Reporting Milestone on or before the applicable Milestone Date as set forth in Attachment L (Reporting Milestones):

(1) Seller's Plan. 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 as soon as practicable, 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;

(2) Monthly Progress Reports. Seller shall provide Company within the Monthly Progress Reports to Company the status of Seller's efforts to achieve such Reporting Milestone(s) that remain outstanding;

(3) Consequences. Unless and until Seller substantially completes each Reporting Milestone to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operations Date.

(D) Guaranteed Milestones; Damages and Termination.

(1) Damages

(a) Milestone Delay Damages. If Seller fails to achieve any such Guaranteed Milestone (other than Commercial Operations) on or before the applicable Milestone Date set forth in Attachment K (Guaranteed Project Milestones), as the same may be extended as provided in Section 2.4(B) (Construction Milestones Extensions), and such failure remains unachieved for ten (10) Days after such applicable Milestone Date, Company shall collect and Seller shall pay Liquidated Damages in the amount of \$ \_\_\_\_\_ **[DRAFTING NOTE: Calculate as follows: (Contract Firm Capacity X \$1,000/MW) = Daily Delay Damages]** per Day, commencing on the eleventh (11<sup>th</sup>) Day after such missed Guaranteed Milestone and continuing for each Day ("Milestone Delay Damages") thereafter that Seller fails to achieve the Guaranteed Milestone; provided, that the number of Days for which Company shall collect and Seller shall pay Milestone Delay Damages shall not exceed sixty (60) Days (the "Milestone Date Delay LD Period").

(b) Daily Delay Damages. If Seller fails to achieve Commercial Operations on or before the latter of the Guaranteed Commercial Operations Date or the expiration of any applicable grace period set forth in Section 2.4(B) (Construction Milestones Extensions), and in addition to any Milestone Delay Damages collected pursuant to Section 2.4(D)(1)(a) (Milestone Delay Damages), Company shall collect and Seller shall pay Liquidated Damages in the amount of \$ \_\_\_\_\_ **[DRAFTING NOTE: Calculate as follows: (Contract Firm Capacity X \$1,500/MW) = Daily Delay Damages]** for each Day ("Daily Delay Damages") following the tenth (10<sup>th</sup>) Day after the Guaranteed Commercial Operations Date that Seller fails to achieve Commercial Operations; provided, however, 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").

(2) Termination Right. If, upon the expiration of the Milestone Date Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved such

missed Milestone Date, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by declaring an Event of Default pursuant to Section 8.1(A)(1) and issuing a written termination notice to Seller pursuant to Section 8.2(B) (Right to Terminate; Forward Contract). If the Agreement is terminated by Company pursuant to this Section 2.4(D)(2) (Termination Right), Company shall have the right to collect Pre-COD Termination Damages and/or Post-COD Termination Damages, as provided in Section 9.3 (Damages in the Event of Termination by Company) of this Agreement. Unless and until Seller completes each Guaranteed Milestone to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operations Date.

(E) Notices and Reports. If Seller fails to achieve the Commercial Operations Date by the Guaranteed Commercial Operations Date or has reasonable grounds for concluding that it is unlikely to achieve that objective:

(1) Not Force Majeure. If such failure or anticipated failure is not the result of Force Majeure, Seller shall:

(a) promptly give Company written notice of such failure or anticipated failure in writing;

(b) expeditiously provide Company with a written explanation of the reason for such failure or anticipated failure; and

(c) provide Company with written weekly progress reports describing the actions taken to achieve the Commercial Operations Date and the estimated time frame for completion of such actions.

(2) Force Majeure. If such failure or anticipated failure is the result of Force Majeure, Seller shall, without limitation to the generality of Article 18 (Force Majeure), provide the notice, explanation and weekly progress reports required under Section 18.4 (Satisfaction of Certain Conditions).

(F) Development Period Security. Company shall draw upon the Development Period Security established pursuant to Section 7.1 (Security Fund) on a monthly basis for payment of the total Milestone Delay Damages and 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.

## 2.5 No Waiver

(A) Facility Conditions Precedent and Construction Milestones. Except as otherwise provided herein, failure by Company to invoke its rights under Section 2.3(B) (Failure of Seller's Facility Conditions Precedent) or Section 2.4 (Failure to Meet Milestone Dates) with respect to any particular Facility Conditions Precedent, Seller's Conditions Precedent or Construction Milestone shall in no way diminish Company's rights upon the failure of Seller to

achieve any subsequent Facility Conditions Precedent or any subsequent Construction Milestone.

(B) Event of Default. Notwithstanding any other provision herein to the contrary, Company's failure to declare an Event of Default during the time periods provided for in this Agreement shall not constitute a waiver if such failure is the direct or indirect result of Seller's misstatement of a material fact or Seller's omission of a material fact which is necessary to make any representation, warranty, certification, guarantee or statement made (or notice delivered) by Seller to Company in connection with this Agreement (whether in writing or otherwise) not misleading.

ARTICLE 3 - SPECIFIC RIGHTS AND OBLIGATIONS OF THE PARTIES

**[DRAFTING NOTE: COMPANY RESERVES THE RIGHT TO MAKE FURTHER REVISIONS TO THIS ARTICLE IN SUBSEQUENT FILINGS OF THE RFP]**

3.1 Rights and Obligations of Both Parties.

(A) Sale and Purchase of Energy and Capacity. Seller shall produce, supply and sell to Company and Company shall take from and pay Seller for the Demonstrated Firm Capacity and Net Electric Energy Output as determined in accordance with the terms and conditions of this Agreement.

(B) Good Engineering and Operating Practices.

(1) 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. **[THIS SECTION MAY BE REVISED TO INCLUDE SPECIFIC REQUIREMENTS DEPENDING ON THE TECHNOLOGY USED BY THE FACILITY.]**

(2) 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. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.

(C) Interconnection Facilities. The terms and conditions related to the Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities are set forth in Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities). 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 an after the Transfer Date to Company, which documents shall be substantially in the form set forth in Attachment I (Form of Grant of Easement). **[ATTACHMENT G (COMPANY-OWNED INTERCONNECTION FACILITIES) CONTAINS ONLY GENERAL TERMS. SPECIFIC TERMS WILL BE PROVIDED AFTER THE COMPLETION OF THE IRS.]**

### 3.2 Rights and Obligations of Seller.

#### (A) Design and Construction of Facility.

(1) General. Seller shall furnish all financial resources, labor, tools, materials, equipment, transportation, supervision, and other goods and services necessary to completely design and build the Facility to fulfill the requirements of this Agreement. Seller shall also be responsible for acquiring any and all necessary Land Rights for the Facility as well as for Fuel handling and waste disposal infrastructures. The design and construction of the Facility as well as the acquisition of other necessary infrastructures shall take place using Good Engineering and Operating Practices. The Facility design and specifications must conform to Company design specifications and standards, where applicable. It is the intent and expectation of the Parties that the Facility have a plant life equal to at least the Term of this Agreement. To the extent practicable, all new equipment shall be designed and constructed by Seller in a manner consistent with that objective.

(2) Milestone Dates. Due to the critical nature of Company's energy needs, Seller's attainment of all Construction Milestones, including Commercial Operations, on or prior to applicable Milestone Dates specified in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones), is essential. Any failure to achieve a Construction Milestone by its Milestone Date shall be treated in accordance with the provisions of Section 2.4 (Failure to Meet Milestone Dates).

(3) [RESERVED]

#### (4) Seller's Governmental Approvals and Land Rights.

(a) Seller's Responsibilities. Seller is responsible for the acquisition and continuous maintenance of all Governmental Approvals and Land Rights required for the construction and operation of the Facility during the Term under conditions which allow Seller to meet the requirements of this Agreement including, but not limited to, Company's right to control the Facility through Company Dispatch. Seller shall obtain the necessary Governmental Approvals to allow Company to start up and shut down Seller's generating units as necessary in accordance with this Agreement and to dispatch Seller's generating units at maximum continuous output twenty-four (24) hours per day for as long as needed to satisfy the Company System demand, as Company deems appropriate, in its reasonable discretion.

(b) Duration of Governmental Approvals and Land Rights. All Governmental Approvals and Land Rights shall be acquired at least for the Term of this Agreement; provided, however, that if the pertinent Governmental Authority does not issue a specific Governmental Approval for at least a period equal to the Term, Seller shall obtain the Governmental Approval for the longest time period generally allowed by law. All Governmental Approvals shall be obtained and renewed by Seller in accordance with procedures set by the

pertinent Governmental Authority. Seller must comply with all provisions in operating Governmental Approvals and with all site-specific requirements imposed by any Governmental Authority. Seller shall be responsible for all costs related to any violations by Seller, its employees, agents or representatives, of any provisions of any of the Governmental Approvals or Land Rights, and in no situation shall Company be held responsible for violations of Seller's Permits or Land Rights.

(5) Review of Facilities.

(a) Drawings and Calculations. Seller shall make readily available to Company a complete set of all detailed engineering, vendor and manufacturing and as-built drawings and calculations relating to the design and construction of the Facility, including the documentation required by Section 1.b.iii.G (Cybersecurity and Critical Infrastructure Protection) of Attachment B (Facility Owned by Seller), within a reasonable time after such drawings are available, but in no event later than seven (7) Days following the date on which the application for the required Governmental Approvals for construction of the Facility are submitted to the appropriate Governmental Authority and, with respect to the as-built drawings, no later than one hundred (120) Days after the Facility achieves the Commercial Operations Date. Such drawings and calculations shall be submitted in electronic format, if requested by Company, in a format compatible with Company's computer hardware and software.

(b) Review, Observation and Inspection. Company shall have an opportunity to (i) review and comment on the design of the Facility, (ii) to observe the construction of the Facility and the equipment to be installed therein, and (iii) to inspect the Facility and related equipment following the completion of construction and during the course of this Agreement, provided that such activities do not materially interfere with Seller's construction or operation of the Facility.

(c) No Endorsement, Warranty or Waiver. In no event shall any review, comment or failure to comment by Company be deemed to be an endorsement, warranty or waiver of any right by Company. In no event shall any failure by Company to exercise its rights under this Section 3.2(A)(5) (Review of Facilities) constitute a waiver by Company of, or otherwise release Seller from, any other provision of this Agreement.

(d) Areas of Common Concern. In areas of common concern, such as the type and settings of Seller's protective relaying equipment, Seller shall submit such concerns, designs and settings for Company's review and acceptance. Protective relay settings must coordinate with the Company System as Company, within its sole discretion, designs and operates the Company System.

(6) Facility Protection and Control Equipment.

(a) Seller's Obligations. Seller shall, at its own cost, furnish, install, operate and maintain internal breakers, relays, switches, synchronizing equipment and other associated protective and control equipment necessary to maintain the standard of reliability, quality and safety of electric energy production suitable for parallel operation with the Company System as required by this Agreement and Good Engineering and Operating Practices.

(b) Company's Right to Review the Design. Company shall have the right, but not the obligation, to review and accept the design of all such equipment, protective relay settings, and control logic as soon as practicable, and in no event later than thirty (30) Days after the receipt of all Governmental Approvals for construction of the Facility and shall present any comments relating thereto to Seller, as soon as practicable and in no event later than sixty (60) Days after receiving such design information.

(c) Company's Right to Review Modifications. Company shall have the right, but not the obligation, to review and accept any proposed future action by Seller to modify or replace such equipment, or change such settings, as soon as practicable, and in no event later than forty-five (45) Days prior to such future action; provided, however, that Company shall present any comments relating thereto to Seller as soon as practicable, and in no event later than fifteen (15) Days after receiving information relating to such future action.

(d) Company's Right to Review Installation. Company shall have the right, but not the obligation, to review, inspect and accept the installation, construction and setting of all such equipment in order to ensure consistency with the design submitted by Seller for Company's review. If Company exercises such right, Company shall inform Seller as soon as practicable, and in no event later than forty-five (45) Days after such review or inspection, of any problems it believes exist and any recommendations it has for correcting such problems.

(e) No Endorsement, Warranty or Waiver. Company's inspection and acceptance of Seller's equipment and settings shall not be construed as endorsing the design thereof, nor as any warranty of the safety, durability or reliability of said equipment and settings, nor as a waiver of any of Company's rights. In no event shall any failure by Company to exercise its rights under this Section 3.2(A)(6) (Facility Protection and Control Equipment) constitute a waiver by Company of, or otherwise release Seller from, any other provision of this Agreement.

(f) Cooperation. Seller and Company shall cooperate with each other in good faith in agreeing upon design standards for any equipment or settings referred to in this Section 3.2(A)(6) (Facility Protection and Control Equipment).

(g) Timing for Implementation of Company Proposals. Within a reasonable time after receipt of Company's comments referred to in this Section 3.2(A)(6) (Facility Protection and Control Equipment) or notification by Company of problems related to Seller's obligations under this Section 3.2(A)(6) (Facility Protection and Control Equipment), but no later than ninety (90) Days after such notification (unless such condition is causing a safety hazard or damage to the Company System or the facilities of any of Company's customers, in which event the correction must be promptly made by Seller), Seller shall implement Company's proposals.

(h) Relay Settings and Control Logic. Notwithstanding the foregoing, Seller shall utilize relay settings and control logic prescribed by Company, which may be changed over time within the design capability of the equipment as the requirements of the Company System change. If Seller demonstrates to the satisfaction of Company that the utilization of such relay settings and control logic would likely result or have resulted in an event normally requiring Liquidated Damages or an Event of Default, Seller shall be excused from same. If Seller and Company disagree as to whether the utilization of such relay settings resulted in an event that required Liquidated Damages or an Event of Default, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineers List pursuant to Section 3.3(B)(1)(b) and the Qualified Independent Engineering Company will determine if the utilization of such relay settings resulted in the event that gave rise to Liquidated Damages or an Event of Default pursuant to the Independent Engineering Assessment. The Seller and Company shall abide by the Qualified Independent Engineering Company's determination.

(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, progress reports 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 specific Facility Conditions Precedent contained in Section 2.3(A) (Seller's Facility Conditions Precedent) and the status of efforts to meet each Milestone Date contained in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones). 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 Facility Conditions Precedent or Construction Milestones. Seller shall provide Company with any requested documentation to support the achievement of Facility Conditions Precedent or Construction Milestones within ten (10) Business Days of receipt of such request from Company. At Company's request, Seller shall provide an opportunity for Company to meet with appropriate personnel of Seller or its contractors to discuss and assess any such Monthly Progress Report. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of

Section 18.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 3.2(A)(7) (Monthly Progress Reports).

(B) Warranties and Guarantees of Performance.

(1) Equivalent Availability Factor. Seller warrants and guarantees that, in each Contract Year during the Term the Facility will achieve an EAF of 90% or greater. If a Force Majeure event(s) occurs, the Force Majeure period shall not count for the purposes of calculating EAF to compute Liquidated Damages or Event of Default criteria, but only to the extent that Seller's inability to perform is caused by one (1) or more Force Majeure event(s).

(2) Equivalent Forced Outage Factor. Seller warrants and guarantees that, in each Contract Year during the Term the Facility will not exceed a 4% EFOF. If a Force Majeure event(s) occurs, the Force Majeure period shall not count for the purposes of calculating EFOF to compute Liquidated Damages or Event of Default criteria, but only to the extent that Seller's inability to perform is caused by one (1) or more Force Majeure event(s).

(3) Demonstrated Firm Capacity. Seller warrants and guarantees that the Facility will have and maintain the capability to produce and deliver to the Metering Point the Demonstrated Firm Capacity in accordance with the terms of this Agreement.

(4) Power Quality. Seller warrants and guarantees that the Facility will produce electric energy that meets the quality standards in Section 3.a (Reactive Power Control), Section 3.b (Active Power Control and Available Capacity), Section 3.e (Undervoltage Ride-Through), Section 3.f (Over Voltage Ride-Through), Section 3.g (Transient Stability Ride-Through), Section 3.h (Voltage Phase Angle Change Ride-Through), Section 3.i (Frequency Ride-Through), and Section 3.l (Harmonics) of Attachment B (Facility Owned by Seller).

(5) Disconnection Events. Seller warrants and guarantees that Disconnection Events will not exceed three (3) per Contract Year.

(6) Start-up Failures. Seller warrants and guarantees that, in each Contract Year during the Term, each individual generating unit within the Facility will not experience more than two (2) Start-up Failures.

(7) Liquidated Damages. In the event Seller fails to satisfy the warranties and guarantees of performance in this Section 3.2(B) (Warranties and Guarantees of Performance), Seller shall be liable for Liquidated Damages as provided in Article 9 (Liquidated Damages).

(8) Exclusive Warranties. The foregoing warranties and guarantees of performance constitute the exclusive warranties and guarantees under this Agreement and operate in lieu of all other warranties and guarantees, whether oral or written. Seller

and Company disclaim any other warranty and guarantee, express or implied, including without limitation, warranties of merchantability or fitness for a particular purpose.

(C) Waste Handling. Seller shall be responsible for the handling and proper disposal of any waste products produced by the Facility, including but not limited to wastewater and ash, and for any costs associated therewith.

(D) Emissions. Seller shall be responsible for the control and consequences of any and all emissions produced as a result of operation of the Facility and for all costs and expenses associated therewith.

(E) Compliance with Laws. Seller shall at all times comply with all applicable federal, state and local laws, rules, regulations, orders (including but not limited to executive orders), ordinances, permit conditions and other governmental actions (collectively "Laws") and shall be responsible for all costs associated therewith.

(F) Adequate Spare Parts. Seller shall at all times keep on hand or have ready access to sufficient spare parts, which shall include, but not be limited to, the critical spare parts shown in Attachment Z (Critical Spare Parts), to maintain the Facility in a manner which provides reasonable assurance, consistent with Good Engineering and Operating Practices, that the performance of the Facility will meet the requirements of this Agreement.

(G) Periodic Meetings. The Seller's General Manager or an alternate satisfactory to Company shall attend periodic meetings with appropriate Company representatives and be prepared to discuss Facility operations and maintenance and interface with the Company System operations. Such meetings may be regularly scheduled or called by Company specifically to address particular problem areas.

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

(1) Obligations Related to Borrowed Money. Seller shall fail to comply with any provision with respect to any obligations for borrowed money in excess of One Million Dollars (\$1,000,000) if the effect of such failure to comply is to cause, or to permit the holder or holders of such obligations (or a trustee on their behalf), to cause such obligations to become due prior to their stated maturity, except to the extent that such failure to comply shall have been cured or waived prior to any acceleration of such obligations thereunder and said cure or waiver shall not have involved the receipt by any such holder or holders of any additional consideration, financial or otherwise

(2) Order for Payment of Money. Any final order, judgment or decree is entered in any proceeding, which final order, judgment or decree provides for the payment of money in excess of One Hundred Thousand Dollars (\$100,000) by Seller, and Seller shall not discharge the same or provide for its discharge in accordance with

its terms, or procure a stay of execution thereon within sixty (60) Days from the entry thereof, and within such period of sixty (60) Days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal.

(3) Payments for Materials or Labor. Seller shall fail to make any payment for materials or labor used in the engineering, design, construction, maintenance or operation of the Facility within ninety (90) Days after the due date thereof, except for payment obligations contested in good faith by Seller or adequately bonded to the reasonable satisfaction of Company or contract retentions withheld during Seller's review of a contractor's performance.

(4) Financing Documents. The Facility Lender shall declare an event of default under the Financing Documents.

(5) Governmental Approvals and Land Rights. Seller shall have received any notice that it is not in compliance with any of the Governmental Approvals and/or Land Rights that enable Seller to operate the Facility.

(I) Financial Compliance.

(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) the accounting principles of FASB ASC 842 Leases ("FASB ASC 842"), (iii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 842 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 the Facility, or the administration of this Agreement, from having access to such Financial Compliance Information (unless approved in writing in advance, by Seller).

(2) Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Financial Compliance Information as provided in this Section

3.2(I) (Financial Compliance). Company may share the Financial Compliance Information on a confidential basis with HEI and the independent auditors and attorneys for HEI and Company. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Section 3.2(I) (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 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 Section 3.2(I) (Financial Compliance).

(3) Required Disclosure. In circumstances other than those addressed in the immediately preceding paragraph, if any Recipient becomes legally compelled under applicable law or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the 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 Section 3.2(I) (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions of this Section 3.2(I) (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.

(4) Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient under this Section 3.2(I) (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.

(5) Consolidation. Company does not want to be subject to consolidation set forth in FASB ASC 810, as issued and amended from time to time by FASB. 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. If Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller fifty percent (50%) of the reasonable and verifiable costs of having necessary audits performed and preparation of the audited financial statements; provided that the foregoing reimbursement shall not include the costs, whether actual or estimated, of preparing unaudited financial statements. 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, if requested by Company, negotiate and may effectuate a sale of the Facility to Company at (i) if the sale occurs, if applicable, prior to Seller’s tax equity investors have been paid their targeted internal rate of return, 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, as applicable, on or after the date that Seller’s tax equity investors have been paid their targeted internal rate of return, 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).

(J) Seller’s Obligation to Deliver Facility. Upon the exercise by Company of its rights under Section 8.2(B)(2)(a) (Company’s Assumption of Seller’s Interest or Purchase of the Facility), Seller shall deliver the Facility to Company in proper working order in accordance with then current electric utility standards for a facility similar to the Facility. If Seller fails to meet this obligation, Company shall have the right to put the Facility in proper working order in accordance with such standards either directly or through a qualified contractor. Seller shall reimburse Company within thirty (30) Days of written demand for payment in immediately available funds for any and all reasonable costs incurred by Company in connection with such work. Where such payments are reimbursements for amounts paid by Company to third parties prior to receipt of payment from Seller, interest shall be paid thereon at the Prime Rate for the period between payment by Company and receipt of payment from Seller. The obligations of

Seller under this Section 3.2(J) (Seller's Obligation to Deliver Facility) shall survive the expiration or termination of this Agreement.

(K) Allowed Capacity. The Available Capacity from the Facility may exceed the Contract Firm Capacity. Company may dispatch up to Available Capacity in accordance with Section 3.3(A)(1) (Routine Dispatch) of this Agreement. Company may limit the Net Electric Energy Output pursuant to, but not limited to, Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), Section 5 (Personnel and System Safety) of Attachment Y (Operation and Maintenance of the Facility), Good Engineering and Operating Practices and Attachment B (Facility Owned by Seller). Company shall pay for any Net Electric Energy Output of the Facility up to the Available Capacity, so long as such energy is accepted pursuant to Company Dispatch, in accordance with the Energy Charge provisions of Attachment J (Energy Charge and Capacity Charge Payment Formulas). Company shall not be required to pay any additional Capacity Charge for energy dispatched by Company up to the Available Capacity.

### 3.3 Rights and Obligations of Company.

#### (A) Dispatch of Facility Power.

##### (1) Routine Dispatch.

(a) Company shall have the right to dispatch all real power up to the Available Capacity, and specify reactive power delivered from the Facility to the Company System, as it deems appropriate in its reasonable discretion, subject only to and consistent with Good Engineering and Operating Practices, the requirements set forth in this Section 3.3(A) (Dispatch of Facility Power), Attachment B (Facility Owned by Seller) and Seller's maintenance schedule determined in accordance with Section 8 (Schedule of Outages) of Attachment Y (Operation and Maintenance of the Facility). Company shall not pay for reactive power.

(b) Company Dispatch of Facility's resource(s) will either be by Seller's manual control under the direction of the Company System Operator or by computerized control via SCADA as provided in Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), in each case at Company's reasonable discretion, within the Dispatch Range and subject to the minimum dispatch requirements of Section 3.3(A)(2) (Minimum Dispatch). Unless otherwise agreed to, Company may request the maximum real power output at 0.85 lagging to 0.90 leading power factor from the Facility as measured at the Metering Point to maintain system operating parameters as specified by the Company. Notwithstanding anything to the contrary, the power produced by the Facility shall always be subject to remote, automatic or manual dispatch by Company.

(c) Refusal or inability of the Seller's resource(s) to provide the output required by the Company Dispatch shall result in the assumption that the

Available Capacity contribution of that resource is equal to the actual net energy delivered from the Facility resource. This shall be considered at reduced Available Capacity for the purpose of calculating the Seller's EAF and EFOF. The size of the derating will be determined by subtracting the Available Capacity from the Demonstrated Firm Capacity, from the time the inability to meet the dispatch request occurs until such time as the Seller demonstrates the Demonstrated Firm Capacity as requested by Company. Seller shall utilize the full capability of the Facility to satisfy its obligation to deliver Demonstrated Firm Capacity in accordance with Company Dispatch by taking necessary actions, including but not limited to ensuring adequate access and control of Seller's renewable resources, means of delivery (piping, valves, etc.) of the resource to conversion equipment and functionality of the conversion equipment and generators.

(2) Minimum Dispatch. The minimum dispatch of each resource under remote control by the Company shall be the Minimum Load Capability as further described in Section 3.n (Minimum Load Capability) of Attachment B (Facility Owned by Seller).

(3) Dispatch Forecast. Company will work with Seller to support development of forecasts needed for informing long term procurement of consumables (if any) and maintenance. **[THIS SECTION MAY BE REVISED TO INCLUDE SPECIFIC REQUIREMENTS DEPENDING ON THE TECHNOLOGY USED BY THE FACILITY.]**

(B) Company Right to Require Independent Engineering Assessment.

(1) Implementation of Independent Engineering Assessment.

(a) If (i) Seller is failing to operate the Facility in accordance with Section 2.1(E) (Requirements for Electric Energy Supplied by Seller), Section 3.2(A)(6) (Facility Protection and Control Equipment), Section 1 (Standards) of Attachment Y (Operation and Maintenance of the Facility), Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility), Section 4 (Protective Equipment) of Attachment Y (Operation and Maintenance of the Facility), and Section 5 (Personnel and System Safety) of Attachment Y (Operation and Maintenance of the Facility), or is otherwise failing to comply with Good Engineering and Operating Practices, and fails to remedy such failure within ninety (90) Days of written notice thereof from Company, or fails to comply with Section 10.4(B) (Correction of Certain Conditions), and Company reasonably believes that such failure is likely to result in a failure to meet the Technical and Operational Requirements set forth in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller); (ii) Seller is in breach of this Agreement with respect to the performance or operation of the Facility and has not cured such breach within the time limits

specified in Article 8 (Default); (iii) otherwise required by Section 8.2(C) (Right to Demand Independent Engineering Assessment and Modification); or (iv) as required by Section 3.3(B)(1) (Implementation of Independent Engineering Assessment), Company may require that the practices in question be assessed by a qualified professional engineering firm to be chosen from Attachment D (Consultants List – Qualified Independent Engineering Companies) and revised from time to time under Section 3.3(B)(2) (Qualified Independent Engineering Companies).

(b) The Parties shall promptly undertake to agree on a firm to be used from the Qualified Independent Engineers List; provided, however, that if such agreement is not reached within seven (7) Days after Company gives notice to Seller that it is invoking its rights under this Section 3.3(B) (Company Right to Require Independent Engineering Assessment), the firm shall be chosen from the Qualified Independent Engineers List by Company. Seller may, at its sole expense, contract with its chosen firm (from the Qualified Independent Engineers List) to provide a second assessment of the practices in question. Company's chosen firm may review Seller's assessment and choose, in its sole discretion, to use all, some or none of Seller's recommendations in such assessment. Notwithstanding Seller's assessment, and whether or not Company's Qualified Independent Engineering Company has used any of Seller's recommendations from its Qualified Independent Engineering Company, the Independent Engineering Assessment completed by Company's Qualified Independent Engineering Company and the Recommendations contained therein shall be used in connection with respect to the actions required Section 3.3(B)(1)(c) immediately below.

(c) The Qualified Independent Engineering Company selected shall make an Independent Engineering Assessment as to whether (i) any recommended actions may be implemented, consistent with Good Engineering and Operating Practices, to correct the failures of Seller to operate the Facility within the requirements or performance metrics required under this Agreement that prompted the Independent Engineering Assessment, or (ii) any of Seller's practices in question conform to Good Engineering and Operating Practices. If the Qualified Independent Engineering Company determines that recommendations are appropriate to rectify either (i) or (ii) above the Qualified Independent Engineering Company shall recommend such necessary actions by Seller (the "Recommendations"). If the Recommendations require action by Seller to change its practices, Seller shall take such actions. Where the Recommendations require action by Seller, the Qualified Independent Engineering Company shall determine, after reasonable consultation with Seller within thirty (30) Days (or such longer period as deemed appropriate by such Qualified Independent Engineering Company) after its Recommendations are first made, whether Seller has taken adequate action to carry out such Recommendations. If the Qualified Independent Engineering Company then certifies that Seller has failed to take adequate action, Company shall notify Seller and the Facility Lender in writing of such certification and the basis

therefor. Such notice shall state in bold letters that failure to commence implementation of the Recommendations on or before the date that is thirty (30) Days from the date of such notice (the “Implementation Date”) may lead to Company exercising its option under Section 3.3(B)(1)(d) or termination of this Agreement. If neither Seller nor the Facility Lender has begun to implement the Recommendations on or before the Implementation Date, such failure shall constitute an Event of Default under Section 8.1(A)(6). If either Seller or any Financing Party begins to implement the Recommendations on or before the Implementation Date, the Qualified Independent Engineering Company shall monitor whether the implementation thereof is being diligently pursued. If, after reasonable consultation with the parties involved in such implementation, the Qualified Independent Engineering Company determines that such implementation is not being diligently pursued, it shall promptly so certify to Company. Company shall thereupon promptly notify Seller and the Facility Lender in writing of such certification, the basis therefor and the remedial steps that must be taken to cure (the “Second Notice”). Such Second Notice shall state in bold letters that failure to implement the remedial steps identified in the Second Notice (the “Remedial Steps”) on or before the date that is thirty (30) Days from the date of the Second Notice may lead to Company exercising its option under Section 3.3(B)(1)(d) or termination of this Agreement. If at any time after the date that is thirty (30) Days from the date of the Second Notice, the Qualified Independent Engineering Company again certifies to Company that implementation of Recommendation is not being diligently pursued and/or the Remedial Steps are not being implemented, and Company has not exercised its option under Section 3.3(B)(1)(d), such certification shall constitute an Event of Default by Seller under Section 8.1(A)(6). Seller shall bear all costs of the Qualified Independent Engineering Company’s services unless the Independent Engineering Assessment determined that no Recommendations could be made, in which case Company shall bear all costs of the Independent Engineering Assessment.

(d) Alternatively, after the Implementation Date, or, within thirty (30) Days of the Second Notice, if Seller fails to diligently carry out the Recommendations, Company, in its sole discretion, may elect to complete the Recommendations and Seller shall cooperate with Company to effect such Recommendations as Company determines in its sole discretion. Company shall be entitled to charge Seller, and Seller shall pay upon demand, for all of the costs to complete such Recommendations, including Company’s internal work necessary to design, complete and test such work.

(2) Qualified Independent Engineering Companies. The Company and Seller shall agree on the Qualified Independent Engineers List which shall be attached hereto as Attachment D (Consultants List – Qualified Independent Engineering Companies) containing the names of engineering firms which both Parties agree are fully qualified to perform the Independent Engineering Assessment under Section 3.3(B)(1) (Implementation of Independent Engineering Assessment). At any time, except when an Independent Engineering Assessment is being made under Section

3.3(B)(1) (Implementation of Independent Engineering Assessment), either Party may remove a particular company from the Qualified Independent Engineers List by giving written notice of such removal to the other Party. However, neither Party may remove a company or companies from the Qualified Independent Engineers List without approval of the other Party if such removal would leave the Qualified Independent Engineers List with less than two (2) companies. During January of each calendar year, both Parties shall review the current Qualified Independent Engineers List and give notice to the other Party of any proposed additions to the Qualified Independent Engineers List and any intended deletions. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Qualified Independent Engineers List with less than two (2) companies. Proposed additions to the Qualified Independent Engineers 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) Days. By mutual agreement between the Parties, a new company or companies may be added to the Qualified Independent Engineers List at any time.

## ARTICLE 4 - SUSPENSION OR REDUCTION OF DELIVERIES

### 4.1 Initiation by Company.

This section shall apply to suspensions or reductions of electric energy deliveries from the Facility directly resulting from instructions or remote-control actions by the Company System Operator. This section does not apply to changes in electric energy output of the Facility within the normal Dispatch Range. This section does not apply to suspensions and/or reductions of energy output from the Facility initiated by Facility personnel and/or equipment in response to conditions on the Company System, such as by the action of protective equipment or primary frequency or reactive power response to Company System conditions.

(A) Safety of Persons and/or Property. If the Company System Operator determines that an adverse condition exists that is likely to endanger the safety of persons and/or property, and/or endanger the integrity of the Company System or have an adverse effect on Company customer's electric service, the Company System Operator may remotely separate the Facility from the Company System by tripping the Facility's synchronizing breakers via SCADA without prior notice. If Company disconnects the Facility from the Company System, it shall immediately notify Seller by telephone or hotline and thereafter confirm in writing the reasons for the disconnection.

(B) Reclosing. If the Facility is separated from the Company System for any reason, under no circumstances shall Seller reclose into the Company System without first obtaining specific approval to do so from the Company System Operator which approval shall be granted promptly upon the removal of the adverse condition stated above.

(C) Duration of Disconnection. The Facility shall remain disconnected until such time that the adverse condition has been corrected.

(D) Facility Problems. If the operation of the Facility is causing or substantially contributing to an adverse condition due to the failure to meet any of the requirements of this Agreement, Seller shall, at its own cost, modify its electric equipment or operations to the extent necessary to promptly resume full deliveries of electric energy at the quality of electric service required.

### 4.2 No Obligation to Accept Energy.

(A) General. During periods in which Seller has reduced or suspended deliveries of electric energy as requested or required by Company under Section 4.1(A) (Safety of Persons and/or Property), Company shall have no obligation to accept any electric energy which might otherwise have been received from the Facility during such period, and Company shall have no obligation to pay for electric energy which otherwise would have been available or received from the Facility during such period, and, except as provided in Section 4.2(B) (Review by Seller), the Facility shall be considered unavailable or on forced outage during such period for purposes of calculating Seller's EAF, EFOF and Disconnection Events.

(B) Review by Seller. The claim of occurrence of any of the adverse conditions described above in Section 4.1(A) (Safety of Persons and/or Property) or Section 4.1(D)

(Facility Problems) shall be subject to verification by Seller. If it is determined that Company did not have a valid reason for disconnecting the Facility or that the Facility was not causing or contributing to the adverse condition requiring the disconnection under Section 4.1(A) (Safety of Persons and/or Property) or Section 4.1(D) (Facility Problems), Company shall still have no obligation to accept any electric energy which otherwise would have been received from the Facility during such period, and Company shall still have no obligation to pay for electric energy which otherwise would have been available or received from the Facility during such period, provided however, the duration of the period of separation will not be counted against EAF or EFOF or Disconnection Events.

4.3 Initiation by Seller. If Seller suspends, or can reasonably anticipate the need to suspend or substantially reduce, deliveries of electric energy below the level called for by Company Dispatch pursuant to Section 3.3(A) (Dispatch of Facility Power) for any reason other than a request by Company pursuant to Section 4.1 (Initiation by Company), it shall provide immediate oral notice and subsequent written notice to Company as soon as practicable, containing a reasonably detailed statement of the reasons for such suspension or reduction and the likely duration thereof. Seller shall use commercially reasonable efforts to restore full deliveries of electric energy as soon as practicable the Facility shall be considered unavailable or on forced outage during such period for purposes of calculating Seller's EAF, EFOF and Disconnection Events.

## ARTICLE 5 - RATES FOR PURCHASE

### 5.1 Capacity and Energy Purchased by Company.

(A) Energy and Capacity. Subject to the other provisions of this Agreement, Company shall accept and pay for the Net Electric Energy Output generated by the Facility and delivered to Company and make capacity payments to Seller when such capacity is available as set forth herein. The Net Electric Energy Output and capacity (demand) shall be metered in accordance with Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility), and Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility) and such metering shall constitute the official and legal measurements for any payments hereunder.

(B) Seller's Start-up Plan. Prior to the Commercial Operations Date, Company will use reasonable efforts to accept electric energy from the Facility during the initial generation start-up and local generation commissioning activities. Seller shall provide to Company a written, detailed, and comprehensive Start-up plan thirty (30) Days in advance of delivering any electric energy to Company and shall provide written notice to Company of any changes to such Start-up plan as soon as reasonably practicable, but no less than three (3) Days in advance of implementing those changes. Seller shall coordinate such Start-up and testing with the Company System Operator. Net Electric Energy Output delivered to and accepted by Company pursuant hereto prior to the Commercial Operations Date shall be considered test energy but must meet all of the quality standards established in this Agreement. Company shall only pay for actual fuel usage for any such Net Electric Energy Output actually delivered from the Facility before the Commercial Operations Date.

(C) Energy Charge. Subject to the terms of this Agreement, following or in the course of successful completion of the Control System Acceptance Test, beginning with energy delivered during the Capacity Test, and thereafter, provided that the Facility has achieved Commercial Operations, Company shall pay Seller for electric energy delivered to the Point of Interconnection in response to Company's dispatch in accordance with the formulas set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

(D) Capacity Charge. Subject to the terms of this Agreement, Capacity Charge Payments shall be calculated in accordance with the formulas specified in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

(1) BAFO Capacity Charge Rate Adjustment. To provide inflation protection to the Seller, the Company will allow Seller a one-time pricing adjustment to its BAFO Capacity Charge Rate, not to exceed ten percent (10%) of the BAFO Capacity Charge Rate, based on the increase, if any, in the GDPIPD index between the submission date of Seller's BAFO Capacity Charge Rate and the PUC Approval Order Date. Any change in the GDPIPD index value ("GDPIPD Compare Rate") shall be determined by dividing the  $GDPIPD_{PUC\ Approval}$  by the  $GDPIPD_{BAFO\ Submission}$ . If there is no change in the index value or if the index value decreases (i.e., the GDPIPD Compare Rate is less than or equal to 1.0) during the period between Seller's BAFO Capacity Charge Rate submission date and the PUC Approval Order Date, Seller will not be permitted an

adjustment to its BAFO Capacity Charge Rate. If the GDPIPD Compare Rate is greater than 1.0, the adjustment to the BAFO Capacity Charge Rate shall be calculated by multiplying the BAFO Capacity Charge Rate by the GDPIPD Compare Rate (which shall not exceed 1.10). Any GDPIPD Compare Rate exceeding 1.10 shall be adjusted to be 1.10 in order to determine the Capacity Charge Rate.

(2) BAFO Capacity Charge Rate.

(a) Investment Grade Pricing. The BAFO Capacity Charge Rate shall be the Investment Grade Capacity Charge Rate if, by the Construction Financing Closing Milestone: (i) Seller enters into a step-in agreement, or other substantially equivalent assurance in the event of default by Company of its contractual payment obligations under this Agreement (hereinafter, regardless of the form such assurance takes, a “Step-In Agreement”), with the State of Hawai‘i or an applicable department thereof when a PPA is executed, or as soon as reasonably possible thereafter, in accordance with the IPP Bill, and/or (ii) Company’s credit rating reaches Investment Grade Status. Seller shall not be permitted to opt out of the Step-In Agreement in order to circumvent the applicability of the Investment Grade Capacity Charge Rate.

(b) Non-Investment Grade Pricing.

(i) The BAFO Capacity Charge Rate shall be the Non-Investment Grade Capacity Charge Rate if, by the Construction Financing Closing Milestone: (A) the IPP Bill does not pass and become law or if the IPP Bill becomes law but the State of Hawai‘i does not elect to execute a Step-In Agreement with Seller (despite Seller’s best efforts); and (B) Company’s credit rating does not reach Investment Grade Status.

(ii) Notwithstanding the application of Section 5.1(D)(2)(b)(i):

A. the BAFO Capacity Charge Rate will be adjusted downward from the Non-Investment Grade Capacity Charge Rate to the Investment Grade Capacity Charge Rate, if, at any time during the Term: (1) Seller executes a Step-In Agreement with the State of Hawai‘i under the IPP Bill; or (2) Company’s credit rating reaches Investment Grade Status; and

B. if Seller’s actual financing costs are lower than assumed/estimated in developing its Non-Investment Grade Capacity Charge Rate at the time of bid submission, as demonstrated by the Financing Cost Comparison (which shall be provided to Company, together with all supporting documentation, within thirty Days of Seller’s completion of each of the Construction Financing Closing Milestone and the closing of Seller’s long-term financing), Seller will be required to adjust

its Non-Investment Grade Capacity Charge Rate downward on a pro rata basis to reflect such lower financing costs.

(E) Capacity Test. After or in the course of successful completion of a CSAT, Seller shall be allowed to conduct Capacity Tests (subject to inspection by Company) in accordance with the testing procedures set forth in Attachment W (Capacity Test Procedures), to determine the Demonstrated Firm Capacity of the Facility and whether Capacity Charge payments may be adjusted in accordance with Section 5.1(F) (Capacity Shortfall) and should begin in accordance with Section 5.1(G) (Commencement of Capacity Charge Payments).

(F) Capacity Shortfall. If, after determining the Demonstrated Firm Capacity as provided in Section 5.1(E) (Capacity Test), the Demonstrated Firm Capacity is less than the Contract Firm Capacity, the Capacity Charge payment to Seller shall be reduced in accordance with Section 4 (Initial Capacity Shortfall; Corrective Period) of Attachment W (Capacity Test Procedures).

(G) Commencement of Capacity Charge Payments. The Capacity Charge payments under Section 5.1(D) (Capacity Charge) shall begin when the Facility has successfully completed the Capacity Test referred to in Section 5.1(E) (Capacity Test), the Facility has achieved Commercial Operations.

(H) Demonstrated Firm Capacity. After the Commercial Operations Date, Seller may only increase the Demonstrated Firm Capacity of the Facility following a Subsequent Capacity Test conducted pursuant to Section 7 (Subsequent Capacity Test) of Attachment W (Capacity Test Procedures).

(I) Hawai'i General Excise Tax. Company shall not be liable for payment of the applicable Hawai'i General Excise Tax levied and assessed against Seller as a result of this Agreement. The rates and charges in this Article 5 (Rates for Purchase) shall not be adjusted by reason of any subsequent increase or reduction of the applicable Hawai'i General Excise Tax.

(J) No Payment of Emission Fees. Company shall not be liable for payment of the applicable air pollutant emission fees imposed by the DoH or U.S. EPA on Seller as a result of operating or having the potential to operate the Facility.

(K) No Payment of Other Taxes or Fees. Company shall not be liable for payment of nor reimbursement of any Seller payment of any new or modified tax or fee imposed by any Governmental Authority.

## ARTICLE 6 - BILLING AND PAYMENT

6.1 Monthly Invoice. As soon as practicable, but not later than the fifth (5th) Business Day of each Calendar Month, Company shall provide Seller with the appropriate data for Seller to compute the payment due for capacity provided and electric energy delivered to Company in the preceding Calendar Month as determined in accordance with this Agreement. Seller shall also report Seller's Average Available Capacity for such Calendar Month. Seller shall compute the Energy Charge and the Capacity Charge for the same Calendar Month and promptly thereafter, but not later than the tenth (10<sup>th</sup>) Business Day of each Calendar Month, submit an invoice ("Monthly Invoice") for the Capacity Charge and Energy Charge to be paid to Seller for the preceding Calendar Month. Each Monthly Invoice shall include Seller's backup data for the computation of the Capacity Charge and the Energy Charge. Unless and until Company designates a different address, the Monthly Invoice shall be delivered to:

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

Hawai'i Electric Light Company, Inc.  
P.O. Box 1027  
Hilo, Hawai'i 96721-1027  
Attention: Energy Contract Manager

Maui Electric Company, Limited  
P.O. Box 398  
Kahului, Hawaii 96733-6898  
Attention: Energy Contract Manager

6.2 Payment.

(A) Date Payment Due. No later than the fifteenth (15th) Business Day of the following Calendar Month during which the invoice was submitted (i.e. January invoice submitted in February, to be paid on the 15<sup>th</sup> Business Day of March), Company shall pay, in immediately available funds, such monthly Capacity Charge and Energy Charge payments as computed in Article 5 (Rates for Purchase), or provide to Seller an itemized statement of its objections to all or any portion of such Monthly Invoice and pay any undisputed amount. Notwithstanding all or any portion of such invoice in dispute, simple interest shall accrue on any invoiced amount that remains unpaid following the fifteenth (15th) Business Day of the following Calendar Month during which the invoice was submitted, or following the due date for such payment if extended, at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due such 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.

(B) Set Off. Company at any time may set off against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including

damages, Liquidated Damages, insurance premiums, and other payments, that are owed by Seller to Company pursuant to this Agreement or are past due under other accounts Seller has with Company for other services. Undisputed and non-set off portions of amounts invoiced under this Agreement shall be paid on or before the due date.

(C) Other Payments. Any amounts due from either Party under this Agreement other than monthly Energy Charges and Capacity Charges, including (i) all amounts pursuant to Attachment G (Company-Owned Interconnection Facilities), (ii) all amounts pursuant to Section 13(A) (Meters) of Attachment Y (Operation and Maintenance of the Facility) and Section 13(B) (Meter Testing) of Attachment Y (Operation and Maintenance of the Facility), (iii) a monthly metering charge of \$25.00 per month, which is in addition to any charges due Company for sales of electric energy by Company to Seller pursuant to the applicable rate schedule; and (iv) such other costs to be incurred by Company and reimbursed by Seller as set forth in this Agreement, shall be paid or objected to within thirty (30) Days following receipt from either Party of an itemized invoice from the other Party setting forth, in reasonable detail, the basis for such invoice.

6.3 Billing Disputes. Either Party may dispute invoiced amounts but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 17 (Dispute Resolution). When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with simple interest from the date that such disputed amount was payable until the date that the amount owed is paid at the average daily Prime Rate for the period.

6.4 Adjustments. In the event adjustments are required to correct inaccuracies in Monthly Invoices, the Party requesting adjustment shall use the method described in Section 13(C) (Corrections) of Attachment Y (Operation and Maintenance of the Facility), if applicable, to determine the correct measurements, and shall recompute the amounts due during the period of such inaccuracies. Except as noted below, the difference between the amount paid and that recomputed for each Monthly Invoice affected shall be paid, or repaid, with interest from the date that such Monthly Invoice was payable until the date that such recomputed amount is paid at the average daily Prime Rate for the period or objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request. 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 be resolved pursuant to Article 17 (Dispute Resolution). All claims for adjustments shall be waived for any deliveries of electric energy made more than thirty-six (36) months preceding the date of any such request.

## ARTICLE 7 - CREDIT ASSURANCE AND SECURITY

### 7.1 Security Fund.

(A) General. Seller is required to post and maintain either Development Period Security or Operating Period Security based on the requirements of this Article 7 (Credit Assurance and Security) for the term of this Agreement.

(B) Development Period Security. To guarantee 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 financial security to Company in an amount equal to \$100/kW of the Contract Firm Capacity (the "Development Period Security"). Seller shall provide 50% of the Development Period Security to Company within ten (10) Business Days of the Execution Date of the Agreement and the remaining 50% of the Development Period Security within ten (10) Business Days of the Effective Date.

(C) Return of the 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 7.1(G) (Company's Right to Draw From Security Funds), in the following circumstances: (1) this Agreement is declared null and void pursuant to its terms, (2) the PUC issues an order denying approval for an application for a PUC Approval Order, which does not become subject to appeal, (3) the PUC issues an Unfavorable PUC Order, which does not become subject to appeal, (4) a Non-Appealable PUC Approval Order is not obtained within the time periods specified in Section 2.2(F)(2) (Time Period for PUC Approval), or (5) following Company's receipt of the Operating Period Security pursuant to Section 7.1(D) (Operating Period Security).

(D) 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 financial security to Company in the amount equal to \$175/kW of the Contract Firm Capacity based on the Contract Firm 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.

(E) Form of Security. Seller shall supply the Development Period Security and Operating Period Security required in the form of an irrevocable standby letter of credit substantially in the form attached to this Agreement as Attachment M (Form of Standby Letter of Credit) from a bank doing business in the United States and subject to United States state or federal regulation, with a credit rating of "A-" or better from Standard & Poor's or A3 or better from Moody's (any such qualifying bank being referred to herein as an "LC Bank"). If the credit rating of the LC Bank falls below A- or A3 (as applicable), Company may require Seller to replace, within thirty (30) Days' notice by Company, such letter of credit with an irrevocable standby letter of credit from another bank meeting the requirements stated above. Any such letter of credit must 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. In the event Company receives notice from the LC 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 7.1(H) (Failure to Renew or Extend Letter of Credit) and Section 7.1(I) (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 7 (Credit Assurance and Security).

(F) 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 7 (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 7.1(G) (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, and 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.

(G) 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 or the GHG Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities), any amounts for which Company is entitled to reimbursement or indemnification under this Agreement, and for any amounts necessary under Section 12.1(L)(2)(f) to fund Seller's Community Benefits Program. Company may, in its sole discretion, draw all or any part of such amounts due Company from any Security Funds to the extent available pursuant to this Article 7 (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.

(H) 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 7.1(I) (L/C Proceeds Escrow), until Seller provides a substitute form of irrevocable standby letter of credit meeting the requirements of this Article 7 (Credit Assurance and Security), which substitute letter of credit shall be procured no later than five (5) Business Days after expiration of the letter of credit.

(I) L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 7.1(H) (Failure to Renew or Extend Letter of Credit), and for so long as a substitute letter of credit meeting the requirements of this Article 7 (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 7.1(I) (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, the IRS Letter Agreement or the GHG Letter Agreement, 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 escrow account. Seller shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon the issuance of a substitute letter of credit satisfying the requirements of this Article 7 (Credit Assurance and Security) 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. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing reducing, or otherwise administering the Security Funds through the L/C Proceeds Escrow shall be borne by Seller.

7.2 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 damages owed by Seller to Company, under this Agreement, Company shall release the Security Funds (including any accumulated interest, if applicable) to Seller.

## ARTICLE 8 - DEFAULT

### 8.1 Events of Default.

(A) Default by Seller. The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by Seller:

(1) Company declares an Event of Default pursuant to Section 2.4(D)(2) (Termination Right);

(2) [RESERVED]

(3) Seller shall fail to pay Company any amount as and when due under this Agreement (less any amounts disputed in good faith pursuant to Article 17 (Dispute Resolution)) and neither Seller nor the Facility Lender remedy such non-payment within thirty (30) Days after written demand therefor by Company served upon Seller with a copy served upon the Facility Lender;

(4) Seller shall fail to operate, maintain or repair the Facility in accordance with the terms of this Agreement such that a condition exists in the Facility (i) which has a material adverse impact on the Company System (including but not limited to the ability of the Company System to provide acceptable levels of electric energy to satisfy demand) or (ii) an adverse physical impact on the equipment of Company's customers or (iii) which Company reasonably determines presents an immediate danger to Company personnel, third parties, the Company System or Company equipment, and Seller shall fail to initiate and diligently pursue reasonable action to cure such failure within seven (7) Days after actual receipt by Seller and the Facility Lender of demand therefor by Company, provided, that Company may, after providing written notice to Seller and Facility Lender, enter upon the Site, and undertake such reasonable action on behalf of Seller, consistent with Good Engineering and Operating Practices, until either such adverse effect or danger is eliminated or Company is reasonably satisfied that Seller has, within the aforesaid seven (7) Day period, initiated and is diligently pursuing such reasonable action. Seller shall bear or reimburse Company, as the case may be, for all reasonable, documented, out-of-pocket costs incurred by Company in connection with such reasonable actions taken by Company on behalf of Seller as provided herein, and shall cooperate in good faith with Company in providing access to the Facility and the Site, in the event Company elects to undertake such action as provided herein;

(5) Seller shall (i) abandon the Facility prior to the Commercial Operations Date or (ii) fail to maintain continuous service to the extent required by this Agreement for a period of seven (7) or more consecutive Days, the last twenty-four (24) hours of which shall be after notice by Company to Seller that it is not in compliance with this provision, unless such abandonment or failure is caused by Force Majeure or an Event of Default by Company. For purposes of this Section 8.1(A)(5), abandonment of the Facility prior to the Commercial Operations Date shall mean the failure by Seller, after the Non-appealable PUC Approval Order Date, to proceed with or prosecute in a diligent manner the planning, design, engineering, permitting, completion (including,

without limitation, purchasing, accounting, training and administration) and Start-up of the Facility for a consecutive period of thirty (30) Days, the last ten (10) Days of which shall be after notice from Company to Seller that it is not in compliance with this provision;

(6) Company declares an Event of Default in accordance with Section 3.3(B)(1)(c) or Section 1.j (Demonstration of Facility) of Attachment B (Facility Owned by Seller);

(7) Seller shall fail to deliver the Facility in accordance with Section 3.2(J) (Seller's Obligation to Deliver Facility);

(8) Seller shall fail to meet the warranties and guarantees of performance specified in Section 3.2(B)(1) (Equivalent Availability Factor) or Section 3.2(B)(2) (Equivalent Forced Outage Factor) by more than ten (10) percentage points on average in any Contract Year or if Seller fails, after the twelfth (12th) full month following the Commercial Operations Date, to maintain an EAF greater than seventy-five percent (75%) on a twelve-month rolling average basis; provided, that to the extent such failure of performance is attributable to an event of Force Majeure, the contribution of such event of Force Majeure to such failure of performance shall be eliminated from the EAF calculation for the purposes of, and only for the purposes of, establishing an Event of Default of Seller pursuant to this Section 8.1(A)(8), and provided further, that the event of Force Majeure contributing, in whole or in part, to such failure of performance is subject to the provisions of Article 18 (Force Majeure);

(9) Seller shall fail to meet the warranty and guarantee of performance specified in Section 3.2(B)(5) (Disconnection Events) by more than seven (7) Disconnection Events in any Contract Year;

(10) Seller fails to obtain the prior written consent of Company required under Section 12.1(G) (Substitute Principal) or Section 12.1(H) (Substitute Entity Operating Facility);

(11) Seller becomes insolvent, or makes an assignment for the benefit of creditors 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 or 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; or;

(12) Without the application, approval or consent of Seller, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Seller, or any part of its property, or a proceeding described in Section 8.1(A)(11) immediately above shall be instituted against Seller and such appointment shall continue undischarged or such proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive Days or Seller shall fail to file in a timely manner, an answer or other pleading denying the material allegations filed against it in any such proceeding;

(13) Without the prior written consent of Company, Seller shall transfer, convey, lose or relinquish its right to own or operate the Facility or to occupy the Site to any person, except an entity to whom Seller may assign this Agreement under Article 20 (Transfers, Assignments and Financing Debt);

(14) [RESERVED]

(15) Seller fails to satisfy the requirements of Article 7 (Credit Assurance and Security) of this Agreement;

(16) Seller delivers or attempts to deliver to the Point of Interconnection electric energy that was not generated by the Facility; The Facility Lender declare an event of default under the Financing Documents and then fail to initiate, within sixty (60) Days thereafter, such actions as may be legally necessary (such as foreclosure) to take possession of the Facility and to thereafter diligently prosecute such actions to conclusion;

(17) Seller shall fail to perform a material obligation of this Agreement not otherwise specifically referred to in this Section 8.1(A) (Default by Seller), which failure has or may reasonably be anticipated to have a material adverse effect on Seller's delivery of capacity and energy to Company in accordance with the terms of this Agreement and which failure shall continue for forty-five (45) Days after written demand by Company for performance thereof;

(18) Seller makes any representation or warranty to Company required by, or relating to Seller's performance of, this Agreement that is false and misleading in any material respect when made;

(19) Seller shall fail to provide new and/or updated Required Models within 30 Days' notice from Company of a breach of Section 6.a (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller); or

(20) Seller shall fail to meet the warranty and guarantee of performance specified in Section 3.2(B)(6) (Start-up Failures) by more than eight (8) Start-up Failures for any individual generating unit in any Contract Year.

(B) Default by Company. The occurrence of any of the following at any time during the Term of this Agreement shall constitute an "Event of Default" by Company:

(1) Company shall fail to pay Seller any amount as and when due under this Agreement (less any amounts disputed in good faith pursuant to Section 6.2 (Payment)) and shall fail to remedy such non-payment within forty-five (45) Days after demand therefor from Seller;

(2) Company shall (i) be dissolved, be adjudicated as bankrupt, or become subject to an order for relief under any federal bankruptcy law; (ii) fail to pay, or admit in writing its inability to pay, its debts generally as they become due; (iii) make a general assignment of substantially all its assets for the benefit of creditors; (iv) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for itself or any substantial part of its property; (v) institute any proceedings seeking an order for relief or to adjudicate it as bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors; or (vi) take any action to authorize or effect any of the foregoing actions;

(3) Without the application, approval or consent of Company, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Company or any part of its respective property, or a proceeding described in Section 8.1(B)(2) shall be instituted against Company and such appointment shall continue undischarged or such proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive Days or Company shall fail to file timely an answer or other pleading denying the material allegations filed against it in any such proceeding;

(4) Company shall fail to perform a material obligation of this Agreement not otherwise specifically referred to in this Section 8.1(B) (Default by Company), which failure shall have a material adverse effect on its ability to accept and pay for, or Seller's ability to deliver, capacity and energy in accordance with the terms of this Agreement and which failure shall continue for forty-five (45) Days after written demand by Seller for performance thereof; or

(5) Company makes any representation or warranty to Seller required by, or relating to Company's performance of, this Agreement that is false and misleading in any material respect when made.

(C) Cure Periods and Force Majeure Exceptions. Before becoming an Event of Default, the occurrences set forth in Section 8.1(A) (Default by Seller) and Section 8.1(B) (Default by Company) are subject to cure periods and Force Majeure exceptions as follows:

(1) Under Section 8.1(A)(1), cure periods and the consequences of Force Majeure are addressed in Section 2.4(B) (Construction Milestones Extensions) and Section 18.5 (Effect of Force Majeure on Milestone Dates and Guaranteed Commercial Operations Date) and no further opportunity to cure or Force Majeure exceptions are applicable;

(2) Under Section 8.1(A)(11) through Section 8.1(A)(13), Section 8.1(A)(18), Section 8.1(A)(20), Section 8.1(B)(2), and Section 8.1(B)(3), no opportunities to cure or Force Majeure exceptions are applicable; or

(3) Under Section 8.1(A)(3), Section 8.1(A)(4), Section 8.1(A)(5), Section 8.1(A)(6), Section 8.1(A)(7), Section 8.1(A)(8), Section 8.1(A)(9), Section 8.1(A)(10), Section 8.1(A)(15), Section 8.1(A)(16), Section 8.1(A)(17), Section 8.1(A)(19), Section 8.1(A)(20), Section 8.1(B)(1), and Section 8.1(B)(5):

(a) If the occurrence is not the result of Force Majeure, the non-performing Party shall be entitled to a cure period, if any, to the limited extent expressly set forth in each section; or

(b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 18.4 (Satisfaction of Certain Conditions) are satisfied, the non-performing Party shall be entitled to a grace period as provided in Section 18.6 (Effect of Force Majeure on Other Events of Default), which shall apply in lieu of any cure periods provided in Section 8.1(A) (Default by Seller) and Section 8.1(B) (Default by Company).

## 8.2 Rights and Obligations of the Parties Upon Default.

(A) Notice of Default. Upon the occurrence of an Event of Default specified in Section 8.1 (Events of Default), the non-defaulting Party shall deliver to the defaulting Party (with a copy to the Facility Lender and/or the collateral agent designated therefor) a written notice which (i) declares that an Event of Default has occurred under Section 8.1 (Events of Default) of this Agreement; and (ii) identifies the specific provision or provisions of such Section under which such Event of Default shall have occurred.

(B) Right to Terminate; Forward Contract.

(1) Notice of Termination. If an Event of Default under Section 8.1 (Events of Default) shall have occurred and not been cured within the cure periods provided in Section 8.1(C) (Cure Periods and Force Majeure Exceptions), or, as to Events of Default

under Section 8.1(A)(6) or Section 8.1(A)(7) pursuant to the remedial provisions described therein, or such other cure periods provided under the Financing Documents to which Company is a party, as applicable, the non-defaulting Party shall have the right to terminate this Agreement by delivering a written notice of termination which shall be effective thirty (30) Days from the date such notice is delivered.

(2) Termination by Company.

(a) Company's Assumption of Seller's Interest or Purchase of the Facility. If an Event of Default by Seller occurs, and if Company delivers to Seller the notice required under Section 8.2(B) (Right to Terminate; Forward Contract) stating that Company has elected to exercise its rights hereunder, Company shall have the right to either (i) assume Seller's interest in the Facility, or (ii) purchase the Facility as follows:

(i) Assumption of Seller's Interest. In the event Company elects to assume Seller's interest in the Facility, Company shall, subject to applicable PUC approval, promptly assume all right, title and interest of Seller in the Facility and the Interconnection Facilities, this Agreement, the Project Documents and the Financing Documents to the extent it is legally capable of doing so (and to the extent the Project Documents and Financing Documents permit such assumption by Company), and to take over the construction or operation of the Facility and the Interconnection Facilities forthwith and to construct or operate the Facility and the Interconnection Facilities during the period in which the foregoing assumption is being perfected, and to complete the construction of and/or operate the same, provided that Company also assumes all of Seller's obligations under the Financing Documents and the Project Documents (other than this Agreement, and as to the Financing Documents and Project Documents, only to the extent allowed by those documents); provided further that Company shall pay to Seller an amount equal to the Appraised Fair Market Value of the Facility, as determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), less the sum of [(1) all amounts (including but not limited to, principal, accrued interest and penalties due or outstanding under the Financing Documents or any other obligation secured by the Facility or any part thereof, plus (2) all amounts currently owed by Seller to Company, plus (3) all amounts currently due or outstanding under contracts or other obligations being assumed by Company under this Section 8.2(B)(2)(a)(i) (Assumption of Seller's Interest), plus (4) all amounts, including, without limitation, all charges and penalties, incurred under the Financing Documents as a result of Company exercising its rights under this Section 8.2(B)(2)(a)(i) (Assumption of Seller's Interest)]. Upon such assumption, Company shall have no obligation to remedy or cause to be remedied the events which gave rise to the Event of Default under Section 8.1(A) (Default by Seller) or to pay any delinquent principal, interest, penalties, or other

amounts due or outstanding under any Project Documents, Financing Documents, or other contracts or other obligations; provided, however, that any payments Company does make toward such delinquent principal, interest, penalties, or other amounts shall be deducted from the Appraised Fair Market Value paid to Seller under this Section 8.2(B)(2)(a)(i) (Assumption of Seller's Interest) (unless already deducted from the Appraised Fair Market Value payment described above). The Financing Documents and Project Documents shall specify that Company has the assumption rights described in this Section 8.2(B)(2) (Termination by Company), and that such rights shall have priority over the exercise by the Facility Lender of their security interest in, and mortgage on, this Agreement, the other Project Documents and/or the Facility. Despite any such assumption of rights by Company, Seller shall continue to be liable to Company for all obligations to Company arising from events which occurred through the date of Company's assumption, except for such obligations that were deducted from the Appraised Fair Market Value payment to Seller described above. Seller shall take all action and provide all information necessary to facilitate Company's decision whether to exercise its rights under this Section 8.2(B)(2) (Termination by Company) and to implement the exercise of those rights if Company so chooses.

(ii) Purchase of the Facility. In the event Company elects to purchase the Facility, Company shall promptly assume all right, title and interest of Seller in the Facility and the Interconnection Facilities, this Agreement, and the Project Documents to the extent it is legally capable of doing so, to take over the construction or operation of the Facility and the Interconnection Facilities forthwith and to construct or operate the Facility and the Interconnection Facilities during the period in which the foregoing purchase is being completed, and to complete the construction of and/or operate the same, provided that Company also assumes all of Seller's obligations under the Project Documents (other than this Agreement); provided further that Company shall pay to Seller an amount equal to the Appraised Fair Market Value of the Facility, as determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), less the sum of [(1) all accrued interest and penalties due or outstanding under the Financing Documents or any other obligation secured by the Facility or any part thereof, plus (2) all amounts currently owed by Seller to Company, plus (3) all amounts currently due or outstanding under contracts or other obligations being assumed by Company under this Section 8.2(B)(2)(a)(ii) (Purchase of the Facility) plus (4) all amounts, including, without limitation, all charges and penalties, incurred under the Financing Documents as a result of Company exercising its rights under this Section 8.2(B)(2)(a)(ii) (Purchase of the Facility)]. Upon such assumption, Company shall have no obligation to remedy or cause to be remedied the events which gave

rise to the Event of Default under Section 8.1(A) (Default by Seller) or to pay any delinquent principal, interest, penalties, or other amounts due or outstanding under any Project Documents, Financing Documents, or other contracts or obligations; provided, however, that any payments Company does make toward such delinquent principal, interest, penalties, or other amounts shall be deducted from the Appraised Fair Market Value paid to Seller for the Facility under this Section 8.2(B)(2)(a)(ii) (Purchase of the Facility) (unless already deducted from the Appraised Fair Market Value payment described above). The Financing Documents and the Project Documents shall specify that Company has the purchase rights described in this Section 8.2(B)(2) (Termination by Company), and that such rights shall have priority over the exercise by the Facility Lender of their security interest in, and mortgage on, this Agreement, the other Project Documents and/or the Facility (but as to the Land Rights documents, only to the extent allowed by such documents). Despite any such exercise of rights by Company, Seller shall continue to be liable to Company for all obligations to Company arising from events which occurred through the date of Company's purchase, except for such obligations which were deducted from the Appraised Fair Market Value payment to Seller described above. Seller shall take all action and provide all information necessary to facilitate Company's decision whether to exercise its rights under this Section 8.2(B)(2) (Termination by Company) and to implement the exercise of those rights if Company so chooses. Company's purchase of the Facility under this Section 8.2(B)(2)(a)(ii) (Purchase of the Facility) shall be pursuant to a purchase and sale agreement subject to the requirements of Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller) and pursuant to PUC approval subject to the requirements of Section 5 (PUC Approval) of Attachment P (Sale of Facility by Seller).

(b) Seller's Obligations Upon Termination. If Company elects to exercise its rights under this Section 8.2(B)(2) (Termination by Company), Seller shall take all actions as may be necessary (i) to convey to Company free and clear of all liens and encumbrances (other than those of Company and the Facility Lender that may continue to exist after Company's assumption under Section 8.2(B)(2)(a)(i) (Assumption of Seller's Interest), and those liens which are to be paid or released through deductions withheld from the Appraised Fair Market Value payment above) all of Seller's right, title and interest in and to the Facility and the Interconnection Facilities and any and all materials, equipment, design materials and supplies relating to the Facility and the Interconnection Facilities, including without limitation, any such materials, equipment, design materials or supplies located at the Site or in transit to the Site, whether or not completed or ready for use or incorporated into the Facility and the Interconnection Facilities, and any such materials, equipment, design materials or supplies being processed, fabricated, assembled or prepared off the Site for installation in the Facility and the Interconnection Facilities or for use at or in

connection with the Facility and the Interconnection Facilities, and (ii) to assign to Company, with such consents and undertakings as may be necessary to make such assignments fully effective, all of Seller's interests under the Financing Documents (in the case of a Company assumption under Section 8.2(B)(2)(a)(i) (Assumption of Seller's Interest), and only to the extent such assignment is allowed by those documents) and the Project Documents (other than this Agreement). Seller's obligations under this Section 8.2(B)(2) (Termination by Company) shall survive any exercise by Company of its remedies under Section 8.2(B)(1) (Notice of Termination) or any termination of this Agreement by Company pursuant to Section 8.2(B)(2) (Termination by Company).

(c) Other Assumption of Seller's Interest. If Company elects not to or cannot assume all of Seller's interests, rights, and obligations or purchase the Facility in accordance with Section 8.2(B)(2)(a) (Company's Assumption of Seller's Interest or Purchase of the Facility), and if an Event of Default declared by Company has occurred, the Facility Lender (and/or the collateral agent designated therefor) shall have sixty (60) Days from receipt of the notice delivered by Company pursuant to Section 8.2(A) (Notice of Default), subject to the requirements of this Section 8.2(B)(2)(c) (Other Assumption of Seller's Interest), to cause an affiliate of the Facility Lender or a new purchaser or lessee of the Facility to assume all of the right, title and interest of Seller under this Agreement and the Project Documents. The right of the Facility Lender (and/or collateral agent) to provide such affiliate or new purchaser or lessee shall be subject to Company's consent, not to be unreasonably withheld, and to satisfaction of the following conditions: (i) the affiliate or new purchaser or lessee shall have 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; (ii) the affiliate or new purchaser or lessee shall have provided Company with adequate assurances of its creditworthiness (including such guarantees as Company deems appropriate) and ability to perform its financial obligations hereunder in a manner consistent with the terms and conditions of this Agreement; and (iii) the affiliate and/or Facility Lender shall remedy or cause to be remedied the event which gave rise to the Event of Default under Section 8.1(A) (Default by Seller) within sixty (60) Days of the Facility Lender's receipt of the notice delivered by Company under Section 8.2(A) (Notice of Default). Notwithstanding such assumption by the affiliate or new purchaser or lessee, Seller shall continue to be liable to Company for all obligations to Company arising from events which occur through the date on which the affiliate or new purchaser or lessee makes such assumption effective. The performance or non-performance of the terms of this Agreement by the affiliate or new purchaser or lessee shall be measured from the date of such assumption. During the pendency of such assumption, Seller shall cooperate with the Facility Lender and shall take all actions as may be necessary (aa) in the case of a new purchaser or an affiliate of the Facility Lender which is to acquire the Facility, to convey to the affiliate or new purchaser all right, title and interest in the Facility and any and all materials, equipment, design materials and supplies relating to the Facility, including without limitation, any such materials,

equipment, design materials or supplies located at the Site or incorporated into the Facility, and any such materials, equipment, design materials or supplies being processed, fabricated, assembled or prepared off the Site for installation in the Facility or for use at or in connection with the Facility, and (bb) to assign to such new purchaser or affiliate or to a lessee, with such consents and undertakings as may be necessary to make such assignments fully effective, all of Seller's interests under this Agreement, the other Project Documents and the Financing Documents. If the assumption of rights, interests and obligations by the affiliate or new purchaser or lessee occurs strictly in accordance with this Section 8.2(B)(2)(c) (Other Assumptions of Seller's Interest), Company shall continue this Agreement with the affiliate or new purchaser or lessee substituted in the place of Seller hereunder.

(d) Effective Date. Without limitation to the generality of the preceding subsections of this Section 8.2(B)(2) (Termination by Company), the earliest Day upon which a termination of this Agreement can be effective as a result of a failure to achieve the Guaranteed Commercial Operations Date would be the Day following expiration of the one hundred eighty (180) Day COD Delay LD Period provided in Section 2.4(D)(1)(b) (Daily Delay Damages).

(e) Termination Damages. 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 8.2(B) (Right to Terminate; Forward Contract), to collect all damages, including liquidated damages ("Termination Damages"), in accordance with Article 9 (Liquidated Damages).

(3) Forward Contract. Without limitation to the generality of the foregoing provisions of this Section 8.2 (Rights and Obligations of the Parties Upon Default), 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 8.1(A) (Default by Seller), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

(C) Right to Demand Independent Engineering Assessment and Modification.

(1) Notice of Default. If an Event of Default described in Section 8.1(A)(8) or Section 8.1(A)(9) occurs, Company shall, prior to exercising its rights under Section 8.2(A) (Notice of Default) or Section 8.2(B) (Right to Terminate; Forward Contract) on the basis thereof, give written notice to Seller that it will obtain an Independent Engineering Assessment concerning the failure to meet the specified warranted levels. Within thirty (30) Days after receipt by Seller of such notice, a president, vice president, or other authorized delegate of Company and Seller, both having full authority to settle the matter, shall personally meet in Hawai'i and attempt in good faith to make the determination described in Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment). If these officials reach agreement on a determination, the

provisions of Section 8.2(C)(3) (Determination That There Are No Commercially Reasonable Changes) and Section 8.2(C)(4) (Determination That There Are Commercially Reasonable Changes) shall apply thereto. If no meeting takes place within thirty (30) Days of Seller's receipt of the aforesaid written notice, or if agreement between these officials is not reached within forty-five (45) Days of Seller's receipt of such notice, Company may at any time thereafter require that an Independent Engineering Assessment be conducted in accordance with Section 3.3(B) (Company Right to Require Independent Engineering Assessment) except that in every instance all costs and expenses of such Independent Engineering Assessment shall be borne by Seller.

(2) Changes Based on Independent Engineering Assessment. The representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, shall determine whether there are commercially reasonable changes in the Facility, or in the manner in which Seller operates the Facility, which (i) could be implemented within two hundred and seventy (270) Days (or such other time period which Company and Seller mutually agree upon) after such findings are made by the Parties or the Qualified Independent Engineering Company, as the case may be, and (ii) could reasonably be expected to result in future operation of the Facility in each Contract Year at the following levels **[THIS SECTION MAY BE REVISED BASED ON THE SPECIFIC PROJECT.]**

(a) An EAF not less than ninety percent [90%] computed in accordance with Section 3.2(B)(1) (Equivalent Availability Factor);

(b) An EFOF not to exceed four percent [4%] computed in accordance with Section 3.2(B)(2) (Equivalent Forced Outage Factor);

(c) The Facility shall have the capability, within Good Engineering and Operating Practices and within the design limitations of the Facility equipment, of producing the Demonstrated Firm Capacity; or

(d) No more than three (3) Disconnection Events or any single point of failure violations in any Contract Year.

Notwithstanding anything to the contrary stated or implied herein, the remaining Term of the Agreement shall not be considered in determining whether there are commercially reasonable changes that could be implemented by Seller to improve its performance to the above-specified levels.

(3) Determination That There Are No Commercially Reasonable Changes. If the representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, determine that there are no commercially reasonable changes meeting the requirements of Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment), Company may thereafter declare an Event of Default on the basis of the failure described in Section 8.1(A)(8) or

Section 8.1(A)(9) which preceded Company's request for an Independent Engineering Assessment.

(4) Determination That There Are Commercially Reasonable Changes. If the representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, determine that there are commercially reasonable changes meeting the requirements of Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment) above, Company may not declare an Event of Default on the basis of the failure described in Section 8.1(A)(8) or Section 8.1(A)(9) which preceded Company's request for an Independent Engineering Assessment unless Seller either (i) fails to diligently carry out such recommended changes as determined in accordance with the procedures and requirements set forth in Section 3.3(B) (Company Right to Require Independent Engineering Assessment) or (ii) implements such changes but the Facility nevertheless does not meet the standards of Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment) in the first full Contract Year after such changes are implemented; provided that, if such right to declare an Event of Default is not exercised within three (3) months after such first full Contract Year, Company shall be deemed to have waived such right.

Alternatively, in the instance specified in sub-part (i) above where Seller fails to diligently carry out such recommended changes as determined in accordance with the procedures and requirements set forth in Section 3.3(B) (Company Right to Require Independent Engineering Assessment), Company, in its sole discretion, may elect to carry out the recommended changes and Seller shall cooperate with Company to effect such changes as Company determines in its sole discretion and Company shall be entitled to charge Seller, and Seller shall pay upon demand, for all of the costs to complete such recommended changes, including Company's internal work necessary to design, complete and test such work. If such changes do not meet the standards of Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment) in the first full Contract Year after such changes are implemented, Company may declare an Event of Default on the basis of the failure described in Section 8.1(A)(8) or Section 8.1(A)(9); provided that, if such right to declare an Event of Default is not exercised within three (3) months after such first full Contract Year, Company shall be deemed to have waived such right.

8.3 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 8.2 (Rights and Obligations of the Parties Upon Default). Accordingly, the remedies set forth in Section 8.2 (Rights and Obligations of the Parties Upon Default) 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 9 - LIQUIDATED DAMAGES

9.1 Liquidated Damages. Recognizing that Company must provide the ultimate service to its customers and that the capacity and energy produced by the Facility is needed to meet the requirements of Company’s customers, and in order to avoid the difficulties of proof in connection with the damages Company would incur in the event of a failure of the Facility to meet the Technical and Operational Requirements herein, the Parties agree that the following Liquidated Damages for failure by Seller to attain required performance (i) constitute a reasonable and good faith estimate of the anticipated or actual loss or damage which would be incurred by Company as a result of such failure, (ii) are not intended as a penalty, (iii) may be invoked by Company to ensure that the Facility meets the Technical and Operational Requirements established under this Agreement and (iv) constitute Company’s sole and exclusive monetary remedy with respect to the matters set forth in Section 9.2 (Calculation and Payment of Liquidated Damages) and Section 9.3 (Damages in the Event of Termination by Company), provided, however, that the Company’s invoking Liquidated Damages shall not limit or otherwise affect Company’s right to seek (aa) monetary damages when Liquidated Damages are not applicable under the terms of this Agreement and when Company has not terminated this Agreement (or damages with respect to losses arising independent of a termination of this Agreement), and (bb) specific performance or injunctive relief when monetary damages will not provide adequate relief.

9.2 Calculation and Payment of Liquidated Damages. **[THIS SECTION MAY BE REVISED BASED ON THE SPECIFIC PROJECT.]**

(A) Equivalent Availability Factor. For each one-tenth (1/10) of a percentage point that the Equivalent Availability Factor of the Facility falls below the guaranteed level specified in Section 3.2(B)(1) (Equivalent Availability Factor) for each Contract Year, Seller shall pay to Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

EAF Damages Schedule Amount Below Guaranteed Level

EAF	Liquidated Damages
90.0% - 100%	-0-
85.0% - 89.9%	\$3,000 per 0.1%
80.0% - 84.9%	\$4,000 per 0.1%
75.0% - 79.9%	\$5,000 per 0.1%
Below 75.0%	\$6,000 per 0.1%

Such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(A) (Equivalent Availability Factor) within thirty (30) Days of receipt of Company’s written demand, Company

may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement

(B) Equivalent Forced Outage Factor. For each one-tenth (1/10th) of a percentage point that the EFOF exceeds the guaranteed level specified in Section 3.2(B)(2) (Equivalent Forced Outage Factor) for each Contract Year, Seller shall pay Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

EFOF Damages Schedule Amount Above Guaranteed Level

EFOF	Liquidated Damages
0.0% - 3.9%	-0-
4.0% - 6.9%	\$4,000 per 0.1%
7.0% - 9.9%	\$7,000 per 0.1%
Above 10.0%	\$10,000 per 0.1%

All Such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(B) (Equivalent Forced Outage Factor) within thirty (30) Days of receipt of Company’s written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(C) Excessive Disconnection Events. For each Disconnection Event that exceeds the guaranteed amount set forth in Section 3.2(B)(5) (Disconnection Events) for the current Contract Year, Seller shall pay Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

<u>Disconnection Events</u>	<u>Liquidated Damages</u>
1 - 3 Disconnection Events	\$6,500 per event
4 – 7 Disconnection Events	\$9,500 per event
More than 7 Disconnection Events	\$12,500 per event

For each Disconnection Event that also results in the loss of more than **[142 MW - Oahu, 30 MW - Hawai’i, 20 MW - Maui]** MW active power output measured at the Point of Interconnection at any point in time during such Disconnection Event, Seller shall pay Company additional Liquidated Damages in the amount of \$6,000 for each occurrence. For avoidance of doubt, each Single Point of Failure Violation or when the entire Facility disconnects is also a

Disconnection Event counting against the guaranteed amount set forth in Section 3.2(B)(5) (Disconnection Events).

All such Liquidated Damages (for Disconnection Events and Disconnection Events that also result in Single Point of Failure Violations) shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(C) (Excessive Disconnection Events) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(D) Damages in the Event Seller Fails to Maintain Workforce. The amounts payable by Seller under Section 11 (Seller's Obligation to Maintain Workforce) of Attachment Y (Operation and Maintenance of the Facility) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand from Company within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(D) (Damages in the Event Seller Fails to Maintain Workforce) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(E) Milestone Delay Damages. The amounts payable by Seller under Section 2.4(D) (1)(a) (Milestone Delay Damages) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages) and Seller shall be pay such amounts in accordance with the provisions of Section 2.4(D)(1)(a) (Milestone Delay Damages).

(F) Daily Delay Damages. The amounts payable by Seller under Section 2.4(D)(1)(b) (Daily Delay Damages) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages) and Seller shall be pay such amounts in accordance with the provisions of Section 2.4(D)(1)(b) (Daily Delay Damages).

(G) Termination Damages. The amounts payable by Seller under Section 9.3 (Damages in the Event of Termination by Company) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand from Company within thirty (30) Days after such demand and in accordance with any applicable provisions of Section 8.2 (Rights and Obligations of the Parties Upon Default). In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(G) (Termination Damages) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(H) Damages in the Event Seller Fails to Provide Required Models. The amounts payable by Seller under Section 6.b (Remedies) of Attachment B (Facility Owned by Seller) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand from Company within thirty (30) Days after such demand. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages

due under this Section 9.2(H) (Damages in the Event Seller Fails to Provide Required Models) within thirty (30) Days of receipt of Company’s written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(I) Start-up Failure Damages. For each Start-up Failure that exceeds the guaranteed amount set forth in Section 3.2(B)(6) (Start-up Failures) for the current Contract Year, Seller shall pay Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

<u>Start-up Failures</u>	<u>Liquidated Damages</u>
1 - 3 Start-up Failures	\$6,500 per event
4 – 7 Start-up Failures	\$9,500 per event
More than 7 Start-up Failures	\$12,500 per event

All such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(I) (Start-up Failure Damages) within thirty (30) Days of receipt of Company’s written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement. [START-UP FAILURE LIQUIDATED DAMAGES WILL APPLY TO PROJECTS PROVIDING FAST START GENERATING RESOURCES]

9.3 Damages in the Event of Termination by Company.

(A) Pre-COD Termination Damages. If the Agreement is terminated by Company in accordance with this Agreement before the Commercial Operations Date due to an Event of Default where Seller is the defaulting Party, Company shall be entitled to Liquidated Damages in the amount of \$500,000 (“Pre-COD Termination Damages”) in addition to any Milestone Delay Damages and Daily Delay Damages paid by Seller.

(B) Post-COD Termination Damages. 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 liquidated damages calculated by multiplying the Demonstrated Firm Capacity by \$75 per kW (“Post-COD Termination Damages”).

(C) 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 Section 8.2(B) (Right to Terminate; Forward Contract) would be difficult or impossible to predict with certainty, and (ii) the Pre-COD Termination Damages and Post-COD Termination Damages, as applicable, are an appropriate approximation of such damages.

9.4 Other Rights Upon Default. Upon the occurrence of an Event of Default by either Party, the non-defaulting Party, subject to the rights described in this Agreement, including, but not limited to, Section 8.1(C) (Cure Periods and Force Majeure Exceptions), Section 8.2(B) (Right to Terminate; Forward Contract), Section 8.2(C) (Right to Demand Independent Engineering Assessment and Modification), may exercise, at its election, any rights and claim and obtain any remedies it may have at law or in equity, including, but not limited to, compensation for monetary damages, injunctive relief and specific performance.

## ARTICLE 10 - COMPANY'S USE OF AND ACCESS TO FACILITY

10.1 Entry for Work on Site. Seller shall permit Company, its employees and agents (including but not limited to affiliates and contractors and their employees) to enter upon the Facility, with such prior notice as is reasonable under the circumstances, to take such action as may be necessary in the reasonable opinion of Company to: (i) maintain, inspect, read and test meters and other Company equipment pursuant to Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility), and Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility), (ii) interconnect, interrupt (including, but not limited to, operating the manual disconnect device provided by Seller in accordance with Section 5 (Personnel and System Safety) of Attachment Y (Operation and Maintenance of the Facility), monitor or measure electric generation produced at the Facility in accordance with the terms of this Agreement, and (iii) exercise any other rights Company may have under this Agreement.

10.2 Provision of Site Space. Seller shall provide without charge suitable space on the Site for all Company equipment to be placed on the Site under this Agreement. Suitable space as used herein means space appropriate for the intended use with adequate electric power, air conditioning, telecommunication wiring, security, and other necessary building services. In addition, Seller shall provide a means for reasonable access by Company to the Site, also without charge to Company. If Company exercises its rights to have a Company Site Representative under Section 10.5 (Company Site Representative), Seller will provide suitable office space at the Site for such Company Site Representative.

10.3 No Ownership Interest. Neither Seller nor any Financing Party shall acquire any ownership interest or security interest in or lien or mortgage on any equipment installed, owned, and maintained at the Site by Company pursuant to this Agreement, and Company shall have a reasonable time after termination of this Agreement in which to remove such equipment.

10.4 Inspection of Facility Operation.

(A) Company's Right to Inspect. Seller shall permit Company, its employees and agents (including but not limited to affiliates and contractors and their employees), from the Execution Date, to enter upon and inspect the Facility and the Facility's design manuals and drawings, its operating and maintenance manuals, and Seller's construction, operation and maintenance thereof from time to time, upon reasonable prior notice.

(B) Correction of Certain Conditions. If Company observes a condition during such inspections which it believes may have an adverse impact on Seller's ability to fulfill its obligations under this Agreement, Company may make a written request for Seller to correct such condition and Seller shall provide a written report on such condition within thirty (30) Days. If Company disagrees with the Seller's proposal to remedy the condition, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineer's List pursuant to Section 3.3(B)(1)(b) and the Qualified Independent Engineering Company will make a recommendation to remedy the situation. The Seller shall abide by the Qualified Independent Engineering Company's recommendation. Both Parties shall equally share in the cost for the independent engineering assessment. However, Seller shall pay all costs associated

with implementing the recommendation. Company's inspection of Seller's equipment or operation shall not be construed as endorsing the design thereof nor as any warranty of the safety or reliability of said equipment or operation nor as a waiver of any right by Company.

10.5 Company Site Representative. Company may, at its sole discretion, assign a Company employee or representative as a "Company Site Representative" for the Facility. Such assignment of a Company Site Representative would become effective upon ten (10) Days' written notice to Seller. Upon the exercise by Company of the rights provided in this Section 10.5 (Company Site Representative), Seller shall provide at no cost to Company suitable office space at the Site for the Company Site Representative to conduct business. Once established, the Company Site Representative shall have free access at all times to any and all operational areas of the Facility. Seller shall comply with any reasonable request of the Company Site Representative for information concerning the design, construction, operation (including fueling) and maintenance of the Facility.

## ARTICLE 11 - AUDIT RIGHTS

11.1 Rights of Company. Company shall have the right throughout the Term and for a period of three (3) years following the end of the Term, as extended, upon reasonable prior notice, to audit the books and records of Seller to the limited extent necessary to verify the basis for any claim by Seller for payments from Company or to determine Seller's compliance with the terms of this Agreement. Company shall not have the right to audit other financial records of Seller. Seller shall make such records available at its offices in [REDACTED], the State of Hawai'i during normal business hours. Company shall pay Seller's reasonable actual, verifiable costs for such audits, including allocated overhead.

11.2 Rights of Seller. Seller shall have the right throughout the Term and for a period of three (3) years following the end of the Term, as extended, upon reasonable prior notice, to audit the books and related records of Company to the limited extent necessary to verify the basis for charges invoiced by Company to Seller under this Agreement. Seller shall not have the right to audit other records of Company. Company shall make such information available during normal business hours at its offices in [REDACTED], the State of Hawai'i. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overheads.

## ARTICLE 12 - REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 By Seller. Seller represents, warrants and covenants, as of the Execution Date and for extent of the Term, as follows:

(A) Duly Organized. Seller is a **CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ETC.** duly organized, validly existing and in good standing under the laws of the State of [ ]. Seller has full power, authority and legal right to execute and deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, reorganization, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights from time to time in effect.

(B) Land Rights and Governmental Approvals.

(1) Seller shall obtain all Land Rights and Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Upon no circumstances 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.

(2) As of the commencement of construction, Seller shall have obtained (i) all Land Rights and Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility and the Company Owned Interconnection Facilities.

(C) No Conflict. The execution and delivery of, and performance by Seller of its obligations under this Agreement will not result in a violation of, or be in conflict with, any provision of its **ORGANIZATIONAL DOCUMENTS OF SELLER, i.e., Articles of Incorporation, Partnership Agreement, etc.**, or result in a violation of, or be in conflict with, or constitute a default or an event which would, with notice or lapse of time, or both, become a default under, any mortgage, indenture, contract, agreement or other instrument to which Seller is a party or by which it or its property is bound, where such violation, conflict, default or potential default would materially adversely affect Seller's ability to perform its obligations under this Agreement, or result in a violation of any statute, rule, order of any court or administrative agency, or regulation applicable to Seller or its property or by which it or its property may be bound, or result in a violation of, or be in conflict with, or result in a breach of, any term or provision of any judgment, order, decree or award of any court, arbitrator or governmental or public instrumentality binding upon Seller or its property, where such violation, conflict, or breach would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(D) No Default. Seller is not in default, and no condition exists which, with notice or lapse of time, or both, would constitute a default by Seller under any mortgage, loan

agreement, deed of trust, indenture or other agreement with respect thereto, evidence of indebtedness or other instrument of a material nature, to which it is party or by which it is bound, or in violation of, or in default under, any rule, regulation, order, writ, judgment, injunction or decree of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, where such default, condition or violation would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(E) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending against such Seller, or of which Seller has otherwise received official notice, or which to the knowledge of Seller is threatened against Seller, wherein an adverse decision, ruling or finding would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(F) Experience, Qualifications and Resources. Seller has entered into this Agreement in connection with the conduct of its business and it has the experience, qualifications and financial resources necessary to operate and maintain the Facility in accordance with the terms and conditions of this Agreement.

(G) Substitute Principal. Seller shall obtain Company's prior written consent before replacing [NAME] as [GENERAL PARTNER/MANAGING MEMBER] of Seller. Company shall grant its consent if it is reasonably satisfied that the substitute [GENERAL PARTNER/MANAGING MEMBER] (i) has the qualifications to carry out the [GENERAL PARTNER/MANAGING MEMBER] role, and (ii) has provided Company with evidence satisfactory to Company of the substitute's creditworthiness and ability to perform its financial obligations hereunder (including such guarantees as Company deems appropriate) in a manner consistent with the terms and conditions of this Agreement. In addition to the foregoing, if Company's grant of consent is dependent upon any valid business consideration not related to the proposed [GENERAL PARTNER/MANAGING MEMBER]'s qualifications or financial substance, Company shall specify such concern to the Seller and shall grant its consent if the Seller provides a [GENERAL PARTNER/MANAGING MEMBER] that is a reasonably satisfactory substitute meeting such concern.

(H) Substitute Entity Operating Facility. Seller shall obtain Company's prior written consent before replacing [NAME OF ENTITY OPERATING FACILITY] as the operator of the Facility. Company shall grant its consent if it is reasonably satisfied that the substitute entity is qualified to operate the Facility and (i) has 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 (ii) has provided Company with evidence satisfactory to Company of the substitute's creditworthiness and ability to perform its financial obligations hereunder (including such guarantees as Company deems appropriate) in a manner consistent with the terms and conditions of this Agreement.

(I) Adequate Fuel Supply. Seller shall maintain at the Facility a supply of Fuel or renewable source energy [DEPENDENT ON FACILITY RESOURCE TYPE(S)] and other necessary consumables adequate to give Seller the ability to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term of the Agreement.

(J) Compliance with the RPS Law. As of the Commercial Operations Date and during any time when the Facility operates using Renewable Fuel or from a Renewable Energy Source, the energy produced by the Facility will comply with the RPS Law in effect as of the Effective Date.

(K) Own Account. Seller is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the Company and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement. It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

(L) Community Engagement. The Parties acknowledge that, prior to the Execution Date, Seller provided to Company a comprehensive community engagement and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project ("Community Engagement Plan").

(1) General Requirements. Seller agrees to work with the Host Community and 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, Governmental Approvals, Project schedule, plan for reporting construction related updates, labor and prevailing wage commitment (if any), and a Community Outreach Plan which factor in monthly Project status updates. The "Host Community" shall refer generally to the residential community in the immediate vicinity of the Project that would be affected by the ongoing development, construction, operation and maintenance of the Project, including but not limited to increased traffic, construction noise, odors, dust and debris, modified or affected view planes and other environmental effects. Seller's determination of the Host Community shall be subject to review by Company to ensure that the Host Community has been satisfactorily identified and that the benefits of Seller's Community Benefits Program are targeting specific needs identified by the Host Community.

(2) Community Benefits Program. Seller shall also provide Seller's plan for the creation of the mandatory community benefits program (the "Community Benefits Program") required under the RFP and included in Seller's RFP Proposal. **[NOTE: COMPANY RESERVES THE RIGHT TO REQUIRE REVISIONS AND/OR ADDITIONAL PROVISIONS TO SELLER'S COMMUNITY BENEFITS PROGRAM TO ADDRESS ISSUES IDENTIFIED IN THE RFP EVALUATION PROCESS].**

(a) The Community Benefits Program shall be designed to specifically benefit the needs identified by the Host Community affected by the Project by addressing the Host Community's identified needs, including but not limited to, one or more of the following: infrastructure improvements, enhanced educational opportunities, jobs and job training, historical and/or cultural protection, neighborhood beautification, identified mitigation of Project effects

on the Host Community, and any other similar community benefit. Any material revision(s) to the Community Benefits Program (from that proposed in Seller's RFP Proposal) shall be subject to Company's prior review and approval before implementation and funding by Seller.

(b) Seller shall implement the Community Benefits Program no later than six (6) months after the Commercial Operations Date, with the requirement that decisions on the community benefits and distribution of the first annual payment of funds be completed no later than six (6) months after program implementation.

(c) Annually, Seller shall re-fund the Community Benefits Program with the required amount even if all or any portion of prior year's funds remains to be distributed. The annual funding amount for Seller's Community Benefit Program shall be no less than \$3,000 per MW per year of Contract Firm Capacity, provided however, that proposals may commit to fund a higher amount above the applicable minimum at Seller's option (the "Community Benefits Funding Amount"). With Company's review and prior approval, other methods and timing of funding the Community Benefits Funding Amount may be proposed provided that such alternative methods do not materially alter or diminish the intended effects of an annual funding requirement. Approval will be at Company's sole discretion.

(d) Results of the Community Benefits Program, including but not limited to, disclosure of the community benefit(s) funded, the recipients and amounts distributed and a summary of the community benefit(s) to be expected from such funding, shall be annually reported and publicly available for review at any time on Seller's website and upon request.

(e) It shall be Seller's sole responsibility to ensure that the Community Benefits Program is properly funded by Seller and that funds are distributed for the benefit of the needs identified by the Host Community on a timely basis. The Community Benefits Program shall be subject to audit by Company no more than once every two years during the Term to ensure compliance by Seller, provided, however, that if Company receives credible evidence and/or reports of abuse or neglect of the Community Benefits Program by Seller or any of its partners administering the program (a "Program Complaint"), Company may conduct an immediate audit notwithstanding that a prior audit had been conducted in the year immediately preceding the Program Complaint. Seller shall cooperate with Company's reasonable requests to Seller in its efforts to complete any audit. Seller shall reimburse Company for actual expenses incurred in completing any audit (whether biennial or as a result of a Program Complaint) of Seller's Community Benefits Program. Seller shall additionally pay Company for Company's time and effort, e.g., labor and overhead, to complete an audit necessitated by a Program Complaint.

(f) If Seller fails to fund any annual funding requirement for the Community Benefits Program, then Seller, upon demand by Company, shall make the required annual funding within thirty (30) Days of Company's demand. If Seller does not make such funding after demand by Company within the time required, Company shall be entitled to, at Company's sole option, setoff the funding requirement from amounts due to Seller or draw upon Operating Period Security in the amount necessary so that Company can direct such funds to the Community Benefits Program.

(g) If an audit discovers and confirms that funds previously distributed under the Community Benefits Program were misused or otherwise not expended for the benefit of the needs identified by the Host Community in accordance with the program, Seller shall, in addition to the annual funding requirement for the next year of the program, also re-fund the program with the amount of the misused funds for reallocation and distribution.

(h) If Seller, with Company's prior approval, administers its own Community Benefits Program (including any program administered by an affiliate or non-profit foundation of Seller), and it is discovered and confirmed that Seller has not funded its Community Benefits Program and/or has not distributed such funds in accordance with the program (as such may be revised with Company's prior review and approval) in any year during the Term, Seller shall double its funding to and distribution of funds from the program in the subsequent year. If Seller fails to properly fund or distribute funds in accordance with the program for two (2) years or more, Company may disqualify Seller's Community Benefits Program and require Seller to administer a new program with a Host Community-based non-profit entity capable of administering a new Community Benefits Program for and on behalf of Seller.

(3) Seller's Community 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 Engagement Plan.

(4) The Parties also acknowledge that, within 30 days of Proposal submission, Seller provided reasonable advance notice of a minimum of fourteen (14) days and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; (iii) information regarding the Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have fourteen Days from the date of said public meeting to submit written comments to Company and/or Seller for inclusion for evaluation of the RFP Proposal and 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, within 21 days after the public meeting. 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.

(5) The Parties also acknowledge that, subsequent to selection to the RFP final award group and 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; (iii) an update regarding Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) 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.

(6) 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.

(7) 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 12.1(L) (Community Engagement) do not represent the only community outreach and engagement activities that can or should be performed by Seller.

(a) 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.

(b) Seller shall also implement an adequate community outreach and notification process and procedure to notify and engage the surrounding community adjacent to the Facility in the event of any Force Majeure event or other Facility issue which causes or may result in adverse impacts and effects upon such community, including inhabitants, livestock and other property of the community.

(8) 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 and phone number]**

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

(M) Tax Credits. Company acknowledges and agrees that the Refundable Tax Credit and Non-Refundable Tax Credit shall inure to the benefit of the Claiming Entity; provided, however, that Seller acknowledges and expressly agrees that the Refundable Tax Credit and Non-Refundable Tax Credit, with regard to Seller’s Facility, have been calculated into the Energy Charge based on the maximization of such credits. In the event that Seller’s Facility does not gain the benefit of the Refundable Tax Credit and/or the Non-Refundable Tax Credit, Seller expressly acknowledges and agrees that it shall not amend the Energy Charge.

~~(M)~~(N)Project Labor Agreement. Prior to the commencement of, and at all times during the performance of any construction work on the Facility or Company-Owned Interconnection Facilities until Commercial Operations is achieved, all contractors, at any tier, including, but not limited to, the EPC Contractor and any subcontractors performing such

construction work, shall enter into and be subject to a project labor agreement with the Covered Entities.

12.2 By Company. Company represents and warrants, as of the Execution Date and for the extent of the Term, as follows:

(A) Duly Organized. Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Hawai‘i. Company has full power, authority and legal right to execute and deliver and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by Company and constitutes a legal, valid and binding obligation of Company, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, reorganization, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights from time to time in effect.

(B) No Conflict. The execution and delivery of, and performance by Company of its obligations under this Agreement will not result in a violation of, or be in conflict with, any provision of the articles of incorporation or bylaws of Company, or result in a violation of, or be in conflict with, or constitute a default or an event which would, with notice or lapse of time, or both, become a default under, any mortgage, indenture, contract, agreement or other instrument to which Company is a party or by which it or its property is bound, where such violation, conflict, default or potential default would materially adversely affect Company's ability to perform its obligations under this Agreement, or result in a violation of any statute, rule, order of any court or administrative agency, or regulation applicable to Company or its property or by which it or its property may be bound, or result in a violation of, or be in conflict with, or result in a breach of, any term or provision of any judgment, order, decree or award of any court, arbitrator or governmental or public instrumentality binding upon Company or its property, where such violation, conflict, or breach would have a material adverse effect on Company's ability to perform its obligations under this Agreement.

(C) No Default. Company is not in default, and no condition exists which, with notice or lapse of time, or both, would constitute a default by Company under any mortgage, loan agreement, deed of trust, indenture or other agreement with respect thereto, evidence of indebtedness or other instrument of a material nature, to which it is party or by which it is bound, or in violation of, or in default under, any rule, regulation, order, writ, judgment, injunction or decree of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, where such default, condition or violation would have a material adverse effect on Company's ability to perform its obligations under this Agreement.

(D) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending against such Company, or of which Company has otherwise received official notice, or which to the knowledge of Company is threatened against Company, wherein an adverse decision, ruling or finding would have a material adverse effect on Company's ability to perform its obligations under this Agreement.



## ARTICLE 13 - INDEMNIFICATION

### 13.1 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 and agents, including but not limited to contractors, subcontractors and their 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 or to which any Indemnified Company Party becomes subject, resulting from, arising out of, or relating to, any Claim due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company (whether or not well founded, meritorious or unmeritorious) relating to (i) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Facility and Company-Owned Interconnection Facilities (excluding, (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, provided, however, that such exclusion shall not apply to matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or (B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party or its agents or subcontractors, except as and to the extent that any of the foregoing such Loss is attributable to the gross 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 13.1(A) (Indemnification Against Third Party Claims), Section 13.1(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) Notice. In case any Claim subject to Section 13.1(A) (Indemnification Against Third Party Claims) or Section 13.1(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 13.1 (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.

(2) No Right to Assume. Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 13.1(A) (Indemnification Against Third Party Claims), Section 13.1(B) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the 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 13.1(D)(2) (No Right to Assume). 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) Subrogation. Upon payment of any Losses by Seller pursuant to this Section 13.1 (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) Cooperation. Company shall fully cooperate and cause all Indemnified Company Parties to fully cooperate, in the defense of or response to any Claim subject to Section 13.1 (Indemnification of Company).

### 13.2 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 and agents, including but not limited to contractors, subcontractors and their 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 or to which any Indemnified Seller Party becomes subject, resulting from, arising out of, or relating to, due to any Claim by a third party not controlled by or under common ownership and/or control with Seller (whether or not well founded, meritorious or unmeritorious) relating to (i) (A) if the Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, excluding, however, matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or

(B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation, and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the negligence or willful misconduct of an Indemnified Seller Party.

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

(C) Knowledge of Claim. If Company shall obtain knowledge of any Claim subject to Section 13.2(A) (Indemnification Against Third Party Claims), Section 13.2(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) Notice. In case any action, suit or proceeding subject to Section 13.2(A) (Indemnification Against Third Party Claims), Section 13.2(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 13.2 (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, 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.

(2) Assumption and Control of Defense. Company shall not be entitled to assume and control the defense of any such Claim subject to Section 13.2(A) (Indemnification Against Third Party Claims), Section 13.2(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 13.2(D)(2) (Assumption and Control of Defense). 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) Subrogation. Upon payment of any Losses by Company pursuant to this Section 13.2 (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) Cooperation. Seller shall fully cooperate and cause all Indemnified Seller Parties to fully cooperate, in the defense of or response to any Claim subject to Section 13.2 (Indemnification of Seller).

## ARTICLE 14 - 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 Article 14 (Consequential Damages) shall limit any of (i) the indemnification obligations of either Party under Article 13 (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 15 - INSURANCE

15.1 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 determine to be necessary during construction and operation of the Facility. The insurance coverage required hereunder shall provide that it is primary with respect to Seller and Company. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

15.2 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.

15.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance) and Section 3 (Automobile Liability Insurance) of Attachment R (Required Insurance) shall include Company as an additional insured, as its interest 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 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 15 (Insurance) and Attachment R (Required Insurance).

15.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 15 (Insurance) shall be provided to Company within thirty (30) Days after Seller has bound coverage of the related policies or by the date specified in Section 2.3(A) (Seller's Facility Conditions Precedent), whichever is later. 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 provide to Company via Email, certified copies of the insurance policies described in this Article 15 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.

15.5 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.

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

15.7 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.

15.8 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.

15.9 Subcontractors. Seller shall ensure that (a) its engineering, procurement, and construction contractor ("EPC Contractor") is separately covered by liability insurance policies equivalent in type and monetary limits as those required of Seller, as specified in Attachment R (Required Insurance); and (b) its EPC Contractor has required each of its subcontractors performing tasks directly related to the engineering, procurement, construction, energizing, pre-Commercial Operations testing and/or commissioning of the Facility are covered by insurance policies in type and in monetary amounts appropriate for the type of work such subcontractor is performing, including commercial general liability insurance that shall not be less than the greater of \$500,000 or the value of work to be performed by such subcontractor. All such insurance shall be provided at the sole cost of Seller or EPC Contractor or its aforementioned subcontractors.

15.10 General Insurance Requirements.

(A) Each policy and certificate of insurance shall specifically provide the following: "This policy shall be considered to be primary liability insurance which shall apply to any loss or claim before any contribution by any insurance that Company, its employees and/or agents may have in force."

(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 16 - SET OFF

Company shall have the right to set off any payment due and owing by Seller, including but not limited to any payment due under this Agreement and any amounts due as awarded in any action pursuant to this Agreement, against Company's payments of subsequent Monthly Invoices as necessary.

## ARTICLE 17 - DISPUTE RESOLUTION

17.1 Good Faith Negotiations, Management Meeting. Before submitting any claims, controversies or disputes under, arising out of, or relating to this Agreement (“Dispute(s)”) to the dispute resolution procedures set forth in this Article 17 (Dispute Resolution), the presidents, vice presidents, or authorized delegates from both Seller and Company, having full authority to settle the Dispute(s), shall personally meet in Honolulu, Hawai‘i and attempt in good faith to resolve the Dispute(s) (the “Management Meeting”). The Parties shall endeavor to meet within fourteen (14) Days of a Party’s request for a Management Meeting and the Parties may agree to meet remotely via an agreed upon video conferencing platform (e.g., Microsoft Teams, Zoom, Cisco Webex, etc.) if such would facilitate scheduling the Management Meeting within the desired fourteen (14) Days. A Party’s refusal to participate in a Management Meeting within thirty (30) Days of a request for such a meeting by a Party shall be deemed a material default of this Agreement.

17.2 Mediation. Any and all Dispute(s) arising out of or relating to this Agreement which remain unresolved for period of twenty (20) Days after the Management Meeting takes place 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 Commercial Arbitration Rules and Mediation Procedures (“Commercial Rules”) of the American Arbitration Association (“AAA”) then in effect. If the Parties agree to submit the Dispute(s) 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 AAA) and shall otherwise each bear their own mediation costs and attorneys’ fees.

17.3 Arbitration. If the Parties do not agree to mediation of the Dispute(s) within thirty (30) Days after the Management Meeting, or if the Parties submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within thirty (30) Days after completion of the mediation, either Party may initiate arbitration by submitting a demand for arbitration within thirty (30) Days of each of the above events. Such Dispute(s) shall be resolved in Honolulu, Hawai‘i by arbitration administered by AAA under its then-current Commercial Rules, including, if appropriate, the Procedures for Large Complex Commercial Disputes.

(A) Initiation of Arbitration. A Party submitting the Dispute(s) to arbitration shall initiate the arbitration pursuant to the Commercial Rules and shall identify provisions of this Agreement that such Party alleges is subject to the Dispute(s). A respondent shall file an answering statement and/or counterclaim within twenty-one (21) Days of receipt of notice from AAA of the initiation of the arbitration. Any response to a counterclaim shall be filed within twenty-one (21) Days of receipt of such counterclaim.

(B) Selection of Arbitrator. If a Party initiates arbitration of the Dispute(s), the Parties shall attempt to mutually agree on one person to serve as arbitrator of the Dispute(s). If the Parties are unable to mutually select an arbitrator within fourteen (14) Days of filing an answering statement and/or counterclaim, the arbitrator will be appointed pursuant to the Commercial Rules, provided, however, that the Parties may agree to extend the time to

mutually select an arbitrator. The Parties agree that, regardless of the amount in controversy in the Dispute(s), one person shall serve as arbitrator.

(C) Authority of Arbitrator, Judicial Review. The award rendered by the arbitrator shall be final, non-appealable and binding on the Parties and may be entered in any court having jurisdiction. The arbitrator need not enter a reasoned award unless a Party requests such award prior to the selection of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate. Judgment on the award shall be final and non-appealable.

(D) Confidentiality. Except as may be required by applicable law or to enter an award pursuant to Section 17.3(C) (Authority of Arbitrator, Judicial Review), neither Party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right.

17.4 Exclusion. The provisions of this Article 17 (Dispute Resolution) shall not apply to any disputes within the authority of an Independent Evaluator under Article 24 (Process for Addressing Revisions to Certain Requirements) or under Section 9 (Dispute) of Attachment AA (Renewable Portfolio Standards).

17.5 Document Retention. If either Party initiates dispute resolution under Article 17 (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 under such Dispute is resolved.

17.6 Waiver of Trial by Jury. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding, suit, or action arising out of or related to this Agreement.

## ARTICLE 18 - FORCE MAJEURE

18.1 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.

18.2 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, pandemic, 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 18.3(A), 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).

18.3 Exclusions From Force Majeure. Force Majeure does not include:

- (A) 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;
- (B) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves caused by an event of Force Majeure as herein defined;
- (C) any full or partial reduction in the electric output of the Facility that is caused by or arises from (1) a mechanical or equipment breakdown or (2) other mishap or events or conditions attributable to normal wear and tear or defects;
- (D) changes in market conditions that affect the cost of the 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 the Seller;

(E) Seller's inability to obtain Governmental Approvals, Land Rights or approvals of any type for the construction, ownership, operation, or maintenance of the Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained, except, in the case of Seller's inability to obtain Governmental Approvals, such inability is attributable solely to the Governmental Authority responsible for issuing such approval where Seller has provided satisfactory evidence that: (i) all commercially reasonable measures have been taken by Seller to timely apply for such Governmental Approval and to timely respond to questions, revisions and clarifications required by such Governmental Authority in connection with such Governmental Approval; and (ii) all required information, requirements and conditions necessary to issue such Governmental Approval have been met;

(F) The lack of wind, sun or any other resource of an inherently intermittent nature;

(G) Seller's inability to obtain sufficient Fuel, necessary consumables, power or materials to operate the Facility, except if Seller's inability to obtain sufficient Fuel, necessary consumables, power or materials is caused by an event of Force Majeure as herein defined;

(H) 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 the Company pursuant to this Agreement;

(I) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure as herein defined;

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

(K) any full or partial reduction in either the ability of the Facility to deliver its Demonstrated Firm Capacity or in the ability of the Company to accept the Demonstrated Firm Capacity which is caused by any action or inaction of a third party, including but not limited to any vendor or supplier of the Seller or the Company, except to the extent such action or inaction is caused by an event of Force Majeure.

18.4 Satisfaction of Certain Conditions. Section 18.5 (Effect of Force Majeure on Milestone Dates and Guaranteed Commercial Operations Date), Section 18.6 (Effect of Force Majeure on Other Events of Default) and Section 18.7 (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 such non-

performing Party considers such condition or event to constitute a 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 Force Majeure;

(D) The non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end or minimize the effects of the Force Majeure and the anticipated duration of 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, such Party shall give the other Party written notice to that effect.

18.5 Effect of Force Majeure on Milestone Dates and Guaranteed Commercial Operations Date. A Force Majeure affecting the achievement of a Milestone Date or the Guaranteed Commercial Operations Date shall not relieve Seller from liability for either, (1) any applicable Daily Delay Damages under Section 2.4(D)(1) (Damages) or (2) Termination Damages for early termination under Section 2.4(D)(2) (Termination Right), although such Force Majeure shall, if and for so long as the conditions of Section 18.4 (Satisfaction of Certain Conditions) are satisfied, have the effect of deferring such liabilities to the extent of the applicable grace period (if any) provided in Section 2.4(B) (Construction Milestones Extensions).

18.6 Effect of Force Majeure on Other Events of Default. If an occurrence of Force Majeure results in what would otherwise be deemed an Event of Default under Section 8.1 (Events of Default), no Event of Default shall be deemed to have occurred if and for so long as the conditions set forth in Section 18.4 (Satisfaction of Certain Conditions) are satisfied, as long as the condition or event that would otherwise be an Event of Default is cured within the lesser of (i) the duration of the Force Majeure plus any additional time reasonably necessary to remedy the effects of the Force Majeure or (ii) three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as noticed pursuant to Section 18.4(A).

18.7 Effect of Force Majeure. Other than as provided in Section 18.5 (Effect of Force Majeure on Milestone Dates and Guaranteed Commercial Operations Date) and Section 18.6 (Effect of Force Majeure on Other Events of Default), 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 18.4 (Satisfaction of Certain Conditions) are satisfied. If a condition or event of a Force Majeure (a) reduces or limits the Facility's capability to deliver

capacity and/or energy or (b) reduces or limits Company's capability to accept and purchase energy, Company shall be not be obligated to pay for capacity and/or energy so long as the condition or event of Force Majeure prevents the delivery of capacity and/or energy by Seller or prevents acceptance and purchase of capacity and/or energy by Company.

18.8 Obligations Remaining After Event of Force Majeure. No monetary obligations of either Party which arose before the occurrence of an event of Force Majeure causing the suspension of performance shall be excused as a result of such occurrence. 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, except as limited above) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

18.9 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.

18.10 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 8 (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 18.10 (Termination for Force Majeure), neither Party shall be liable for any damages or have any obligations to the other, except as provided in Section 25.23 (Survival of Obligations) other than as provided in Section 25.23(E).

## ARTICLE 19 - ELECTRIC SERVICE SUPPLIED BY COMPANY

This Agreement does not provide for any electric services by Company to Seller. If Seller requires any electric services from Company, Company shall provide such service on a non-discriminatory basis in accordance with Company's applicable tariff schedule, as of the Execution Date, as amended or revised from time to time by Company or successors thereof.

## ARTICLE 20 - TRANSFERS, ASSIGNMENTS AND FINANCING DEBT

20.1 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 the 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.

20.2 Company's Consent and Acknowledgment. In connection with any assignment relating to the Financing Debt to which Company consents pursuant to Section 20.1 (Assignment by Seller), Company shall, if requested by Seller and if its reasonable costs (including internal staff time and legal fees of outside counsel) in responding to such request are paid by Seller, execute and deliver on or before the Closing Date a consent to assignment of this Agreement and other related agreements ("Consent to Assignment") as may be reasonably requested by such Facility Lender. The Consent to Assignment shall (i) be governed by Hawai'i law; (ii) be in form and content reasonably satisfactory to Company; (iii) acknowledge the assignment and/or pledge/mortgage and the right of the Facility Lender to receive notice of Events of Default where Seller is the defaulting party; and (iv) provide the Facility Lender a reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement.

20.3 Financing Document Requirements. Seller shall include in the terms of the Financing Documents, as provisions for Company's benefit, to provide that, as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender, 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 ("Subsequent Owner"), such Subsequent Owner shall, prior to operating the Facility for such purpose have provided 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.

20.4 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 a 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 20.3 (Financing Document Requirements).

20.5 Assignment by Company. This Agreement shall not be assignable 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.

20.6 Binding on Assigns. This Agreement and all of its covenants, terms and provisions shall be binding upon and shall inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

20.7 Transfer Without Consent is Null and Void. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 20.1 (Assignment by Seller) or Section 20.5 (Assignment By Company), as applicable, without fulfilling the requirements of this Article 20 (Transfers, Assignments and Financing Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 8 (Default).

## ARTICLE 21 - SALE OF FACILITY BY SELLER

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 8 (Default).

ARTICLE 22 - SALE OF ENERGY TO THIRD PARTIES

Seller shall not sell any energy from the Facility to any Third Party.

## ARTICLE 23 - EQUAL EMPLOYMENT OPPORTUNITY

23.1 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.

23.2 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 is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

## ARTICLE 24 - PROCESS FOR ADDRESSING REVISIONS TO CERTAIN REQUIREMENTS

### 24.1 Revisions to Technical and Operational Requirements and Resilience Requirements.

(A) Revisions to Technical and Operational Requirements. The Parties acknowledge that, during the Term, certain Technical and Operational Requirements may be revised or added to facilitate necessary improvements in integrating intermittent renewable energy 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 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 and/or operation of the Company System, such as constraints imposed by the HERA Law 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 Technical and Operational Requirements. These types of changes should be implemented by Seller in response to Company request unless it can be shown that the changes negatively impact Seller's ability to meet its obligations under this Agreement.

(B) Revisions to Resilience Requirements. The Parties acknowledge that, during the Term, certain Resilience Requirements may be revised or added to facilitate necessary improvements to improve the resilience of the Company System with respect to withstanding environmental risks, such as hurricanes, wildfires, earthquakes, and/or flooding.

### 24.2 Company Request.

(A) Technical and Operational Requirements Information Request. If Company concludes that a Technical and Operational Requirements 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 Technical and Operational Requirements Information Request with respect to such Technical and Operational Requirements Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Technical and Operational Requirements Information Request, but in no event more than ninety (90) Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Technical and Operational Requirements Proposal responsive to the Technical and Operational Requirements Revision proposed in such Technical and Operational Requirements Information Request.

(B) Resilience Requirements Information Request. If Company concludes that a Resilience Requirements 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 Resilience Requirements Information Request with respect to such Resilience Requirements Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Resilience Requirements 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 Resilience Requirements Proposal responsive to the Resilience Requirements Revision proposed in such Resilience Requirements Information Request.

24.3 Seller Proposal. Upon receipt of a Seller Proposal submitted in response to a Company Information Request, Company will evaluate such Seller 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). A Seller Proposal may only be submitted in response to a Company Information Request. Company shall have no obligation to evaluate or act upon any Seller Proposal submitted at Seller's own initiative.

24.4 Revision Document. If, following Company's evaluation of a Seller Proposal, Company desires to consider implementing the changes in such Seller Proposal (including, if applicable, any Technical and Operational Requirements Revisions or Resilience Requirements Revisions), Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within one hundred eighty (180) Days of receipt of the Seller Proposal, and Company and Seller shall proceed to negotiate in good faith a Revision Document setting forth the specific changes to the Agreement that are necessary to implement the changes addressed in the Seller Proposal (including, if applicable, any Technical and Operational Requirements Revision or Resilience Requirements 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 the Seller Proposal in question, including but not limited to the proposed revisions to the Agreement and the Modification Pricing Impact. Any adjustment to the rates for purchase set forth in Article 5 (Rates for Purchase) (including, without limitation, amendments to the Energy Charge and/or amendments to the Capacity Charge) pursuant to a Technical and Operational Requirements Revision Document shall be limited to the Technical and Operational Requirements Pricing Impact (other than with respect to the financial consequences of non-performance as to a Technical and Operational Requirements Revision). The time periods set forth in a Revision Document as to the effective date for the Revision Modification shall be measured from the date the PUC Revision Order becomes non-appealable as provided in Section 24.6 (PUC Revision Order).

24.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Revision Document within one hundred eighty (180) Days of Company's written notice to Seller pursuant to Section 24.4 (Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Revision Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 24.10 (Dispute) of this Agreement. Any decision of the Independent Evaluator rendered as a result of such dispute shall include a form of a Revision Document as described in Section 24.4 (Revision Document).

24.6 PUC Revision Order. No Revision Document shall constitute an amendment to the Agreement unless and until a PUC Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such

Revision Document shall constitute an amendment to this Agreement. To be “non-appealable” under this Section 24.6 (PUC Revision Order), such PUC Revision Order shall be either (a) 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 thirty (30) Day period (accounting for weekends and holidays, as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (b) affirmed on appeal to any Circuit Court of the State of Hawai‘i, Intermediate Court of Appeals of the State of Hawai‘i, or the Supreme Court of the State of Hawai‘i, or 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).

24.7 Company’s Rights. The rights granted to Company under Section 24.4 (Revision Document) and Section 24.5 (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Revision Document or to initiate dispute resolution under Section 24.10 (Dispute), as a result of a failure to agree upon and execute any Revision Document.

24.8 Seller’s Obligation. Notwithstanding any provision of this Article 24 (Process for Addressing Revisions to Certain Requirements) to the contrary, Seller shall have no obligation to respond to more than one Technical and Operational Requirements Information Request and one Resilience Requirements Information Request during any 12-month period.

24.9 Limited Purpose. This Article 24 (Process for Addressing Revisions to Certain Requirements) is intended to specifically address (a) necessary revisions to the Technical and Operational Requirements to enhance integration of intermittent resources onto the Company System, or to comply with future Laws which may be driven in part by higher integration of intermittent resources; and (b) necessary revision to the Resilience Requirements to support the resilience of the Facility and/or Company-Owned Interconnection Facility. This Article 24 is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Technical and Operational Requirements or Resilience Requirements in accordance with the provisions of this Article 24 (Process for Addressing Revisions to Certain Requirements) are not intended to materially increase Seller's risk of non-performance or default.

24.10 Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Revision Document pursuant to Section 24.5 (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within twenty (20) Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Technical and Operational Requirements, Resilience Requirements, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such twenty (20) Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC

shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within thirty (30) Days of the application.

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

(1) If the Revision Document is for the purposes of implementing Technical and Operational Requirements Revision(s):

(a) The Technical and Operational Requirements Revision(s);

(b) The technical feasibility of complying with the Technical and Operational Requirements Revision(s) and likelihood of compliance;

(c) How Seller would comply with the Technical and Operational Requirements Revision(s);

(d) Reasonably expected net costs and/or lost revenues associated with the Technical and Operational Requirements Revision(s);

(2) If the Revision Document is for the purposes of implementing Resilience Requirements Revision(s):

(a) The Resilience Requirements Revision(s);

(b) The technical feasibility of complying with the Resilience Requirements Revision(s) and likelihood of compliance;

(c) How Seller would comply with the Resilience Requirements Revision(s);

(d) Reasonably expected net costs and/or lost revenues associated with the Resilience Requirements Revision(s);

(3) The appropriate level, if any, of the Modification Pricing Impact in light of the foregoing; and

(4) Contractual consequences for non-performance (including any non-performance of any revised Performance Standard(s) and any revised Resilience Requirement(s) that are commercially reasonable under the circumstances.

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

(C) Assistance. 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) Standard to be Applied in Rendering Decision.

(1) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Technical and Operational Requirements Revision: (i) if it is not technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Technical and Operational Requirements Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall incorporate such Technical and Operational Requirements Revision into a Technical and Operational Requirements Revision Document including (aa) Seller's Technical and Operational Requirements Modifications, (bb) pricing terms that incorporate the Technical and Operational Requirements 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 Technical and Operational Requirements Revision(s). In addition to the Technical and Operational Requirements 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.

(2) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Resilience Requirements Revision: (i) if it is not technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Resilience Requirements Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall incorporate such Resilience Requirements Revision into a Revision Document including (aa) Resilience Requirements Modifications, (bb) pricing terms that incorporate the Resilience Requirements Modification 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 Resilience Requirements Revision(s). In addition to the 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) Fees and Costs. 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.

24.11 HERA Law. The provisions of this Article 24 (Process for Addressing Revisions to Certain Requirements) 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 25 - MISCELLANEOUS

25.1 Notices.

(A) Method of Delivery. 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 (“Email”) (provided receipt thereof is confirmed via Email or in writing by the recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized oversight delivery service (receipt requested), in each case to the appropriate addresses and Email addresses set forth below (or to such other addresses or Email addresses as a Party may designate by notice to the other Party):

Company:

By Mail:

Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawai‘i 96840  
Attention: Manager, Energy Contract Management  
Mail Code: [REDACTED]

Delivered by Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.  
[REDACTED]  
[REDACTED]  
Attention: Manager, Energy Contract Management  
Mail Code: [REDACTED]

By Email to:

Hawaiian Electric Company, Inc.  
Attention: Manager, Energy Contract Management  
Email: [PPANotices@hawaiianelectric.com](mailto:PPANotices@hawaiianelectric.com)

With A Copy To:

By Mail:

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

By Email to:

Hawaiian Electric Company, Inc.

Legal Division  
Email: [Legalnotices@hawaiianelectric.com](mailto:Legalnotices@hawaiianelectric.com)

Seller:

By Mail:

[Redacted]  
[Redacted]  
[Redacted]  
Attn: [Redacted]

Delivered by Hand or Overnight Delivery:

[Redacted]  
[Redacted]  
[Redacted]  
Attn: [Redacted]

By Email to:

[Redacted]

(B) Date of Delivery. Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth (5<sup>th</sup>) 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.

(C) Email Notice. Any notice delivered by Email shall request a receipt thereof confirmed by Email or in writing by the recipient and followed by personal or mail delivery of such correspondence and 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) Additional Means. 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.

25.2 Entire Agreement. This Agreement, including all Attachments, the IRS Letter Agreements and the GHG Letter Agreement (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 representation (other

than those set out in this Agreement) made or information supplied, by or on behalf of the other Party.

25.3 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.

25.4 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.

25.5 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.

25.6 Severability. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be 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.

25.7 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.

25.8 Modification or Amendment. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by both Parties. Any waiver hereunder shall not be valid unless in writing and signed by the Party against whom waiver is asserted. Seller shall not modify or amend or consent to a modification or amendment to any of the Financing Documents or Project Documents without the prior written consent of Company, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller, such as changes to settings shown in Attachment E (Single-Line Diagram and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) and changes to numerical values in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller), shall not be considered amendments to this Agreement requiring PUC approval.

25.9 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.

25.10 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 Email 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, Email 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.

25.11 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.

25.12 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 to 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) The purchased power costs (which costs include without limitation the Energy Charge payments and the Capacity Charge payments) to be incurred by Company as a result of this Agreement are reasonable;
- (3) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase energy and Demonstrated Firm Capacity from Seller, are prudent and in the public interest;
- (4) Company may include the power purchase costs (and applicable revenue taxes) incurred by Company pursuant to this Agreement, including Capacity Charge and Energy Charge in Company's revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of Company's rates during the Term of this Agreement;
- (5) The purchased power costs (and applicable revenue taxes) to be incurred by the Company pursuant to this Agreement may be included in the Company's Energy Cost Recovery Clause and/or the Purchased Power Adjustment Clause, as applicable, to the extent such costs are not included in base rates for the Term; and

(6) Determine that the \_\_\_ kV line extension that is included in the Company-Owned Interconnection Facilities should be constructed above the surface of the ground, if applicable.

(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 Approval Order, Company shall provide Seller with a copy of such PUC Approval Order together with, or separately, a written statement as to whether the conditions set forth in Section 25.12(A) (PUC Approval Order) have been satisfied and the order constitutes a PUC Approval Order. If Company’s written statement declares that the conditions set forth in Section 25.12(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 25.12(C) (Company’s Written Statement) to the effect that the conditions referred to in Section 25.12(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 filed with the PUC or an appeal, the Non-appealable PUC Approval Order Date shall be the date one (1) Day after the expiration of the Appeal Period following the issuance of the PUC Approval Order, or the date of Company’s written statement as required under Section 25.12(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 and clarification is denied or the PUC Approval Order is affirmed after reconsideration or clarification, and such order is not made subject to an appeal, the Non-appealable PUC Approval Order Date shall be deemed to be the date one (1) Day after the expiration of the Appeal Period following the order denying reconsideration 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 25.12(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 25.12(A) (PUC Approval Order).

#### 25.13 Change in Standard System or Organization.

(A) Consistent with Original Intent. If, during the Term of this Agreement, 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 of this Agreement, 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.

25.14 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.

25.15 Definitions. Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Article 1 (Definitions).

25.16 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.

25.17 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 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 requirements of Section 3.2(B) (Warranties and Guarantees of Performance), Attachment Y (Operation and Maintenance of the Facility) and the Technical and Operational Requirements specified in the Agreement.

25.18 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.

25.19 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 17 (Dispute Resolution) of this Agreement.

25.20 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 the 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.

25.21 Attachments. Each attachment to this Agreement (the "Attachments") constitutes an essential and necessary part of this Agreement.

25.22 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 25.22 (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the Hawai'i General Excise tax plus surcharge on the island of [O'ahu/Hawai'i/Maui] (totaling [O'ahu 4.5% / Hawai'i 4.0% / Maui 4.5%] as of the Execution Date) would include an additional [O'ahu 4.712% / Hawai'i 4.166% / Maui 4.712%] so that the underlying payment will be net of such tax liability.

25.23 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 Milestone Delay Damages under Section 2.4(D)(1)(a) (Milestone Delay Damages);
- (B) The obligation to pay Daily Delay Damages under Section 2.4(D)(1)(b) (Daily Delay Damages);
- (C) The obligation to deliver the Facility under Section 3.2(J) (Seller’s Obligation to Deliver Facility);
- (D) Seller’s obligations under Section 8.2(B)(2) (Termination by Company);
- (E) The obligation to pay Termination Damages under Section 9.3(A) (Pre-COD Termination Damages) and Section 9.3(B) (Post-COD Termination Damages);
- (F) The requirements of Article 11 (Audit Rights);
- (G) The indemnity obligations to the extent provided in Article 13 (Indemnification), Section 25.17 (Proprietary Rights) and in Attachment P (Sale of Facility by Seller);
- (H) The requirements of Article 17 (Dispute Resolution);
- (I) The limitation of damages under Article 14 (Consequential Damages);
- (J) The obligations under Section 1(F) (Right of First Refusal), Section 2(D) (Right of First Refusal) and applicable provisions of Section 3 (Procedure to Determine Fair Market Value of the Facility), Section 4 (Purchase and Sale Agreement), Section 5 (PUC Approval) and Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Seller);
- (K) The provisions of Article 25 (Miscellaneous);
- (L) Land restoration requirements under Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities); and
- (M) 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.

25.24 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.

25.25 Certain Rules of Construction. For purposes of this Agreement:

- (A) The phrase “breach of a representation” includes a misrepresentation and the failure of a representation to be accurate.

(B) “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.

(C) “Copy” or “copies” means that the copy or copies of the material to which it relates are true, correct and complete.

(D) When “Article,” “Section,” “Schedule” or “Attachment” is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.

(E) “Will” has the same meaning as “shall” and, thus, connotes an obligation and an imperative and not a futurity.

(F) 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.

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

(H) Each Attachment to this Agreement is hereby incorporated by reference into this Agreement and is made a part of this Agreement as if set out in full in the first place that reference is made to it.

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

(J) Acknowledging that the Parties have participated jointly in the negotiation and drafting of this Agreement, if an ambiguity or question of intent or interpretation arises as to any aspect of this Agreement, then it will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

25.26 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.

IN WITNESS WHEREOF, Company and Seller have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Company: [HAWAIIAN ELECTRIC COMPANY, INC. /  
HAWAI'I ELECTRIC LIGHT COMPANY, INC.  
/ MAUI ELECTRIC COMPANY, LIMITED]

By: \_\_\_\_\_

Name:

Its:

By: \_\_\_\_\_

Name:

Its:

Seller: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Its:

**ATTACHMENT A**  
**FACILITY DESCRIPTION**

(See Section 2.1.B) (Facility Specifications))

1. Name of Facility: \_\_\_\_\_
  - (A) Location: \_\_\_\_\_ (TMK No. \_\_\_\_\_)
  - (B) Site Plan and General Facility Arrangement Layout attached hereto as Exhibit A-1 (Site Plan and General Facility Arrangement Layout).
  - (C) Contact information for System emergencies:  
  
Telephone number: ( ) -  
Facsimile number: ( ) -  
Email address:  
  
(D) Contact Information for notices pursuant to Section 25.1 (Notices) of the Agreement:  
  
Mailing Address:  
  
Address for Delivery by Hand or Overnight Delivery:  
  
Email 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-2 (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: \_\_\_\_\_ 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]

(C) Description of Equipment:

[For example: Describe the type of energy conversion equipment, capacity, and any special features (i.e. combustion, boilers, resource collection methods, emissions considerations, plant controller information, etc.).]

Individual unit: [if more than one type of generator, list information for each generator]

Maximum Auxiliary Load for Facility At Full Output:		
kW	kVAR Consumed	kVAR Produced

Maximum Auxiliary Load for Facility At Startup:		
kW	kVAR Consumed	kVAR Produced

Generator:

Name of Manufacturer: \_\_\_\_\_

Type \_\_\_\_\_

Rated Power \_\_\_\_\_ kW

Voltage \_\_\_\_\_ V, \_\_\_\_\_ phase

Frequency \_\_\_\_\_ HZ

Class of Protection \_\_\_\_\_

Number of Poles \_\_\_\_\_

Rated Speed \_\_\_ rpm  
Rated Current \_\_\_ A  
Uncorrected Power Factor \_\_\_\_\_  
Corrected Power Factor \_\_\_\_\_  
Corrected Current \_\_\_ A  
Single or 3 Phase: \_\_\_\_\_ Phase

(D) Net Nameplate Capacity: Shall be the net instantaneous active power capability of the Facility at the point of interconnection, considering all generation and converter equipment and power plant controls which may act to limit the Facility capability in steady state conditions. The Net Nameplate Capacity shall not be less than the Contract Capacity and shall not limit expected transient dynamic responses to system events.

The Net Nameplate Capacity of this Facility is \_\_\_\_\_ kW. The maximum kW value set forth in the Interconnection Requirements Study.

(E) Description of Facility SCADA and control system(s): **[Describe the SCADA and control systems utilized for Facility monitoring and control.]**

(F) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Facility Description) (“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 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, reject any such revision(s) to this Section 5 which jeopardizes Seller’s ability to meet the Guaranteed Commercial Operations Date, or 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 and 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 (Facility Description) or the Agreement as a result of this Section 5(F) of Attachment A (Facility Description) 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 Section 3.2(A)(2) (Milestone Dates), including, without limitation, Commercial Operations, as a result of any revision pursuant to this Section 5 of Attachment A (Facility Description) 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): \_\_\_\_\_

7. If Seller is not the operator of the Facility, 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-2 (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-3 (Ownership Structure of Seller, Owner and/or Operator).

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

**EXHIBIT A-1**  
**SITE PLAN AND GENERAL FACILITY ARRANGEMENT LAYOUT**

**EXHIBIT A-2**  
**GOOD STANDING CERTIFICATES**

**EXHIBIT A-3**  
**OWNERSHIP STRUCTURE OF SELLER, OWNER AND/OR OPERATOR**

## ATTACHMENT B

### FACILITY OWNED BY SELLER

#### [ATTACHMENT B WILL BE REVISED TO REFLECT THE RESULTS OF IRS]

1. The Facility.
  - a. Drawings, Diagrams, Lists, Settings and As-Built.
    - i. Single-Line Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line diagram (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 Diagram and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme). A final single-line diagram (including notes), Interface Block Diagram, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be attached as labeled “Final” Attachment E (Single-Line Diagram and Interface Block Diagram) and “Final” Attachment F (Relay List and Trip Scheme) to this Agreement and made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the “Final” Attachment E (Single-Line Diagram and Interface Block Diagram) and “Final” Attachment F (Relay List and Trip Scheme) without the prior written consent of Seller and Company. The single-line diagrams shall expressly identify the Point of Interconnection of Facility to the Company System.
    - ii. As-Built. Seller shall provide final as-built drawings of the Seller-Owned Interconnection Facilities within thirty (30) Days of the successful completion of the Acceptance Test.
    - iii. Modeling. Seller shall provide the models as set forth in Exhibit B-1 (Modeling Requirements).
    - 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 Technical and Operational Requirements Modifications. If Company directs any changes in or additions to the Facility, records and operating procedures that are not part of any Technical and Operational Requirements 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 the Company System. The Facility shall be accessible at all times to authorized Company personnel.

ii. The Facility shall include:

**[LIST OF THE FACILITY COMPONENTS]**

Examples may include, but not limited to:

- Seller-Owned Interconnection Facilities
- Substation
- Control and monitoring facilities
- Transformers
- Generators and prime movers
- “Lockable” cabinets or housing suitable for Company-Owned Interconnection Facilities
- Relays and other protective devices
- Telecommunications equipment for communications, telemetry and control

iii. The Facility will comply with the following **[INCLUDE EXCERPTS OF LANGUAGE THAT MAY BE REQUESTED BY COMPANY]**:

A. Seller will install a [REDACTED] 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 will be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker will be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure will be provided for metering transformers. From the high-voltage circuit breaker, another bus connection will be made to another pole mounted disconnect switch, with surge protection.

B. Seller will provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller will provide all conduits and accessories necessary for Company to install the Revenue Metering Package. Seller will also provide within such area, space for

Company to install its SCADA, RTU, or equivalent and certain relaying if necessary for the interconnection. Seller will also provide AC and DC source lines as specified by Company. Seller will provide a telephone line for Company-owned meters. Seller will work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

C. Seller shall ensure that the Seller-Owned Interconnection Facilities has a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum the relaying equipment will provide over and under frequency (81), negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip (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. High Resolution Data. Seller shall install and make available to the Company time stamped and sequential data recordings for all generating resources to perform event analysis and verify Facility performance during steady state and transient disturbance events, which shall meet the Company data requirements for post disturbance review. This will include a time-synchronized phasor measurement unit and a disturbance monitor fault recorder, as specified by Company, at the Facility POI, 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 generator control system data. This data will be used to review the Facility response to system dynamics, such as the frequency response (normal droop), reactive response, etc.

E. Company Telemetry and Control. Seller's equipment shall provide, at a minimum:

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

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

(3) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide control of the voltage, var, or pf target setpoint at the point of regulation when operating in each regulation control mode;

(4) Interface with Company's Telemetry and Control, or designated communications and control interface to provide the active power control requirements under this Agreement;

(5) 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;

(6) Unless agreed otherwise by Company and Seller in writing, Seller shall provide such analog telemetry to Company via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every two (2) seconds; and

(7) 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 five (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 will be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller will 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. Cybersecurity and Critical Infrastructure Protection. While the State of Hawai'i is not currently under North American Electric Reliability Corporation ("NERC") jurisdiction, the Facility shall be designed and maintained with the criteria to meet at all times applicable NERC Critical Infrastructure ("CIP") Medium Impact compliance requirements as the same may be amended, updated and/or replaced during the Term.

i. Security Policies and Documentation. Seller shall implement and document security policies and standards in accordance with industry best practices (e.g., aligned with the intent of the then current version of NERC CIP-003 for Medium Impact Assets) and consistent with the current version of NIST 800-53 Moderate policies and standards. Seller shall submit documentation describing the approach, methodology, and design to provide physical and cyber security (i.e., aligned with the intent of the current version of NERC CIP-003 for Medium Impact Assets) with its submittal of the design drawings pursuant to Section 1(a) (Drawings, Diagrams, Lists, Settings and As-Built) 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, consistent with the current version of National Institute of Standards and Technology (“NIST”) guidelines as indicated in Special Publication 800-53 Rev. 4 "Security and Privacy Controls for Federal Information Systems and Organizations" and Special Publication 800-82 “Guide to Industrial Control Systems (ICS) Security”. The system shall be designed with the criteria to meet applicable compliance requirements and identify areas that are not consistent with NIST 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.
- Seller shall, at the request of Company or, in the absence of any request from Company, at least annually during the term of this Agreement, provide Company with updated documentation and diagrams including a record of changes.

ii. [RESERVED]

iii. Endpoint and Server Security. Seller shall implement appropriate endpoint and server security processes and practices

commensurate with the level of risk as determined by periodic risk assessments:

- Seller shall (consistent with the following sentence) ensure that Malware or unauthorized code is 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 shall periodically review, analyze and implement improvements to and upgrades of its Malware prevention and detection 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.
- iv. Cybersecurity Program. Seller shall establish and maintain a continuous cybersecurity program (i.e., aligned with the current version of NERC CIP-003 for medium impact BES Cyber Systems and NIST standards) that enables the Seller (or its designated third party) to:
- aa. Define the scope and boundaries, policies, and organizational structure of the cybersecurity program.
  - bb. Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Seller's Organization consistent with guidance provided in the current version of NIST Special Publication 800-30 Rev. 1 "Guide for Conducting Risk Assessments".
  - cc. Implement appropriate mitigating controls and training programs and manage resources.
  - dd. Monitor and periodically test the cybersecurity program to ensure its effectiveness. Seller shall review and adjust their cybersecurity program as appropriate for any assessed risks.
  - ee. Applicability is extended to Cloud Service providers and other third-party services the Seller may use.
- v. Security Monitoring and Incident Response. Company and Seller shall collaborate on security monitoring and incident

response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training (i.e., aligned with the current version of NERC CIP-008). Seller shall, at the request of Company or, in the absence of any request from Company, at least quarterly, provide Company with a report of the incidents that it has identified and describe measures taken to resolve or mitigate. 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 (aa) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information, (bb) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller, (cc) cooperate with Company with respect to any such breach or unauthorized access or use; (dd) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (ee) 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.

If malicious software or unauthorized code is found to have been introduced into the Environment, Seller will promptly notify Company. 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 shall promptly report to Company the nature and status of all efforts to isolate and eliminate malicious software or unauthorized code.

vi. Monitoring and Audit. Seller's shall provide information on available audit logs and reports relating to cyber and physical and security (i.e., aligned with Security Event Monitoring requirements of the current version of NERC CIP-007). Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1.b.iii.G (Cybersecurity and 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.

vii. Contingency Plans. Seller shall implement and maintain a business continuity plan, a disaster recovery plan, and an incident response plan (“Contingency Plans” – i.e., aligned with the current version of NERC CIP-009-6) appropriate for the level of risk based on the impact of Seller's associated facilities, systems and equipment, which, if destroyed, degraded, misused, or otherwise rendered unavailable, would affect the reliable operation of the Company System. The Contingency Plans shall be provided to Company upon request. Such Contingency Plans shall be updated to reflect lessons learned from real recovery events.

viii. Supply Chain Risk Management. Seller shall implement and maintain a supply chain risk management plan with implementation of appropriate security controls (i.e., aligned with the current version of NERC CIP-013-1). Controls should address the following security considerations: (1) software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.

H. Available Power Production.

i. Seller’s available power production considering equipment and resource availability (Available Capacity) will be determined at any given time using the best-available data and methods for an accurate representation of the amount of active power available at the Point of Interconnection and from each dispatchable generator. To the extent available, the Parties shall use Seller's real time Available Capacity communicated to Company through the SCADA System for each dispatchable generator, except to the extent that the Available Capacity does not accurately reflect the actual available active power at the Point of Interconnection within the tolerance provided in (Section 3(b)(Active Power and Available Capacity Performance) of this Attachment B (Facility Owned by Seller). During those periods of time when the SCADA derived Available Capacity from Seller does not accurately represent the available power production considering equipment and resource availability, default values shall be used based on established availability and capacity of generating resources. If a measure is found inaccurate, i.e. a Facility dispatchable resource is unable to achieve its telemetered Available Capacity under remote control, the resource will be considered derated to the achievable capacity (reference xxx). 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).

I. Resilience Requirements.

- i. The Facility shall be equipped with a voice communication system capable of contacting the Company during a Company System outage.
- ii. Facility design and implementation shall be such as to avoid any single points of failure resulting in a loss of greater than [142MW - Oahu, 30 MW - Hawai'i] MW measured at the point of interconnection or the total loss of Facility power output if the Facility Net Nameplate Capacity is less than [142 MW - Oahu, 30 MW - Hawai'i,].
- iii. Seller shall reserve space within the Site for possible future installation of Company-owned meteorological and safety equipment (such as wind speed, direction and relative humidity monitors, SODAR and irradiance monitors, cameras, etc.) and AC and DC source lines and connectivity infrastructure for such equipment as may be required depending on the Facility resource type and location. In the event Company decides to install such meteorological and/or safety 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.
- iv. The Facility shall, at a minimum, be assigned a risk category in accordance with, and satisfy the wind load and seismic load requirements of, the International Building Code and any more stringent requirements imposed under applicable Laws.
- v. Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.

c. Design Drawings, List of Equipment, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, a list of equipment to be installed at the Facility (including, but not necessarily limited to, items such, as relays, breakers, and switches), 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, fuse selection, and AC/DC Schematic Trip Scheme (part of design drawings) for the Facility to Company at least sixty (60) Days prior to the Acceptance Test. 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 the Company System requirements change.

d. Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from the 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 furnish, install and maintain in accordance with Company's requirements all conductors, service switches, fuses, meter sockets, and instrument transformer housing and mountings, switchboard meter test buses, meter panels and similar devices required for service connections and meter installations at the Site.

f. Maintenance Plan. Seller shall develop a maintenance plan to maintain Seller-Owned Interconnection Facilities, and shall submit the plan to Company for review and comment. The plan shall include, at a minimum, the \_\_\_ kV interconnection facilities, the control system, and the protective relay system. Seller shall furnish to Company a copy of records documenting such maintenance, within thirty (30) days upon request by the Company.

g. Active Power Control Interface. [ADDITIONAL TELEMETRY AND CONTROL POINTS MAY BE REQUIRED IN DETAILED DESIGN REVIEW TO MEET COMPANY MONITORING AND CONTROL REQUIREMENTS]

- 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 generator, or generator(s) [SUBJECT TO SPECIFIC FACILITY DESIGN, MAY DISPATCH AT A SINGLE CONTROL POINT OR ALLOW GENERATORS TO BE

CONTROLLED INDIVIDUALLY] by the Company System Operator. The Active Power Control Interface will be used to start, stop and control the net real power export from the Facility generator(s) remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center as required under 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. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval. This will include design description and parameters for the Seller's control system(s), which determine provision of net real power 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 provide feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system immediately upon receiving the respective control signal from the Company.
- v. Seller shall provide an analog input to the Telemetry and Control for the gross MW of the individual generating unit(s) or all Facility generating units(s) (Company to determine based on number of generating units), and an analog signal for the total net MW input or output at the Point of Interconnection.
- vi. The Active Power Control Interface shall provide for remote control of the net real power of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not export net real power to Company and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees to accept such net real power and Seller and Company agree on an alternate means of dispatch. The alternate means of dispatch, including but not limited to local controls, is to be the temporary

dispatch mechanism until the Active Power Control Interface is returned to service and must be capable of changing the real power export or import as directed by the Company System Operator within 5 minutes (or such other period as Company accepts in writing) of the Seller receiving the directive by the Company System Operator, verbal or otherwise permitted by such alternate means. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to export electric energy to Company as directed by the Company System Operator as required by this Section 1.g.(v), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.

- If all local and remote active power controls become unavailable or fail, the Facility shall immediately alarm and verbally inform the Company's System Operator.
  - If a direct transfer trip has been required by Company and is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to ramp down and shutdown Facility and open and lockout the main circuit breaker. Company to approve the proposed design and implementation of this function. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**
- vii. The Ramp Rate at which the Facility changes net active power (or at which individual generating resources change their real power shall comply with the Ramp Rate specified in Section 3.c (Ramp Rates) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will provide the Company SCADA control of the Ramp Rate at which the active power output is changed in response to Company dispatch as specified in Section 3.c (Ramp Rates) of Attachment B (Facility Owned by Seller). **[THESE REQUIREMENTS MAY BE MODIFIED BY THE COMPANY SUBJECT TO FACILITY RESOURCE TYPE(S) AND ANTICIPATED DISPATCH ON]**
- viii. The Active Power Control Interface shall accept the following active power control(s) from the Company centralized control system:
- **Maximum Power Import and Export Limits:** The Facility is not allowed to exceed these settings under any circumstances. The primary frequency response control specified in Section 3(m) (Primary Frequency Response) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export

limits, respectively. **[THESE REQUIREMENTS MAY BE MODIFIED BY THE COMPANY SUBJECT TO FACILITY RESOURCE TYPE(S) AND ANTICIPATED DISPATCH ON]**

- Active Power Dispatch: The control signal specifying the Facility generator(s) target MW output(s). The control(s) will be specified by the Company to be consistent with its control system design requirement for active power dispatch of the facility generator(s). The Facility output should match the Active Power Dispatch within +/- 0.5 MW. The Facility generator(s) MW output will be the combination of the dispatch target and the primary frequency response control as further described in Section 3(m) of Attachment B (Facility Owned by Seller).
  - Generator start/stop control(s), upon the receipt the generator will initiate its start or stop sequence.
  - Black start mode Enable/Disable control
  - Isochronous mode Enable/Disable control (When disabled, droop control will be in effect).
- (1) The following telemetry related to active power and frequency response shall be provided from Seller: **[BELOW ARE REPRESENTATIVE AND WILL BE REVISED BASED ON FACILITY DESIGN AND CHARACTERISTICS AFFECTING ACTIVE POWER CONTROL AND DISPATCH]**
- (1) Available Capacity – Represents the MW output the Facility Generator(s) can produce under present conditions, for each resource or combination of resource dispatched by Company’s remote control, and given Facility resource and equipment availability. This is used as upper limit for Active Power Dispatch for Facility or Generator(s).
- (2) Maximum sustained limit: A separate maximum sustained limit point will be required if the Available Capacity does not allow for continuous operation at that load level; the need for which will be determined based on the technology and equipment capabilities of the Facility.
- (3) Maximum Dispatchable Ramp Rate: Maximum ramp rate for dispatch under Active Power Control.
- (4) Minimum sustained limit: Minimum output level the facility can be reduced to continuously without delay (used as lower limit for continuous Company Dispatch).

- (5) Minimum Regulation Limit. This is the lowest net active power output the Facility can achieve (including a net zero load capability if possible) under Company Dispatch as necessary due to transient system constraints, system balancing and frequency control.
  - (6) Frequency Response Mode (droop, isochronous)
  - (7) Black start mode (enabled/disabled)
  - ix. Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator except as necessary for emergency conditions, which should be communicated as soon as possible; and in which case, the generator shall indicate it is overriding active power control by going into a local control mode and/or appropriate telemetered alarm.
  - x. The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.
  - h. Control System Acceptance Test Procedures.
    - i. Conditions Precedent. The following conditions precedent must be satisfied prior to conducting the Control System Acceptance Test on the entire Facility or a Pre-CSAT Partial Installation, as applicable:
      - Successful completion of the Acceptance Test.
        - If a Pre-CSAT Partial Installation is requested for a project with multiple substation or circuit points of interconnection, Company will, in its sole discretion, determine if the Acceptance Test must be completed on a full substation.
      - Facility has been successfully energized.
      - All of the Facility's generators 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, statcom, etc.) shall have been commissioned and be operating within normal parameters.
- Pre-CSAT Partial Installation:
- Successful Completion of the Acceptance Test. Facility requirements will apply to all capacity and resources that have been declared commercial through a partial installation until the Facility is complete indicating all resources comprising the Facility have completed CSAT.

- If a Pre-CSAT Partial Installation is requested for a project with multiple substation or circuit points of interconnection, Company will in its sole discretion, determine if the Acceptance Test must be completed on a full substation.
  - Pre-CSAT Partial Installation to be tested has been successfully energized.
  - The control system is configured for normal operations based on the Pre-CSAT Partial Installation configuration being tested.
  - All equipment that is relied upon for normal operations (including generating resources, ancillary devices such as capacitors/inductors, statcom, etc.) shall have been commissioned and be operating within normal parameters for the Pre-CSAT Partial Installation being tested.
- 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 with less than all of the Facility's equipment 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. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. 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 (Facility Description), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.
- i. Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
- j. Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set

forth in such written notice, to meet the telemetry and control requirements specified in Sections 1(b)(iii)(E) (Company Telemetry and Control) and/or the operational and performance requirements specified in Section 3 (Technical and Operational Requirements) 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 Engineering Company from Attachment D (Consultants List- Qualified Independent Engineering Companies) 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 it takes 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 under Section 8.1(A)(6) of this Agreement. The Company shall have the right to declare the Facility derated 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.

- 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 Section 3.3(A) (Dispatch of Facility Power), Article 4 (Suspension or Reduction of Deliveries), Section 5 (Personnel and

System Safety) of Attachment Y (Operation and Maintenance of the Facility), Good Engineering and Operating Practices and/or Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller) 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 thirty-six (36) months.

d. Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator. 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 local or system-wide outage 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 Company System Operator black start procedures.

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

f. Operation of Synchronizing Breakers. Seller shall have the ability to trip and close its generator synchronizing breakers located at the Facility. Company will have trip control only and breaker status indication of the Facility generator synchronizing breakers. Seller shall notify Company of all operations of its generator synchronizing breaker in advance of such operation if practicable.

3. Technical and Operational Requirements. Seller shall operate the Facility in the following manner to provide power to Company in accordance with this Section 3 (Technical and Operational Requirements) of this Attachment B (Facility Owned by Seller).

a. Reactive Power Control. [THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]

i. Reactive Amount. The Facility shall have sufficient equipment so that each [REDACTED] kVA generator online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the **[generator capability]** curve[s] attached to this Agreement as Exhibit B-2 (Generator Capability Curve(s)). **[NOTE: AT MINIMUM THE FACILITY MUST BE CAPABLE OF A 0.90 POWER FACTOR AT NET NAMPLATE CAPACITY AT THE POI IN BOTH THE LEADING AND LAGGING DIRECTION. THE IRS WILL**

**DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

- ii. Seller shall automatically regulate at a point, the point of regulation, between the Seller's generator terminals and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage, var, or power factor specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller). **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**

- iii. The Facility shall be able to accept a reactive power droop setting between 0 and 0.3 puV/puVAR [settable range to be confirmed by IRS] where puVAR is based on the Reactive Amount specified in Section 3(a)(i) of this Attachment B (Facility Owned by Seller). Company shall have the ability to specify the reactive power droop setting among other voltage control settings remotely through Company SCADA. The Seller shall not change the voltage control settings unless instructed or approved by the Company.

The default reactive power droop setting shall be: \_\_\_\_\_ puV/puVAR  
**[TBD BY IRS]**

- iv. For voltage disturbances at the Point of Interconnection, including faults on the transmission system, the Facility shall respond with reactive power to regulate the voltage and counter the voltage deviation to the extent of the reactive power capabilities described in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller).

Reaction time: The time between a step change in voltage and the time when the resource reactive power output begins responding to the change shall be less than \_\_\_ milliseconds, or as otherwise specified by Company.

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

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

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

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

v. Excitation. The Facility shall contain automatic voltage regulation controls and an excitation system for each generator able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation and excitation system responses at the point of regulation shall be:

(1) Ceiling Voltage. The Facility synchronous generator excitation system ceiling voltage shall be at least [redacted] percent ([redacted]%) [four hundred percent (400%)]-HI/Maui] of rated main generator field voltage.

(2) Response Ratio. The Facility synchronous generator excitation system response ratio shall be \_\_\_\_ (required to be [0.5-Oahu, 3-HI/Maui] or higher).

(3) Excitation Source. The Facility synchronous generator excitation source shall be separate from the generator terminal voltage or be compound sourced (from both generator voltage and current). The excitation source shall be immune to variations in system voltage so that, in the event of a Company system fault, the Facility's generator field does not collapse

(4) Field Forcing Ability. The Facility synchronous generator excitation systems shall have field forcing ability.

vi. 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 SCADA through Company's Telemetry and Control.

b. Active Power Control and Available Capacity

i. The tolerance of active power control accuracy shall be +/- 0.1 MW. The Facility shall maintain active power output as determined by the latest received Active Power Dispatch , as adjusted by the primary frequency response described in Section 3(m) (Primary Frequency Response). .

ii. The tolerance of Available Capacity accuracy shall be +/- 0.1 MW.

c. Ramp Rates.

- i. For changes in active power under Seller's local dispatch control Seller shall ensure that the rate of change is at or below a Ramp Rate specified by the Company . This should not constrain the primary frequency response control described in Section 3(m) (Primary Frequency Response).
  - ii. Upon receiving a command from the Company active power control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility's net real power export at a Ramp Rate to be specified by the Company, as described in Section 1(g)(vii) of this Attachment B (Facility Owned by Seller). The Facility will respond to the Active Power dispatch change immediately without intentional delay. The maximum dispatchable Ramp Rate shall be as fast as the Facility online generator(s) are able to support but at least the greater of 4 MW/min or 10% of the Facility Contract Capacity per minute for Fast Start Generating Resources; a slower dispatchable Ramp Rate may be specified by the Company.
  - iii. The Ramp Rate requirements of this Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) shall not apply to the r Facility Generator(s) primary frequency response described in Section 3(m) (Primary Frequency Response) of this Attachment B (Facility Owned by Seller).
- d. Ride-Through Requirements
- i. In meeting the voltage and frequency ride-through requirements in this Attachment B (Facility Owned by Seller), Sections 3(e) (Undervoltage Ride-Through), 3(f) (Over Voltage Ride-Through), 3(g) (Transient Stability Ride-Through), and 3(i) (Frequency Ride-Through), the Facility shall appropriately respond to the voltage and frequency conditions as required in Section 3(a) (Reactive Power Control) and Section 3(m) (Primary Frequency Response) of this Attachment B (Facility Owned by Seller) within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System. 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 protection driven limits of operation should be conveyed to the Company and represented in the provided models, including the method used to calculate voltage and frequency values used to initiate trip (time frame and filtering, which shall be subject to Company approval to avoid misoperation due to calculation methods). **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH LIMITATION SHALL BE**

**PROVIDED TO COMPANY IN WRITING WITH THE SELLER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]**

ii. The response of each generating resource while within the ride-through requirements of Sections 3(e) (Undervoltage Ride-Through), 3(f) (Over Voltage Ride-Through), 3(g) (Transient Stability Ride-Through), and 3(i) (Frequency Ride-Through), 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 within the Facility and the Facility supports Company System reliability and provides a stable transient response to grid events.

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 lowest magnitude voltage of any three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]:**

$$0.80 \text{ pu} \leq V \leq 1.00 \text{ pu}$$

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

$$0.70 \text{ pu} \leq V < 0.80 \text{ pu}$$

The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the voltage remains in this range.

$$0.40 \text{ pu} \leq V < 0.70 \text{ pu}$$

The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for ten (10) seconds while the voltage remains in this range.

$$0.25 \text{ pu} \leq V < 0.40 \text{ pu}$$

The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twelve hundred (1200) milliseconds while voltage remains in this range.

$$0.00 \text{ pu} \leq V < 0.25 \text{ pu}$$

The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-

through for six hundred (600) milliseconds while voltage remains in this range.

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

- [Oahu] Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.
- [Oahu] Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 23 cycles between the initial clearing time and the reclosing time.
- [Hawaii/Maui] Normally cleared 69kV transmission faults cleared in 5 cycles with one reclose attempt, cleared in 5 cycles, 300 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 300 cycles between the initial clearing time and the reclosing time.

f. Over Voltage Ride-Through. The overvoltage protection equipment at the Facility shall be set so that the Facility will meet the following overvoltage ride-through requirements during high voltage affecting one or more of the three voltage phases (as described below) (“V” is the highest magnitude voltage of any of the three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS.]**:

$1.00 \text{ pu} \leq V \leq 1.10 \text{ pu}$

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 for as long as the equipment allows and at minimum ride-through for thirty (30) seconds while voltage remains in this range.

$V > 1.2 \text{ pu}$

The Facility remains connected to the Company System and ride-through for as long as the equipment allows.

g. Transient Stability Ride-Through. 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. Voltage Phase Angle Change Ride-Through.

i. The Facility shall ride through positive-sequence phase angle changes within a sub-cycle-to-cycle time frame of the voltage at the Point of Interconnection of less than or equal to 30 electrical degrees. In addition, the Facility shall remain in operation for any change in phase angle of individual phases caused by occurrence and clearance of unbalanced faults, provided that the positive-sequence angle change does not exceed the forestated criterion. Active and reactive current oscillations in the post-disturbance period that are positively damped shall be acceptable in response to phase angle changes. Momentary cessation in the post-disturbance period shall not be permitted.

i. Frequency Ride-Through.

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

$$57.0\text{Hz} \leq f \leq 60.0\text{Hz}$$

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

$$56.0\text{Hz} \leq f < 57.0\text{Hz}$$

The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while frequency remains in this range.

$$f < 56.0\text{Hz}$$

The Facility remains connected to the Company System for as long as the equipment allows. .

ii. Overfrequency Ride-Through. The Facility shall meet the following overfrequency ride-through requirements during an overfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

60.0Hz ≤ f ≤ 63.0Hz                      The Facility remains connected to the Company System and in continuous operation.

63.0Hz < f ≤ 64.0Hz                      The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while frequency remains in this range.

f > 64.0Hz                                      The Facility remains connected to the Company System for as long as the equipment allows.

j.        [RESERVED]

k.        Voltage flicker. Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage flicker generated from the Facility to defined levels. **[THESE REQUIREMENTS TO BE SPECIFIED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

l.        Harmonics. Harmonic distortion at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-2014, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems". Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage and current harmonics generated from the Facility to defined levels.

m.        Primary Frequency Response. The Facility shall have a primary frequency response (“PFR”) with a frequency droop characteristic reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions.

i.        The Facility primary 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 when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.

ii.        The Facility net real power export is to be controlled to the primary frequency response correction added linearly to the dispatch setpoint received from the Company through the Active Power Interface described by Section 1(g) (Active Power control Interface) of this Attachment B (Facility Owned by Seller) or locally set as directed by the Company System Operator, or locally set otherwise.

- iii. The primary frequency response parameters shall provide for the following settable ranges and default values.

Parameter	Units	Default (Oahu)	Default (Hawaii, Maui)	Ranges of available settings	
				Min	Max
Deadband <sub>down</sub>	Hz	0.02	0.017	0.01	0.1
Deadband <sub>up</sub>	Hz	0.02	0.017	0.01	0.1
Droop <sub>Down</sub>	%	5	4	0.1	10
Droop <sub>Up</sub>	%	5	4	0.1	10

- iv. The Facility primary frequency response control shall be in continuous operation when operating in parallel with the Company System including all continuous operation and ride-through ranges provided in Sections 3(e) (Undervoltage Ride-Through), 3(f) (Over Voltage Ride-Through), and 3(i) (Frequency Ride-Through) of this Attachment B (Facility Owned by Seller), unless directed otherwise by the Company.
- v. The Company shall have the ability to specify the PFR droops and deadband settings among other frequency response control settings, and enable or disable PFR remotely through Company SCADA.
- vi. The Facility primary frequency response shall perform as follows and as depicted in Figure B-1.

For a step change in frequency at the point of measure [**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 milliseconds, or as otherwise specified by Company.

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.

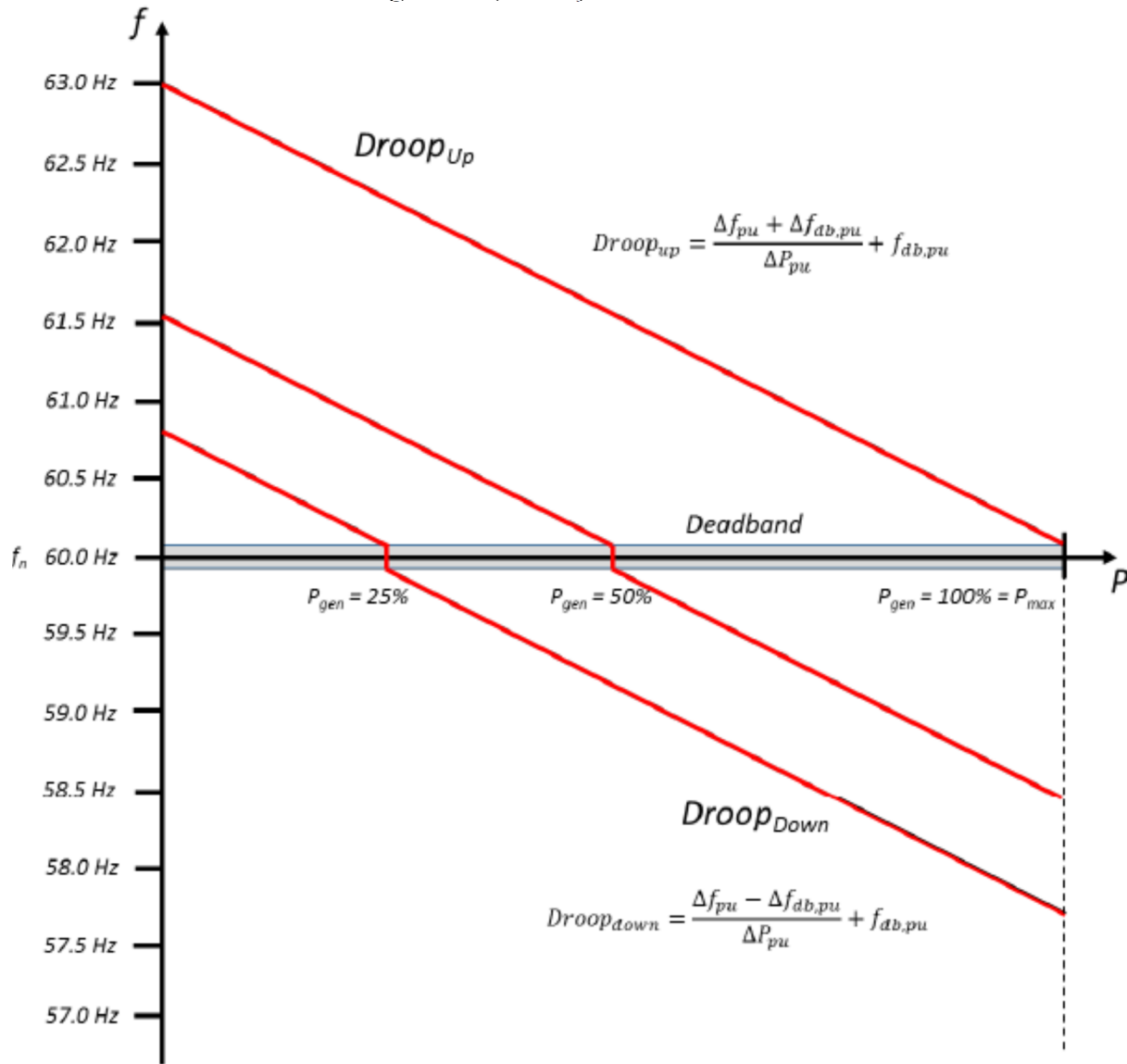
Settling Time: Time in which the resource has entered into, and remains within, the settling band of the new steady-state active power (target)

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.<sup>1</sup>

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

Figure B-1, Steady-State PFR Characteristic



Nominal System Frequency, 60 Hz

<sup>1</sup> Percentage based on final (expected) settling value.

vii. Ishochronous Frequency Response Mode. The Facility will provide the capability to supply isochronous mode of operation. The control design shall allow for a bumpless transfer between modes of operation. 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 (i.e. “zero droop”). When isochronous mode of operation is selected while connected to the live system the target frequency shall be initialized to the grid frequency and the target increased or decreased from the Company System through the control interface. In a black start configuration, the target shall be 60 Hz. If the Facility operates with multiple generator(s), it is desired for the generator(s) governor control to be operating as a bank when in isochronous control.

n. Minimum Load Capability.

The Facility shall allow for the online generator(s) to operate down to its lowest feasible minimum capability (including a net zero load capability if possible), to be dispatched at Company’s sole discretion as necessary to address system constraints, system balancing and frequency control.

The Facility Minimum Load Capability will be \_\_\_ MW (may be specified per generator, or for a given configuration, depending on the Facility resources and design).

o. Inertia Constant. The Facility synchronous generator and turbine shall have a inertia constant (H) of \_\_\_ MJ/MVA.

p. Short Circuit Ratio. The Facility synchronous generator shall have a short circuit ratio of \_\_\_.

q. Open Circuit Transient Field Time Constant. The Facility synchronous generator shall have an open circuit transient field time constant of \_\_\_ seconds.

r. Generator Step-Up Transformer(s).

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

ii. Self-Energization of Facility Step-Up Transformers(s). The Facility shall be designed, configured, and operated such that all Facility step-up transformers shall be energized from the de-energized state by the Facility generator(s) and not the Company System. The Facility step-up transformer(s) must be energized prior to being synchronized and

connected to the Company System. The process of interconnecting the energized Facility with the Company System shall be seamless and bumpless using an auto-synchronizing circuit breaker. Immediately upon connecting to the Company System, the Facility shall transition to the normal operating mode. The self-energization control mode status shall be telemetered to the Company through SCADA.

s. Control Systems and Auxiliary Equipment. The power source for the Facility generator control systems and auxiliary equipment required for normal operation of the Facility will be designed to be immune from system transients in accordance with Section 3.2(A)(6) (Facility Protection and Control Equipment) and Section 4 (Protective Equipment) of Attachment Y (Operation and Maintenance of the Facility) to meet the performance during under/over voltage and under/over frequency ride through conditions pursuant to Sections 3(e) (Undervoltage Ride-Through), 3(f) (Over Voltage Ride-Through), 3(g) (Transient Stability Ride-Through), 3(i) (Underfrequency Ride-Through) and 3(j) (Overfrequency Ride-Through) of this Attachment B (Facility Owned by Seller).

t. Cycling of Generating Units.

- i. The Facility generator can be shut down and restarted as many times in any 24-hour period as directed by Company System Operator subject to the limitations of this Section 3(t) (Cycling of Generating Units) of Attachment B (Facility Owned by Seller). Starts and shutdown after Unit Trips shall not be counted toward the limit in this Section 3.t.i. Fast Start Generating Resources must permit multiple shut down / restart cycles per day. Bulk Energy Generating Resources should provide technical / operational requirements, if any, limiting the number of offline cycles.
- ii. Minimum Downtime. The minimum time between shutting down and starting up the Facility generator shall be not less than \_\_\_ minutes. Fast Start Generating Resources should provide as short a minimum downtime as possible.
- iii. Minimum Runtime. The minimum time the Facility generator must remain online after a start shall be not less than \_\_\_ minutes. Fast Start Generating Resources should provide as short a minimum uptime as possible.

u. Start-up Periods. The maximum time from start to minimum load and ready for remote dispatch operations of the Facility generator under normal, non-emergency, system conditions shall not exceed \_\_\_ minutes when the generator has been off line for less than \_\_\_ hours (warm start) and \_\_\_ minutes when the generator has been off-line for \_\_\_ hours or more (cold start). When requested by Company under emergency conditions, Seller shall use commercially reasonable efforts to accelerate such Start-up periods to the extent the Facility is capable of doing so within manufacturer's

specifications and warranties. Fast Start Generating Resources must come online as quickly as possible, but in all cases less than 30 minutes.

v. Blackstart. The Facility shall be able to blackstart, start and energize itself without support from the Company System (self-energization) and, unless infeasible due to the operational capabilities of the Facility, be capable of providing the black start resource for energizing the Company system (Black start) . Facilities providing Fast Start Generating Resource(s) shall provide Black Start capabilities. **[DRAFTING NOTE: TO BE DELETED IF SELLER’S TECHNOLOGY TYPE IS INCAPABLE OF REASONABLY SERVING AS A BLACK START RESOURCE.]**

- i. At the Company System Operator’s sole discretion and to the extent of the operating limits of the Facility, the Facility shall blackstart and serve as a cranking path to energize the Company System as directed by the Company System Operator. This requires the Facility to be capable of energizing the interconnection with no voltage at the point of interconnection.
- ii. Upon blackstart and energization of a part of the Company System, the Facility shall provide:
  - a. Voltage Regulation according to Section 3(a) (Reactive Power Control) of this Attachment B (Facility Owned by Seller).
  - b. Frequency Control with an isochronous governor to a frequency target initially set to 60 Hz and adjustable at the sole discretion of the Company System Operator.
  - c. Supply power to the Company System through system restoration.
- iii. The Facility shall seamlessly and bumplessly transition from blackstart mode to normal operating mode (i.e.; frequency droop) as directed by and at the sole discretion of the Company System Operator. The blackstart control mode status shall be telemetered to Company through SCADA.
- iv. The Facility blackstart design and configuration, including the isochronous control capabilities, shall be subject to the prior written approval of Company in its sole discretion and implemented by Seller prior to conducting the CSAT. The blackstart design and configuration may be modified by mutual agreement of Seller and Company.

w. Heat Rate Curve. During the Term, the Heat Rate Curve for each individual generating unit within the Facility (or composite curve, as applicable) shall not exceed the baseline heat rate curve established for the generating unit (“Baseline Heat Rate Curve”) by more than five percent (5%). Heat Rate Curves shall be established and demonstrated pursuant to Heat Rate Tests and/or operational data as described in this Section 3(w) (Heat Rate Curve) of Attachment B (Facility Owned by Seller). Company

may, in its sole discretion, designate a Company representative or representatives to be present during any Heat Rate Test.

- i. Establishing the Base Heat Rate Curve. At least ten (10) Days prior to CSAT, Seller shall provide a Heat Rate Test plan for Company's review and approval for each generating unit within the Facility. The plan shall, at a minimum, include the following details: the generating unit(s) to be tested, the type and heating value of the Fuel, the megawatt (MW) outputs to be used for each Heat Rate Test (including a high load, midpoint load, and low load), and the proposed date and time of the Heat Rate Tests. Upon Company's review and approval of Seller's test plan, Seller shall perform a Heat Rate Test during CSAT for each generating unit within the Facility (or composite curve, as applicable). Seller shall provide to Company the results of each Heat Rate Test, including MWh and Fuel usage, as well as any other information and/or data reasonably requested by Company to assess each Heat Rate Test and resulting Heat Rate Curve.
  - a. If no conditions occur that could affect a Heat Rate Test and produce inaccurate results, then the Heat Rate Curve derived from the Heat Rate Test shall constitute the Base Heat Rate Curve for the applicable generating unit.
  - b. If conditions occur that could impact a Heat Rate Test and produce inaccurate results, then upon either Party's request, Seller shall reperform the Heat Rate Test for the applicable generating unit until both Parties agree that the resulting Heat Rate Curve is accurate. Upon such agreement, the Heat Rate Curve derived from the Heat Rate Test shall constitute the Base Heat Rate Curve for the applicable generating unit.
  - c. In the event the Facility has undergone technical or operational changes that may impact the net or gross efficiency of the generating units, then either Party may request a reperformance of Heat Rate Tests for the Facility generating units, in which case those Heat Rate Tests shall be performed within ten (10) Days of such request (or such other period of time agreed to by the Parties in writing) and new Base Heat Rate Curves for the generating units shall be established in accordance with the requirements of this Section 3(w)(i) (Establishing a Base Heat Rate Curve) of Attachment B (Facility Owned by Seller). Notwithstanding the foregoing, if after two (2) reperformances of a Heat Rate Test under Section 3(w)(i)(b) of this Attachment B (Facility Owned by Seller), the Parties cannot agree regarding the accuracy of the resulting Heat Rate Curve, then Company may pursue all rights and remedies set forth in Section 3(w)(iv)(d) of this Attachment B (Facility Owned by Seller).

- ii. Heat Rate Curve Based on Operational Data. Company may, in its sole discretion and at any time during the Term, assess the Heat Rate Curve for any generating unit(s) based on operational data (including Fuel usage, Fuel heating value, and MW produced), and Seller shall provide to Company any operational data reasonably requested by Company to perform such assessment. If, based on such operational data, the Heat Rate Curve (or any point therein) for any generating unit exceeds the Base Heat Rate Curve by more than five percent (5%), Company may, in its sole discretion, request a Heat Rate Test for the generating unit as described in Section 3(w)(iii) (Heat Rate Curve Based on Heat Rate Test) of this Attachment B (Facility Owned by Seller).
- iii. Heat Rate Curve Based on Heat Rate Test. Seller shall perform a Heat Rate Test for the applicable generating unit(s) within ten (10) Days of Company's request under Section 3(w)(ii) (Heat Rate Curve Based on Operational Data), or such other period of time agreed to by the Parties in writing. No later than forty-eight (48) hours prior to commencement of the Heat Rate Test, Seller shall provide Company with a Heat Rate Test plan for Company's review and approval consistent with the requirements set forth in Section 3(w)(i) (Establishing the Base Heat Rate Curve) of this Attachment B (Facility Owned by Seller). Upon Company's review and approval of Seller's test plan, Seller shall perform the Heat Rate Test. Seller shall provide to Company the results of the Heat Rate Tests, including MWh and Fuel usage, as well as any other information and/or data reasonably requested by Company to assess the Heat Rate Test and resulting Heat Rate Curve.
- iv. Heat Rate Tests Results.
  - a. If the Heat Rate Curve derived from the Heat Rate Test described in Section 3(w)(iii) (Heat Rate Curve Based on Heat Rate Test) of this Attachment B (Facility Owned by Seller) is within five percent (5%) of the Base Heat Rate Curve, the Heat Rate Curve shall be deemed to have passed.
  - b. If the Heat Rate Curve (or any point therein) derived from the Heat Rate Test set forth in Section 3(w)(iii) (Heat Rate Curve Based on Heat Rate Test) of this Attachment B (Facility Owned by Seller) exceeds the Base Heat Rate Curve by more than five percent (5%), the Heat Rate Curve shall be deemed to have failed.
  - c. If conditions occur that could impact the Heat Rate Test and produce inaccurate results, then upon either Party's request, Seller shall reperform all or part (i.e., certain points) of the Heat Rate Test for the applicable generating unit until both Parties agree that

the resulting Heat Rate Curve is accurate. Upon such agreement, the resulting Heat Rate Curve shall either pass under Section 3(w)(iv)(a) or fail under Section 3(w)(iv)(b) of this Attachment B (Facility Owned by Seller) based on the criteria set forth therein. If, after two (2) reperformances of the Heat Rate Test, the Parties cannot agree regarding the accuracy of the resulting Heat Rate Curve, then Company may pursue all rights and remedies set forth in Section 3(w)(iv)(d) of this Attachment B (Facility Owned by Seller).

- d. In the event of a Heat Rate Curve failure under Section 3(w)(iv)(b) or a continued disagreement over Heat Rate Test results under Section 3(w)(i)(c) or Section 3(w)(iv)(c) of this Attachment B (Facility Owned by Seller), Company may, in its sole discretion, pursue all rights and remedies set forth in Section 1(k) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller).

4. Disconnection of Seller Facility.

- a. Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller). For the purposes of this Section 4 (Disconnection of Seller Facility), a “Disconnection Event” is a sudden reduction in active power received at the Point of Interconnection of at least \_\_\_ MW of **[TO BE DETERMINED BY COMPANY FOLLOWING IRS]** and/or disconnection of the Facility from the Company System in a period of 2 minutes or less, (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 (Disconnection of Seller Facility) for any future Disconnection Event during the pendency of such election or thereafter. For the avoidance of doubt a Unit Trip shall be considered a Disconnection Event.

- 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 of the Disconnection Event.

- c. Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller’s findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of such Disconnection Event (“Proposed Actions”). The aforementioned findings, data relied upon for such findings, and Proposed Actions, should at a minimum, mimic the requirements outlined in NERC standard PRC-030-1

(Unexpected Inverter-Based Resource Event Mitigation). 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. **[DRAFTING NOTE: COMPANY RESERVES THE RIGHT TO MAKE FURTHER REVISIONS TO THE REPORTING REQUIREMENTS OF A DISCONNECTION EVENT]**

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 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (i) the probable cause of the Disconnection Event, (ii) the Proposed Actions, (iii) the Company’s Recommendations, and/or (iv) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent Third-Party consultant (“Qualified Consultant”) chosen from the Qualified Independent Engineers List attached to the Agreement as Attachment D (Consultants List – Qualified Independent Engineering Companies). 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 Facility (“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 Facility recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless such design changes, operating and maintenance procedure changes, modifications, and/or maintenance cannot reasonably be completed within forty-five (45) Days, in which case, Seller shall complete the foregoing within such longer commercially reasonable period of time agreed to by the Parties in writing.

Company shall have the right to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices 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 Qualified Independent Engineering Companies) 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 Article 17 (Dispute Resolution) of this Agreement.

6. Modeling.

a. Seller's Obligation to Provide Models. Within thirty (30) Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the Facility turbines and generators including any ancillary equipment within the Facility identified in the IRS, 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 electromagnetic transient model (such as a PSCAD model) of the turbines and generators 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"). The Required Models are listed on Exhibit B-1 (Required Models) of this

Attachment B (Facility Owned by Seller). Thereafter, during the Term, Seller shall provide working new and/or updates of any Required Model within thirty (30) Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded. **[DRAFTING NOTE: COMPANY RESERVES THE RIGHT TO MAKE FURTHER REVISIONS TO THE REQUIREMENTS OF SOURCE CODE ESCROW/SECURITY/LETTER OF CREDIT]**

b. Remedies. If Company obtains the Required Models pursuant to Section 6.a (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), and Company finds that the Seller-provided Required Models are incomplete or otherwise unusable, the Company shall notify the Seller of the Required Model issues in writing and Seller shall address the identified issues in writing within fifteen (15) Days of such notice. Failure to provide the new and/or updated Required Models or to remedy the identified issues with the Required Models within thirty (30) Days' of such notice or if the Seller fails to respond to Company's notice to address the Company identified issues within fifteen (15) Days' notice, the Seller shall be liable to Company for Liquidated Damages in the amount of \$500 per Day for each Day Seller fails to provide such remedies commencing from the date of Company's initial notice of a breach of Section 6.a (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller). Failure to respond to Company's notice and either provide the Required Models and/or remedy the identified issues with the Required Models within sixty (60) Days of Company's initial notice of a breach of Section 6.a (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 8.1(A)(20) under the Agreement.

c. Confidentiality Obligations. Company shall keep the Required Models confidential. Company shall restrict access to 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, and who have a need to access the Required Models on behalf of Company to carry out their duties for the authorized use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Required Models and shall take all reasonable actions required to recover any such Required Models in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

## 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 generator controls 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 System Acceptance Test, the Facility shall be deemed to be in a derate 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 Technical and Operational Requirements specified under this Agreement.

## **EXHIBIT B-1 MODELING REQUIREMENTS**

**To be completed based on the Project's characteristics. The Required Models are listed in the RFP Appendix B, Attachment 4 -Model and Interconnection Requirements (IRS) Scope of the RFP.**

**Modeling requirements are set forth in the RFP Appendix B, Attachment 3 Hawaiian Electric Facility Technical Model Requirements and Review Process of the RFP.**

**EXHIBIT B-2 GENERATOR(S) AND FACILITY COMPOSITE CAPABILITY  
CURVE(S)**

## ATTACHMENT C

### METHODS AND FORMULAS FOR MEASURING TECHNICAL AND OPERATIONAL REQUIREMENTS SELECTED PORTIONS OF NERC GADS

#### EQUIVALENT AVAILABILITY FACTOR (EAF)

$$\text{EAF} = [(\text{AH} - \text{EPDH} - \text{EUDH})/\text{PH}] \times 100\%$$

Where:

Available Hours (AH) = Sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH)

Equivalent Planned Derated Hours (EPDH): Each individual Planned Derating (PD, DP) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC. Note: Includes Planned Deratings (PD) during Reserve Shutdowns (RS).

Equivalent Unplanned Derated Hours (EUDH): Each individual Unplanned Derating (D1, D2, D3, D4, DM) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC. Note: Includes Unplanned Derating (D1, D2, D3, D4, DM) during Reserve Shutdowns (RS).

Gross Maximum Capacity (GMC): The maximum capacity the unit can sustain over a specified period of time when not restricted by ambient conditions or deratings., as demonstrated during the Capacity Test.

Maintenance Derating (D4): A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.

Maintenance Derating Extension (DM): An extension of a maintenance derate (D4) beyond its estimated completion date.

Net Maximum Capacity (NMC): Net Maximum Capacity is the unit's Gross Maximum Capacity (GMC) less any capacity (MW) utilized for that unit's station service or auxiliary load. This is demonstrated during the Capacity Test. This is the Demonstrated Firm Capacity.

Net Available Capacity (NAC): Net Available Capacity is the unit’s capacity (MW) available for Company Dispatch. This is measured via telemetry and equal to Available Capacity.

Size of Reduction: (NMC-NAC)

Period Hours (PH): The number of hours in the period being reported that the unit was in the active state. The period hours in each month or year are as follows:

<b>Month</b>	<b>Hrs/Mo</b>	<b>Hrs/Yr</b>	
January	744	8760*	*Add 24 hours during a leap year
February	672*		
March	744		
April	720		
May	744		
June	720		
July	744		
August	744		
September	720		
October	744		
November	720		
December	744		

Planned Derating (PD): A derating that is scheduled well in advance and is of a predetermined duration.

Planned Derating Extension (DP): An extension of a Planned Derate (PD) beyond its estimated completion date.

Planned Outage (PO): An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks, and occurs only once or twice a year. Turbine and boiler overhauls or inspections, testing, and nuclear refueling are typical Planned Outages.

Reserve Shutdown (RS): The state where the unit is available for load but is not synchronized due to lack of demand.

Reserve Shutdown Hours (RSH): Sum of all hours the unit was available to the system but not synchronized for economy reasons.

Service Hours (SH): Sum of all Unit Service Hours.

Unit Service Hours: Hours the unit was synchronized to the system. For units equipped with multiple generators, count only those hours when at least one of the generators was synchronized, whether or not one or more generators were actually in service.

Unplanned (Forced) Derating – Immediate (D1): A derating that requires an immediate reduction in capacity.

Unplanned (Forced) Derating – Delayed (D2): A derating that does not require an immediate reduction in capacity but requires a reduction within six hours.

Unplanned (Forced) Derating – Postponed (D3): A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.

### EQUIVALENT FORCED OUTAGE FACTOR (EFOF)

$$\text{EFOF} = [(\text{FOH} + \text{EFDH})/(\text{PH})] \times 100\%$$

Where:

Equivalent Forced Derated Hours (EFDH): Each Individual Forced Derating (D1, D2, D3) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- $(\text{Derating Hours} \times \text{Size of Reduction})/\text{NMC}$ . Note: Includes Forced Deratings (D1, D2, D3) during Reserve Shutdowns (RS)

Equivalent Forced Derated Hours During Reserve Shutdowns (EFDHRS): Each individual Forced Derating (D1, D2, D3) or a portion of any Forced Derating which occurred during a Reserve Shutdown (RS) is transformed into equivalent outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- $(\text{Derating Hours} \times \text{Size of Reduction})/\text{NMC}$ .

Forced Outage Hours (FOH) = Sum of all hours experienced during Forced Outages (U1, U2, U3) + Startup Failures (SF)

Gross Maximum Capacity (GMC): The maximum capacity the unit can sustain over a specified period of time when not restricted by ambient conditions or deratings, as demonstrated during the Capacity Test.

Net Maximum Capacity (NMC): Net Maximum Capacity is the unit's Gross Maximum Capacity (GMC) less any capacity (MW) utilized for that unit's station service or auxiliary load as demonstrated during the Capacity Test. This is the Demonstrated Firm Capacity..

Net Available Capacity (NAC): Net Available Capacity is the unit's capacity (MW) available for Company Dispatch. [Available Capacity]

Size of Reduction:  $(\text{NMC} - \text{NAC})$

Reserve Shutdown (RS): The state where the unit is available for load but is not synchronized due to lack of demand.

Startup Failure (SF): An outage that results when a unit is unable to synchronize within a specified startup time following an outage or a Reserve Shutdown.

Unplanned (Forced) Derating – Immediate (D1): A derating that requires an immediate reduction in capacity.

Unplanned (Forced) Derating – Delayed (D2): A derating that does not require an immediate reduction in capacity but requires a reduction within six hours.

Unplanned (Forced) Derating – Postponed (D3): A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.

Unplanned (Forced) Outage – Immediate (U1): An outage that requires immediate removal of a unit from service, another Outage State, or a Reserve Shutdown state. This type of outage usually results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.

Unplanned (Forced) Outage – Delayed (U2): An outage that does not require immediate removal of a unit from the in-service state but requires removal within six hours. This type of outage can only occur while the unit is in service.

Unplanned (Forced) Outage – Postponed (U3): An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state beyond the end of the next weekend. This type of outage can only occur while the unit is in service.

**ATTACHMENT D**

**CONSULTANTS LIST -- QUALIFIED INDEPENDENT ENGINEERING COMPANIES**

(See Section 3.3(B)(2) (Qualified Independent Engineering Companies))

**[COMPANY AND SELLER SHALL AGREE UPON A LIST OF MUTUALLY  
AGREEABLE INDEPENDENT ENGINEERING COMPANIES.]**

**ATTACHMENT E**

**SINGLE-LINE DIAGRAM AND INTERFACE BLOCK DIAGRAM**

(See Section 1.a. (Drawings, Diagrams, Lists, Settings and As-Builts) of Attachment B (Facility Owned by Seller))

**ATTACHMENT F**

**RELAY LIST AND TRIP SCHEME**

(See Section 1.a. (Drawings, Diagrams, Lists, Settings and As-Builts) of Attachment B (Facility Owned by Seller))

## ATTACHMENT G

### COMPANY-OWNED INTERCONNECTION FACILITIES

#### **[MAY BE REVISED DEPENDING ON THE GENERATING TECHNOLOGY USED BY FACILITY]**

1. Description of Company-Owned Interconnection Facilities.

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

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

(C) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreement, 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 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]:**

- (1) [Line Extension];
- (2) A lockable, group operated switch located on a pole prior to the Facility switching station. Company will install a [REDACTED] kV drop into Seller-provided dead-end structure.
- (3) 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;
- (4) 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.);

(5) Revenue Metering Package and the infrastructure associated with the Revenue Metering Package as provided in Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility);

(6) 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.

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

2. Construction and Support Services by Seller.

(A) Construction and Support Services by Seller.

(1) 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 "1" AND "2" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(D) ABOVE]**

(2) Seller shall provide the necessary support for the Company's 69 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.

(3) Resilience Requirements.

(a) All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, be in accordance with the appropriate risk category determined by, and satisfy the wind load and seismic

load requirements of, the International Building Code and any more stringent requirements imposed under applicable Laws.

(b) Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.

(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 design and specifications information so Seller can incorporate such information in its bid documents.

(C) Plans. Seller shall provide Company its complete Plans at 30%, 60%, 90%, 100% and final issue for construction. At least 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 latest 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%, 100% and final issue for construction) 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. Seller shall not commence construction of the Company-Owned Interconnection Facilities to be constructed by

Seller (and/or its Contractors) before the Company accepts in writing the Plans.

(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.

(1) 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 2(F)(2) 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.

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

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

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

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

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

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

(f) Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with Attachment B (Facility Owned by Seller) Technical and Operational Requirements.

(g) Agreement on Active Power Control Interface.

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

(i) 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)(3) of this Attachment G (Company-Owned Interconnection Facilities).

(ii) 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)(3) of this Attachment G (Company-Owned Interconnection Facilities).

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

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

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

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

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

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

(3) 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 thirty (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, in the Company's sole discretion based on its assessment of the nature of Seller's lack of

readiness and Company's resources and overall schedule of projects at the time, Company may assign Seller a new Test Ready Deadline and a new Acceptance Testing Milestone Date, which may be behind the other projects then in the queue, coinciding with the estimated time it would take Seller to become test-ready and Company's ability to commence the Acceptance Test. If prior to the new Test Ready Deadline established by Company, Seller becomes ready for the performance of the Acceptance Test, i.e., Seller provides Company with its fourteen (14) Day advance written notice of the commencement of the Acceptance Test (the "Seller Accelerated Test Ready Deadline"), and Company confirms, in its site walk-through of the Facility (which site walk-through the Company may waive in its sole discretion), that Seller is ready for the Acceptance Test, but Company is unable to perform the Acceptance Test within [ ] Days<sup>2</sup> (the "Seller Accelerated Acceptance Testing Milestone Date") and Company's inability to commence the Acceptance Test is solely due to the conditions set forth in Section 2(F)(1)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities), then, for up to the period of time from the Seller Accelerated Acceptance Testing Milestone Date to the date that Company commences performance of the Acceptance Test, Seller shall be entitled to a waiver of Daily Delay Damages that would otherwise be accruing if Seller ultimately fails to meet the Guaranteed Commercial Operations Date due to its failure to meet the original Test Ready Deadline specified in Attachment K-1 (Seller's Conditions Precedent and Company Milestones). For clarity, and to explain the limited waiver of Daily Delay Damages provided for in the preceding sentence, if Seller misses its Test Ready Deadline by forty-five (45) Days and subsequently misses its Guaranteed Commercial Operations Date for that reason by sixty (60) Days and the period of time between the Seller Accelerated Acceptance Testing Milestone Date and the commencement date of the Acceptance Test is fifteen (15) Days (and such delay is solely due to the conditions set forth in Section 2(F)(1)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities)), then Seller shall be entitled to a waiver of fifteen (15) Days of Daily Delay Damages otherwise accruing for Seller's failure to meet the Guaranteed Commercial Operations Date. If the above time periods remain the same but Seller only misses the Guaranteed Commercial Operations Date by thirty (30) Days, Seller shall not be entitled to any Daily Delay Damages waiver as the 30-Day failure to meet the Guaranteed Commercial Operations Date would be attributable to the initial forty-five (45) Days that Seller missed the Test Ready Deadline. Finally, if the above time periods remain the same but Seller misses its Guaranteed Commercial Operations Date by fifty (50) Days, Seller shall be entitled to only a 5-Day waiver of Daily Delay Damages. 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.

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<sup>2</sup> This would be the number of Days between the Test Ready Deadline and the Acceptance Testing Milestone Date stated in the Company Milestones of Attachment K-1 (Seller's Conditions Precedent and Company Milestones).  
Model Firm Capacity RDG PPA

Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

(4) 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. 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.

(H) Guaranteed Commercial Operations Date. Construction of the Interconnection Facilities shall be completed, and the Interconnection Facilities shall be demonstrated to operate in accordance with the requirements of this Attachment G (Company-Owned Interconnection Facilities) and this Agreement by the Guaranteed Commercial Operations Date. In the event that Seller fails to complete the Interconnection Facilities by the Guaranteed Commercial Operations Date and fails to comply with Section 5.1(E) (Commencement of Capacity Charge Payments), the Company shall have no obligation to make such Capacity Charge payments until such work is completed and the conditions of Article 5 (Rates for Purchase) are satisfied.

3. Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility.

(A) Seller Payment to Company.

(1) 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) and Attachment Y (Operation and Maintenance of the Facility) (collectively, the “Engineering and Design Work”), and (cc) conducting the Acceptance Test and Control System Acceptance Test (the Engineering and Design Work and the work to conduct the Acceptance Test and the Control System Acceptance Test being collectively called the “Company Interconnection Work”). The Total Actual Interconnection Costs (the actual cost of Company Interconnection Work are the “Total Interconnection Costs.”

(2) 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 THIS ATTACHMENT G, SECTION 1(d), PLUS TESTING.]**

(3) 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 by Seller in accordance with the following schedule:

(1) Initial Payment: Seller, in connection with early engineering offered by Company [or other reason], has paid \$       ,000.00 to Company;

(2) Company-Owned Interconnection Facilities Prepayment: Within thirty (30) Days after the Effective Date, 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 Engineering and Design Work on Company-Owned Interconnection Facilities until Seller pays the amounts in Section 3(B)(1) (Initial Payment) and Section 3(B)(2) (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.

(3) Balance of Company-Owned Interconnection Facilities Prepayment: On the Guaranteed Procurement Payment Date, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to Company.

Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Seller pays the amount in this Section 3(B)(3) (Balance of Company-Owned Interconnection Facilities) 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.

(4) Scope Changes to Company Interconnection Work. Company may require additional estimated interconnection cost payments (an “Additional Interconnection Cost Payment”) that may be required as a result of revisions to the Company-Owned Interconnection Facilities, other Company Interconnection Work necessary but not covered by the Total Estimated Interconnection Costs and/or revisions to the Project schedule necessitating additional Company Interconnection Work not contemplated when the Total Estimated Interconnection Costs were determined. Company shall prepare commercially reasonable documentation justifying the necessity of the Additional Interconnection Cost Payment, which cannot be unreasonably denied by Seller. Seller shall pay the requested Additional Interconnection Cost Payment within 30 Days of receipt of Company's documentation. If Seller does not make such payment when due, Company shall have the right to draw on the Standby Letter of Credit provided under Section 6(A) (Standby Letter of Credit) of this Attachment G (Company-Owned Interconnection Facilities) or, in Company’s sole discretion, Company may stop Company Interconnection Work when funds from the Total Estimated Interconnection Costs are exhausted and shall not be obligated to re-commence Company Interconnection Work until the Additional Interconnection Cost Payment, however made, is received by Company. The amount of the Additional Interconnection Cost Payment shall be included in the Total Estimated Interconnection Costs for purposes of the true-up required under Section 3(C) (True-Up) of this Attachment G (Company-Owned Interconnection Facilities).

(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 pursuant to its terms, or (iii) the date this Agreement is terminated. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller’s delay or a failure of Seller to respond to Company's request regarding disposition of interconnection equipment and materials. 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 Costs, 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 Costs 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 Costs 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, subject to reimbursement by Seller of the costs thereof incurred by Company in accordance with Section 4(C) (Monthly Bill) of this Attachment G (Company-Owned Interconnection Facilities) immediately below.

(C) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any costs incurred in operating, maintaining and replacing, including replacements to upgrade obsolete equipment (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 the billing date, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Seller to verify such charges.

5. Relocation of Company-Owned Interconnection Facilities.

(A) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the “Total Estimated Relocation Cost”). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.

(B) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty

(30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the “Total Actual Relocation Cost”). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

(A) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses owed to 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 Standby Letter of Credit) from the LC Bank. If the credit rating of the LC Bank falls below A- or A3 (as applicable), Company may require Seller to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank meeting the requirements above. 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 pursuant to its terms, 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), 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 pursuant to its terms), 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 pursuant to its terms), 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 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 Land Rights shall be substantially in the form set forth in Attachment I (Form of Grant of Easement). To the extent Land Rights other than a grant of easement are transferred to Company, appropriate modifications will be made to Attachment I (Form of Grant of Easement) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities Constructed by Seller or by Company. 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 each construction activity 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 necessary for the Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in accordance with such Governmental Approval) or that such Governmental Approvals have otherwise have been closed with the issuing Governmental Authority.

10. Land Rights. Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company) obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land

Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities. For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, including the commercial terms.

[MATRIX TO BE INSERTED]

**ATTACHMENT H**

**FORM OF  
BILL OF SALE AND ASSIGNMENT**

THIS BILL OF SALE AND ASSIGNMENT (“Bill of Sale”) is 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 that certain Power Purchase Agreement for Firm Renewable Dispatchable Generation dated \_\_\_\_\_, 20\_\_ (the “Agreement”) and other good and valuable consideration paid to Transferor by Transferee, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Exhibit A (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 Agreement and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Exhibit B (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 tangible 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 Exhibit A (Description of Tangible Personal Property and Fixtures) and Exhibit B (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai‘i.

4. Signatures and Counterparts. This Bill of Sale may be executed in counterparts, each of which shall be deemed original, and all of which shall together constitute as one and the same instrument binding all parties notwithstanding that all of the parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded, and the remaining pages assembled as one document. This Bill of Sale may also be executed by exchange of executed copies via electronic means, such as PDF.

A party's signature transmitted by electronic means shall be considered an "original" signature for purposes of this Bill of Sale.

**[Signatures for Bill of Sale and Assignment on following page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

\_\_\_\_\_,  
a \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

“Transferor”

\_\_\_\_\_,  
a Hawai‘i corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

“Transferee”

**ATTACHMENT H**

**FORM OF BILL OF SALE AND ASSIGNMENT  
EXHIBIT A**

**DESCRIPTION OF  
TANGIBLE PERSONAL PROPERTY AND FIXTURES**

**ATTACHMENT H**

**FORM OF BILL OF SALE AND ASSIGNMENT  
EXHIBIT B**

**DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY**

**ATTACHMENT I**

**FORM OF GRANT OF EASEMENT**

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT I IS SUITABLE FOR ALL ISLANDS.]**

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By:  Mail  Pickup

Hawaiian Electric Company, Inc.  
Survey Division  
P. O. Box 2750  
Honolulu, HI 96840-0001

This document contains \_\_\_\_\_ pages  
HECO WO# \_\_\_\_\_/JP# \_\_\_\_\_

TITLE OF DOCUMENT(S):

R/W \_\_\_\_\_

**GRANT OF EASEMENT**

PARTIES TO DOCUMENT:

GRANTOR(S):

GRANTEE(S): **[HAWAIIAN ELECTRIC COMPANY, INC.], [HAWAII ELECTRIC LIGHT COMPANY, INC.], [MAUI ELECTRIC COMPANY, LTD.], a Hawaii corporation**

DESCRIPTION: Those certain premises situated off \_\_\_\_\_

Tax Map Keys:  
Address:

**GRANT OF EASEMENT**

THIS GRANT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the "Grantor"), and **[HAWAIIAN ELECTRIC COMPANY, INC.]**, **[HAWAII ELECTRIC LIGHT COMPANY, INC.]**, **[MAUI ELECTRIC COMPANY, LTD.]**, a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii, 96840 (the "Grantee").

WITNESSETH THAT:

WHEREAS, the Grantor is the owner of those certain premises situated off \_\_\_\_\_ (the "Premises"); and

WHEREAS, as evidenced by that certain \_\_\_\_\_ dated \_\_\_\_\_ and recorded in \_\_\_\_\_ as Document No. \_\_\_\_\_, the Grantor entered into an unrecorded \_\_\_\_\_ with \_\_\_\_\_, for purposes of constructing and operating a \_\_\_\_\_ facility (the "Project") on the Premises; and

WHEREAS, the term of the \_\_\_\_\_ commenced on \_\_\_\_\_ and continues for a period of \_\_\_\_\_ years following the Operation Commencement Date (the "Term") as defined in the \_\_\_\_\_; and

WHEREAS, the Grantee requires that the Grantor grant and convey unto the Grantee easements over, upon, across and through the Premises, to allow the Grantee to receive electric energy generated by the Project and to allow the Project to receive electric service from the Grantee's existing grid, for as long as the \_\_\_\_\_ shall be in effect.

NOW THEREFORE, the Grantor, in consideration of the sum of One Dollar (\$1.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual right and easement to construct, reconstruct, operate, maintain, repair and remove poles, guy wires, anchors, overhead and/or underground wire lines and such other appliances and equipment (the "Grantee's Improvements") as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communications and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon, across and through that certain parcel of land situate off \_\_\_\_\_ (the "Easement").

TO HAVE AND TO HOLD the same unto the Grantee, for as long as the \_\_\_\_\_ shall be in effect, including any extensions thereto, provided however, that upon the termination of the \_\_\_\_\_ and the expiration of a termination period of up to \_\_\_\_\_ days afforded to the Grantee by the

Grantor, then all rights granted hereunder shall cease and that upon such termination, Grantee shall have the right to and will, if so requested, remove from the Easement, at its own expense, the Grantee's Improvements and will restore the ground to as reasonably close to the condition in which it was immediately before the installation of the Grantee's Improvements.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee's use of the Easement, the Grantee's Improvements, or Grantee's access to and maintenance of the Grantee's Improvements.

AND the Grantee hereby covenants and agrees that:

**1. Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

**2. Indemnification.** The Grantee, for itself only and not on behalf of the other, will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by such Grantee's failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee's failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

**A. Condemnation.** If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee, to the extent of its interest. **Landscaping.** The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant. **Warranty of Title.** The Grantor, for itself, its heirs and assigns, covenants with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and has good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land. **Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine,

feminine or neuter gender, as the context of this grant shall require. The term “person” shall mean an individual, partnership, association, trust, corporation or other entity as the context may require. **Parties in Interest.** The covenants contained in this Grant of Easement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants, and shall be responsible and obligated, for itself and not for the other Grantee party. **Counterparts.** The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

*[Signatures begin on the following page.]*

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above mentioned.

\_\_\_\_\_

Grantor

STATE OF HAWAII )  
 : ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing \_\_\_\_-page instrument entitled GRANT OF EASEMENT, dated \_\_\_\_\_, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

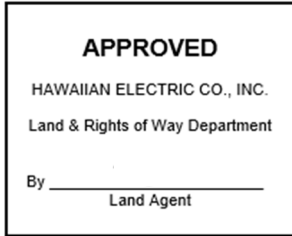
\_\_\_\_\_  
Notary Signature

Type or print name: \_\_\_\_\_  
Notary Public, First Circuit, State of Hawaii

My commission expires: \_\_\_\_\_

[Affix Seal]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above mentioned.



**[HAWAIIAN ELECTRIC COMPANY, INC.],**  
**[HAWAII ELECTRIC LIGHT COMPANY, INC.],**  
**[MAUI ELECTRIC COMPANY, LTD.],**  
a Hawaii corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Grantee

STATE OF HAWAII )  
: ss.  
CITY AND COUNTY OF HONOLULU )

HECO

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that such person is the \_\_\_\_\_ of **[HAWAIIAN ELECTRIC COMPANY, INC.]**, **[HAWAII ELECTRIC LIGHT COMPANY, INC.]**, **[MAUI ELECTRIC COMPANY, LTD.]**, a Hawaii corporation, and the foregoing \_\_\_\_-page instrument entitled GRANT OF EASEMENT, dated \_\_\_\_\_, was signed on behalf of said corporation by authority of its Board of Directors, and said Officer acknowledged said instrument to be the free act and deed of said corporation. This acknowledgement is deemed to include my Notary Certification.

\_\_\_\_\_  
Notary Signature

Type or print name: \_\_\_\_\_  
Notary Public, First Circuit, State of Hawaii

My commission expires: \_\_\_\_\_

[Affix Seal]

**ATTACHMENT J**  
**ENERGY CHARGE AND**  
**CAPACITY CHARGE PAYMENT FORMULAS**

1. Company Payments for Energy and Capacity.

**[THE METHOD OF DETERMINING THE ENERGY AND/OR CAPACITY CHARGE SET FORTH IN THIS SECTION MAY BE REFINED DEPENDING ON THE NATURE OF THE PROJECT.]** The Charges for Energy and Capacity shall be provided for each Calendar Month.

(A) Energy Charge.

(1) Energy Charge Formula. The monthly Energy Charge shall be computed by the following formula:

Energy Charge = \$\_\_\_\_\_ for all energy, service hours and starts during any Contract Year, plus actual cost of Fuel, incurred by Seller, to produce that energy.

Energy Charge = (Fuel Component + Variable O&M Component)

where:

Fuel Component = Actual Fuel Usage x Fuel Component <sub>BASE</sub>

Fuel Component <sub>BASE</sub> = Actual unit cost of fuel **[INCLUDING, BUT NOT LIMITED TO, DEPENDING ON THE NATURE OF THE PROJECT: COST OF FUEL, TAXES, TRANSPORTATION, STORAGE AND FUEL ADDITIVE. AS THIS AGREEMENT IS FOR ENERGY AND CAPACITY FROM RENEWABLE SOURCES, ANY PRICE ADJUSTMENTS TO THE FUEL COMPONENT SHALL NOT BE BASED ON PRICE ADJUSTMENTS OR INDEXING TO ANY FOSSIL FUEL.]**,

Variable O&M Component = Variable O&M Component <sub>BASE</sub> x \_\_\_\_\_ [fixed escalation rate].

Variable O&M Component <sub>BASE</sub> shall consist of:

(a) A “Per kWh Variable Component” of [\$\_\_\_\_\_] per kWh (in 202[ ] dollars) multiplied by the kWh that a generating unit(s) produced

during the Calendar Month [THE PER KWH VARIABLE COMPONENT MAY INCLUDE, WITHOUT LIMITATION, DEPENDING ON THE NATURE OF THE PROJECT, THOSE O&M COSTS THAT VARY WITH ENERGY OUTPUT OF THE GENERATING UNIT. THESE ITEMS INCLUDE CONSUMABLES SUCH AS CHEMICALS FOR WATER TREATMENT (SUCH AS WHEN WATER-INJECTION IS USED FOR NOX EMISSION ABATEMENT) AND TURBINE WASHING AS WELL AS LUBRICATING OILS THAT MAY BE CONSUMED IN THE NORMAL COURSE OF ENERGY PRODUCTION],

(b) A “Per Hour Variable Component” of [\$ ] per hour (in 202[ ] dollars) multiplied by the service hours of the generating unit(s) during the Calendar Month [THE PER HOUR VARIABLE COMPONENT MAY INCLUDE, WITHOUT LIMITATION, DEPENDING ON THE NATURE OF THE PROJECT, THOSE O&M COSTS THAT VARY WITH THE NUMBER OF HOURS THAT THE GENERATING UNIT IS OPERATED. THIS COMPONENT INCLUDES ITEMS SUCH AS LUBRICATING OILS THAT ARE REPLACED AFTER A GIVEN NUMBER OF OPERATING HOURS ACCORDING TO THE MANUFACTURER’S RECOMMENDATIONS]

(c) A “Per Start Variable Component” of [\$ ] per start (in 202[ ] dollars) multiplied by the number of starts of the generating unit(s) during the Calendar Month. [THE PER START VARIABLE COMPONENT MAY INCLUDE, WITHOUT LIMITATION, DEPENDING ON THE NATURE OF THE PROJECT, THOSE O&M COSTS THAT VARY WITH THE NUMBER OF STARTS THAT THE GENERATING UNIT IS OPERATED. THIS COMPONENT INCLUDES ITEMS THAT ARE REPLACED AFTER A GIVEN NUMBER OF STARTS ACCORDING TO THE MANUFACTURER’S RECOMMENDATIONS]

The Reference Year for base year purposes is 20[xx].

Variable O&M Component<sub>BASE</sub> = Per kWhr Variable Component \* net kWhr Export for the month [MAY BE BASED ON INDIVIDUAL GENERATOR OUTPUT, DEPENDING ON FACILITY]+ Per Hour Variable Component \* hours of facility exporting for the month (hour fraction rounded to nearest minute) [MAY BE BASED ON INDIVIDUAL GENERATOR HOURS DEPENDING ON FACILITY] + Per Start Variable Component \* number of starts for the month.

(2) Sample Calculation. A sample calculation of the Energy Charge Payment calculation is provided below: [Sample calculation to be included when PPA is finalized with Seller]

(B) Capacity Charge.

**[THE METHOD OF DETERMINING THE CAPACITY CHARGE SET FORTH IN THIS SECTION MAY BE REFINED DEPENDING ON THE NATURE OF THE PROJECT.]**

(1) Capacity Charge Formula. The Capacity Charge (monthly) shall, on or after the Commercial Operations Date, be computed by the following formula:

$$\text{Capacity Charge} = (\text{Demonstrated Firm Capacity} \times \text{Available Capacity Factor}) \times (\text{Capacity Charge Rate} + \text{Fixed O\&M Component Rate}).$$

(2) Fixed O&M Component Rate. Fixed O&M Component Rate shall be [\$ per kW Available Capacity per month]. **[THE FIXED O&M COMPONENT MAY INCLUDE, WITHOUT LIMITATION, BASE COST OF LABOR REQUIRED TO RUN THE FACILITY (I.E., THOSE LABOR COSTS THAT ARE INDEPENDENT OF THE AMOUNT OF ENERGY GENERATED BY THE FACILITY OR THE RUN-HOURS OF THE FACILITY OR BY THE NUMBER OF STARTS OF THE FACILITY), LEASE RENT IF SITE IS LEASED BY SELLER, PROPERTY TAXES IF SITE IS OWNED BY SELLER AND ADMINISTRATIVE AND GENERAL INDIRECT COSTS].**

(3) Capacity Charge Rate.

Where the GDPIPD Compare Rate is capped at 1.10.

The Capacity Charge Rate in \$/kW per month shall be rounded to (2) two decimal places.

EXAMPLE (for illustrative purposes only):

*BAFO Capacity Charge Rate Submission Date – [ ]*  
*PUC Approval Order Date – August 15, 2025*  
*GDPIPD<sub>BAFO Submission</sub> – [ ] (Q[ ] [ ])*  
*GDPIPD<sub>PUC Approval</sub> – 124.766 (Q2 2025)*  
*BAFO Capacity Charge Rate – \$[ ]/kW per month*

Calculation of Capacity Charge Rate:

$$\text{Capacity Charge Rate} = \text{BAFO Capacity Charge Rate} \times \text{GDPIPD Compare Rate}$$

$$\text{GDPIPD Compare Rate} = \text{GDPIPD}_{\text{PUC Approval}} / \text{GDPIPD}_{\text{BAFO Submission}} = 124.766 / [ ]$$

$$\text{Capacity Charge Rate} = \$[\text{redacted}]/\text{kW per month} \times (124.766/[\text{redacted}]) = \$[\text{redacted}]/\text{kW per month}$$

If GDPIPD Compare Rate is greater than 1.10:

$$\text{Capacity Charge Rate} = \$[\text{redacted}]/\text{kW per month} \times 1.10 = \$[\text{redacted}]/\text{kW per month}$$

(4) Available Capacity Factor Formula. Available Capacity Factor is a ratio comparing the adjusted Service Hours divided by Period Hours and shall be determined as follows:

“Available Capacity Factor” shall be, during the month for which the Capacity Charge is computed, the total Available Hours minus the total of Equivalent Forced Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS)), Equivalent Planned Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS)), Equivalent Unplanned Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS)) and Equivalent Force Majeure Hours during the prior month (other than those excluded pursuant Section 4.2 (No Obligation to Accept Energy)), divided by Period Hours (as defined in Attachment C (Methods and Formulas for Measuring Technical and Operational Requirements/Selected Portions of NERC GADS)).

Equivalent Force Majeure Hours: Each Force Majeure event affecting the Facility’s ability to deliver capacity is transformed into equivalent full Force Majeure hour(s). This is calculated by multiplying the actual duration of the Force Majeure (hours) by the size of the reduction in capacity (MW) divided by the Net Maximum Capacity (NMC). The equivalent Force Majeure Hours for the month are then summed.

Available Capacity Factor Formula:

$$\frac{AH - (EFDH + EPDH + EUDH + EFMH)}{PH}$$

Example (For illustrative purposes):

For the month of October, Seller’s 80MW facility performs its two (2) week annual maintenance, which was previously reported and approved by the Company. Seller’s Capacity Rate is \$40/kWh.

(5) Sample Calculation. A sample of the Capacity Charge payment calculation is provided below: **[Sample calculation to be included when the PPA is finalized with the Seller]**

(6) Investment Tax Credit Adjustment. For purposes of this Section 2(e) (Investment Tax Credit Adjustment) of Attachment J (Energy Charge and Capacity Charge Payment Formulas), the “ITC Adjustment” shall mean the occurrence of a change in law that lowers the base investment tax credit (“ITC”) amount for which the Project is eligible under the Inflation Reduction Act from the ITC amount Seller reflected in its RFP Proposal (“Seller’s Base ITC”). Upon the occurrence of an ITC Adjustment, Seller may request an increase in the Capacity Charge Rate; provided, that any such increase to the Capacity Charge Rate shall be offset by any corresponding change in tax law (e.g., new tax credits, increase in available existing tax credits, reduction in corporate income tax rate, etc.) that benefits Seller. To the extent that Seller requests a price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment), Seller shall provide to Company such documentation and evidence necessary to establish, to Company’s reasonable satisfaction, that the requisite circumstances are present to trigger a price change, including, without limitation: (i) written evidence of the change(s) to the ITC encompassed by the ITC Adjustment, and a description, with specificity, as to the impact of such change(s) on Seller’s pricing, (ii) either (A) written evidence of the other changes in tax law, if any, benefitting Seller, and a description, with specificity, as to the impact of such change(s) on Seller’s pricing, or (B) written certification from Seller that all other tax assumptions made in Seller’s current price remain unchanged due to a lack of any changes in tax law benefitting Seller, and (iii) any other information reasonably requested by Company for purposes of justifying the price change requested by Seller. Moreover, any price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment) shall be agreed to in writing by the Parties and shall be subject to approval by the PUC. Notwithstanding the foregoing, there shall be no change in price pursuant to this provision, if (1) Seller’s RFP Proposal did not include or specify Seller’s Base ITC, (2) a change to the ITC law applicable to the Project becomes effective after the Commercial Operations Date, or (3) if the inability to claim the ITC is due to any other reason other than a change in law. The Company reserves the right and opportunity to propose other methods to adequately preserve a Seller’s pricing assumptions regarding such applicable federal tax credits.

2. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators after completion of the Acceptance Test (such as energy delivered to Company during the Control System Acceptance Test and Seller commissioning but not during the Acceptance Test) (such delivered and accepted energy being referred to collectively as “Test Energy”), provided that Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. In this regard, Company may determine, and Seller shall comply, when and how much Test Energy may be delivered. Company shall not separately pay for Test Energy, provided however, that in the following CSAT Constraints (defined immediately below) circumstance only, for a limited time period as specified below, Company may compensate Seller for certain Test Energy, the delivery of which has been coordinated with Company. In the event that Seller is ready to commence the CSAT but Company is unable to

commence the CSAT due to Company resource constraints, e.g., due to casualty or multiple CSATs already being conducted, or if Seller requests CSAT to occur in whole, or in part during the final 21 days of a calendar year) (such constraints being collectively referred to as “CSAT Constraints”), and if not for such CSAT Constraints Seller would reasonably be expected to achieve Commercial Operations, or partial commissioning, prior to the end of the current calendar year (or Seller’s then current tax year), then Company may, under the parameters specified above, accept delivery of Test Energy and Company shall compensate Seller, for a period no longer than thirty (30) Days, for actual Test Energy delivered during Seller commissioning (post-Acceptance Test and pre-CSAT). This limited circumstance upon which Company may compensate Seller for Test Energy shall not apply to any acceptance of Test Energy for subsequent partial commission after the first partial commissioning completed by Seller. Outside of the limited CSAT Constraints circumstances described immediately above in which Company will compensate Seller for Test Energy, Company shall compensate Seller for actual Fuel costs incurred by Seller for the production of Test Energy that has been delivered to and accepted by Company.

3. 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 3 (Tax Credit Pass Through) of Attachment J (Energy Charge and Capacity Charge Payment Formulas) 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 3 (Tax Credit Pass Through) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

(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:

(1) 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;

(2) 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;

(3) 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 3 (Tax Credit Pass Through) of Attachment J (Energy Charge and Capacity Charge Payment Formulas);

(4) 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 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 claim, or enable its investors to claim, such Hawai‘i Non-Refundable Tax Credit, the following shall apply:

(1) 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;

(2) 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 claim 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 claimed;

(3) 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 3 (Tax Credit Pass Through) of Attachment J (Energy Charge and Capacity Charge Payment Formulas);

(4) 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 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 3 (Tax Credit Pass Through) of Attachment J (Energy Charge and Capacity Charge Payment Formulas). If Seller fails to apply for and to use commercially reasonable efforts to obtain such Hawai'i Renewable Energy Tax Credit as described above, then Company shall be entitled to liquidated damages in an amount equal **[\$150,000 per MW of Contract Firm 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 Firm Capacity]** is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 3(D) of Attachment J (Energy Charge and Capacity Charge Payment Formulas) 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 a credit against any amounts due by Company to Seller under this Agreement, as Company reasonably determines.

(E) If, prior to the application in Section 3(B) or filing in Section 3(C) of this Attachment J (Energy Charge and Capacity Charge Payment Formulas), as applicable, a change in tax law occurs to introduce a Hawai'i Production Tax Credit or an alternative renewable energy 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 claimable tax credits. If, based on such efforts, Seller determines that either Section 3(B) or Section 3(C) of this Attachment J (Energy Charge and Capacity Charge Payment Formulas) would result in a larger Net Amount of claimable 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 claimable 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 claimable 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 Pricing 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 3(B) or Section 3(C) of this Attachment J (Energy Charge and Capacity Charge Payment Formulas), or the Hawai'i Production Tax Credit or alternative tax credit under Section 3(E) of this Attachment J (Energy Charge and Capacity Charge Payment Formulas) 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 3(F) of Attachment J (Energy Charge and Capacity Charge Payment Formulas) 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 (Energy Charge and Capacity Charge Payment Formulas). Company shall pay the fees and expenses of the Independent Tax Expert and Seller shall promptly reimburse Company for one-half of such fees and expenses.

(G) Any dispute arising under this Attachment J (Energy Charge and Capacity Charge Payment Formulas) shall constitute a "Dispute" within the meaning of Article 17 (Dispute Resolution) of this Agreement and shall be resolved as provided in said Article 17 (Dispute Resolution).

(H) For purposes of this Attachment J (Energy Charge and Capacity Charge Payment Formulas), 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 (Energy Charge and Capacity Charge Payment Formulas) directly or through one or more Affiliates

## ATTACHMENT K

### GUARANTEED PROJECT MILESTONES

**[THE FOLLOWING ARE EXAMPLES. COMPANY AND SELLER WILL DISCUSS OTHER GUARANTEED MILESTONES THAT WOULD BE APPROPRIATE FOR A SPECIFIC PROJECT.]**

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
[SPECIFY DATE CERTAIN]	<u>Construction Financing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by [insert same date certain as in left column] or (ii) the financial capability to construct the Facility (“ <u>Construction Financing Closing Milestone</u> ”).
[SPECIFY DATE CERTAIN]	<u>Permit Application Filing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: County Plan Approval.
[SPECIFY DATE CERTAIN]	<u>Guaranteed Commercial Operations Date</u> .

**ATTACHMENT K-1**

**SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES**

**[ATTACHMENT K-1 WILL BE REVISED TO REFLECT THE RESULTS OF  
IRS]**

**[For Developer Interconnection Build, with COMPANY-OWNED SWITCHING  
STATION]**

**SELLER'S CONDITIONS PRECEDENT**

<b>Seller's Conditions Precedent Date</b>	<b>Description of Each of Seller's Conditions Precedent</b>
	Seller shall make payment to Company of the amount required under <u>Section 3(B)(2)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a satisfactory right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(B)(3)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller's ECP Contractor shall obtain grading permit.
	Seller shall provide Long Lead Materials list of Company-Owned Interconnection Facilities, including but not limited to control house, and metering, CTs and PTs.
	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.
	Seller's EPC contractor shall complete Seller's engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).

<p><b>No later than three (3) months prior to the commencement of the Acceptance Test</b></p>	<p>Seller shall provide station service power, if applicable, as required by Company.</p>
<p><b>No later than three (3) months prior to the commencement of the Acceptance Test</b></p>	<p>Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.</p>
<p>[Specify date]  <u>"COIF Construction Completion Date"</u></p>	<p>Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>
<p>[specify date] ("<u>Test Ready Deadline</u>")</p>	<p>Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(F)(2) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>
	<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

**COMPANY MILESTONES**

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

<b>Company Milestone Date</b>	<b>Description of Each Company Milestone</b>
Two months after COIF Construction Completion Date and 10 business days after "Test Ready Deadline"	Company shall, subject to Seller's continued satisfaction of the requirements set forth in <u>Section 2(F)(2)</u> and <u>Section 2(F)(3)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
Fourteen (14) calendar days following successful completion of Acceptance Test, unless any portion of this period falls within the last twenty-one (21) days of December, in which case the 14 calendar days will begin once that Company black-out period ends.	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

**ATTACHMENT K-1**

**SELLER’S CONDITIONS PRECEDENT AND COMPANY MILESTONES**

**[ATTACHMENT K-1 WILL BE REVISED TO REFLECT THE RESULTS OF IRS]**

**[FOR DEVELOPER INTERCONNECTION BUILD, NO COMPANY-OWNED SWITCHING STATION]**

**SELLER’S CONDITIONS PRECEDENT**

<b>Seller's Conditions Precedent Date</b>	<b>Description of Each of Seller's Conditions Precedent</b>
	Seller shall make payment to Company of the amount required under <u>Section 3(B)(2)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
("Guaranteed Procurement Date")	Seller shall make payment to Company of the amount required under <u>Section 3(B)(3)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.
	Seller’s EPC Contractor shall obtain grading permit.
	Seller shall provide Long Lead Materials list of Company-Owned Interconnection Facilities, including but not limited to control house and metering CTs and PTs.
	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.
	Seller’s EPC Contractor shall complete Seller’s engineering work (Issued for Construction Set) related to the Company-Owned

	Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities)
<b>No later than three (3) months prior to the commencement of the Acceptance Test</b>	Seller shall provide station service power, if applicable, as required by Company.
<b>No later than three (3) months prior to the commencement of the Acceptance Test</b>	Seller or Seller's EPC contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.
[Specify date] <u>"COIF Construction Completion Date"</u>	Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).
<b>[specify date] ("<u>Test Ready Deadline</u>")</b>	Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(F)(2)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.
	Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.

## COMPANY MILESTONES

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

<b>Company Milestone Date</b>	<b>Description of Each Company Milestone</b>
<input checked="" type="checkbox"/> <b>Business Days following the Test Ready Deadline</b>	Company shall, subject to Seller’s continued satisfaction of the requirements set forth in <u>Section 2(F)(2)</u> and <u>Section 2(F)(3)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
<input type="checkbox"/> Business Days following the successful completion of the Acceptance Test, unless any portion of this period falls within the last 21 days of December, in which case the <input type="checkbox"/> Business Days will begin once that Company black-out period ends.	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

**ATTACHMENT K-1**

**SELLER’S CONDITIONS PRECEDENT AND COMPANY MILESTONES**

**[ATTACHMENT K-1 WILL BE REVISED TO REFLECT THE RESULTS OF IRS]**

**[FOR DEVELOPER INTERCONNECTION BUILD HAWAI‘I ISLAND]**

**SELLER’S CONDITIONS PRECEDENT**

<b>Seller's Conditions Precedent Date</b>	<b>Description of Each of Seller's Conditions Precedent</b>
	Seller shall make payment to Company of the amount required under <u>Section 3(B)(2)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(B)(3)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.
	Seller’s EPC Contractor shall obtain grading permit.
	Seller shall provide Long Lead Materials list of Company-Owned Interconnection Facilities, including but not limited to control house and metering CTs and PTs.
	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.
	Seller’s EPC Contractor shall complete Seller’s engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities)

<p><b>[No later than three (3) months prior to the commencement of the Acceptance Test]</b></p>	<p>Seller shall provide station service power, if applicable, as required by Company.</p>
<p><b>[No later than three (3) months prior to the commencement of the Acceptance Test]</b></p>	<p>Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.</p>
<p>[Specify date]  <u>"COIF Construction Completion Date"</u></p>	<p>Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>
	<p>Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(F)(2) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>
	<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

## COMPANY MILESTONES

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

<b>Company Milestone Date</b>	<b>Description of Each Company Milestone</b>
8 weeks following the Seller construction completion and commissioning of all COIF and SOIF assets.	Company shall, subject to Seller's continued satisfaction, unless otherwise agreed to by the Parties, of the requirements set forth in <u>Section 2(F)</u> (Acceptance Test Procedures) of Attachment G (Company-Owned Interconnection Facilities), commence Acceptance Testing.
Fourteen (14) calendar days following successful completion of the Acceptance Test for the entire Facility, unless any portion of this period falls within the last 21 days of December, in which case the 14 calendar days will begin once that Company black-out period ends.	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support seller generation commissioning.

ATTACHMENT L

REPORTING MILESTONES

[FOR DEVELOPER INTERCONNECTION BUILD WITH COMPANY-OWNED SWITCHING STATION]

[THE FOLLOWING ARE EXAMPLES. COMPANY AND SELLER WILL DISCUSS OTHER REPORTING MILESTONES THAT WOULD BE APPROPRIATE FOR A SPECIFIC PROJECT.]

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, <u>engineering, procurement and construction</u> agreements and <del>EPC Contractor agreement</del> <u>general contractor agreements, which shall each include a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities.</u> Under no circumstances shall redactions conceal information that is necessary for Company to verify <u>Company's</u> rights <u>or Seller's obligations</u> under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility generators.
[Date]	Building Permit: Seller or Seller's EPC Contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	All generators for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.

**ATTACHMENT L**

**REPORTING MILESTONES**

**[FOR DEVELOPER INTERCONNECTION BUILD, NO COMPANY-OWNED SWITCHING STATION]**

<b>Reporting Milestone Date</b>	<b>Description of Each Reporting Milestone</b>
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment agreements and EPC Contractor agreement. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Building Permit: Seller or Seller's EPC contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site, tested and mechanically complete.

## ATTACHMENT L

### REPORTING MILESTONES

#### [FOR DEVELOPER INTERCONNECTION, MAUI AND HAWAII ISLAND]

[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment agreements and EPC Contractor agreement. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements.
[Date]	Seller or Seller's EPC contractor shall obtain grading permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site, tested and mechanically complete.

**ATTACHMENT M**

**FORM OF STANDBY LETTER OF CREDIT**

(See Section 7.1(E) (Form of Security))

**[Bank Letterhead]**

**[Date]**

**Beneficiary:** [HAWAIIAN ELECTRIC COMPANY, INC.][HAWAII ELECTRIC LIGHT COMPANY, INC.][MAUI ELECTRIC COMPANY, LIMITED]

**[ADDRESS]**

**[BANK'S NAME]**

**[BANK'S ADDRESS]**

**Re: Irrevocable Standby Letter of Credit**

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] ("Applicant") in the initial amount of \$ \_\_\_\_\_ [DOLLAR VALUE] and authorize you, [Hawaiian Electric Company, Inc.][Hawai'i Electric Light Company, Inc.][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 following conditions, 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 must be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of [Hawaiian Electric Company Inc.][Hawai'i Electric Light Company, Inc.][Maui Electric Company, Limited], and [(ii) the amount of the draft accompanying this certification is due and owing to [Hawaiian Electric Company, Inc.][Hawai'i Electric Light Company, Inc. ][Maui Electric Company, Limited] under the terms of the Power Purchase Agreement dated as of \_\_\_\_\_, between \_\_\_\_\_, and [Hawaiian Electric Company Inc. ][Hawai'i Electric

**Light Company, Inc. ]**[Maui Electric Company, Limited] or [(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 [for draw relating to lapse of the Letter of Credit while credit support is still required]].

The amounts of any drafts drawn under this credit are to be endorsed on the reverse side hereof. 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, or by Email transmission of documents to [Bank Email Address] or other such Email address in PDF format as specified from time to time by the bank. If presentation is made by facsimile transmission or Email 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 or Email, 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:

Vice President, Resource Procurement  
Hawaiian Electric Company, Inc.  
799 S. King St.  
Honolulu, Hawai'i 96814

and to:

SVP, Chief Financial Officer & Treasurer  
Hawaiian Electric Company, Inc.  
799 S. King St.  
Honolulu, Hawai'i 96814

And to Applicant at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[BANK'S NAME]** and **[BANK'S ADDRESS]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[BANK]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[BANK]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Note – insert State of bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

**[BANK'S NAME]:**

By: \_\_\_\_\_  
**[AUTHORIZED SIGNATURE]**

## ATTACHMENT N

### ACCEPTANCE TEST GENERAL CRITERIA

(See definition of Acceptance Test in Article 1 (Definitions))

**[THIS ATTACHMENT MAY BE MODIFIED  
BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

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 \_\_\_ kV breakers, which connect the Facility to Company System – must open and close locally using the local controls. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.

(D) Remotely test the operation of the Facility's \_\_\_ kV breakers which connect the Facility to Company System – must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.

(E) 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 Diagram and Interface Block Diagram) for the Facility.

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

(G) 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.

(H) 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.

(I) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility’s \_\_\_ kV breakers, if any, open as they are designed to open. (Back up relay testing)

(J) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of 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 following items are required components of the Acceptance Test and must be satisfied for successful completion of this Test: (1) Electronic and three (3) hard copies of all Switchyard construction drawings, specifications, calibrations, and settings including as-built drawings; (2) Equipment operating and maintenance manuals, spare parts lists, commissioning notes, as-built equipment settings, and other information related to the switchyard equipment; and (3) Contractor construction warranties and equipment warranties.

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

(See definition of Control System Acceptance Test in Article 1 (Definitions))

**[THIS ATTACHMENT MAY BE MODIFIED  
BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

**[NOTE: IT MAY BE NECESSARY TO REPEAT  
SOME OFF-LINE TESTS WITH THE FACILITY ON-LINE.]**

1. The Control System Acceptance Test (“CSAT”) for the Facility will be conducted, following installation of the Facility. The CSAT procedures will be in accordance with criteria set forth herein. The CSAT 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 Section 3.3(A) (Dispatch of Facility Power) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller). The CSAT is to be successfully completed prior to the Commercial Operations Date.

(A) Seller will provide an estimate of the earliest date for the Control System Acceptance Test at least ninety (90) Days before the date. No Control System Acceptance Test will be scheduled during the final 21 Days of a calendar year.

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

(C) When the Facility is ready for the CSAT, 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.

(D) The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule.

(E) The CSAT procedures for the Facility will be mutually agreed upon between Seller and Company prior to conducting the test.

(F) The procedures will include, but not be limited to, demonstration of the functional requirements of the Facility defined in Section 3.3(A) (Dispatch of Facility Power) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller) such as, but not limited to:

(1) Interconnection equipment and communications to support remote monitoring of the Facility and control of Facility.

(2) Loss-of-Communications responses

- (3) Retention of data for controller power cycles
- (4) Droop characteristic and change of frequency control / response modes (if applicable)
- (5) Real power delivery under remote Company Dispatch, Active Power Dispatch
- (6) Accurate provision of limits for Minimum and Maximum Dispatch.
- (7) Ramp Rates
- (8) Voltage regulation
- (9) Blackstart
- (10) BESS Capacity Test and demonstration of the round trip efficiency of the BESS, each as described in Attachment W (Capacity Test Procedures)
- (11) Heat Rate Tests to establish Base Heat Rate Curves for each generating unit within the Facility

(G) Testing of primary and redundant communications between Company System Operator and Facility Operator.

(H) 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 Facility equipment and controls. During the commissioning the following will be required:

(1) 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 Operations.

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 and PSCAD program.

(2) 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.

(I) Examples of the type of tests conducted to meet the aforementioned objectives may include, but are not limited to the following:

(1) Functional Tests:

(A) 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.

(B) Dispatch Test to verify if the Facility's active power limit and setpoint 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 and appropriate limiting of the Facility's real power output.

(C) 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) Attachment B (Facility Owned by Seller) to this Agreement.

(D) 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).

(E) Loss-of-Communication Test to verify the Facility will properly respond to the various singular and combined disconnection and reconnection of the communication systems relied upon to properly protect and control the Facility. Test is generally conducted by simulating a communications failure and observing the proper response of the Facility. **[If DTT required for the Project.]**

(F) Self-Energization Test to verify the Facility will properly self energize and synchronize to the Company System.

(G) Blackstart Test.

(H) Demonstration of the Facility functions either by direct control of the Facility or manipulation of other system conditions to prove functionality.

(2) Monitoring Test:

(A) The monitoring test requires the Facility to operate as it would in normal operations and in accordance with the provisions of this Agreement.

To ensure useful and valid test data is collected the monitoring test shall end 14 continuous Days from the start or restart of the monitoring tests.

If Seller requests and Company agrees a Capacity Test may be conducted during the course of the Monitoring Test.

(3) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the 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.

(J) 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 Control System Acceptance Test. The Parties understand and agree that a successful completion of the test does not constitute a waiver of any of the Technical and Operational Requirements 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 Technical and Operational Requirements in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller).

2. Partial Commissioning. If Seller desires to initiate partial commissioning of the Facility prior to the Commercial Operations Date, Seller shall provide notice to Company of its readiness for partial commissioning of the Facility and shall inform Company of the portion of the Facility (in MWs) being proposed for partial commissioning. Such notice shall occur materially prior to the Guaranteed Commercial Operations Date, and any proposed partial commissioning shall be subject to Company's written acceptance and approval, which may be withheld in Company's sole discretion. In the event the Parties agree to partial commissioning of the Facility, the Guaranteed Commercial Operations Date shall not be extended.

(A) Technical Requirements. In the event the Parties agree to partial commissioning of the Facility as set forth immediately above, within ten (10) Business Days after each Pre-CSAT Partial In-Service Date, Seller shall provide written notice to Company (the "Pre-CSAT Partial In-Service Notice") confirming (i) the portion of the Facility in MW that qualifies as a Pre-CSAT Partial Installation and the Pre-CSAT Partial In-Service Date, (ii) the conditions precedent in Section 1(h) (Control System Acceptance Test Procedures) of Attachment B (Facility Owned by Seller) for commencement of the Control System Acceptance Test with respect to such Pre-CSAT Partial Installation have been met, and (iii) to the extent delivery of Test Energy has occurred or is occurring, that the portion of the Facility has been successfully synchronized to the grid.<sup>h</sup>Partial Commissioning Costs. Partial commissioning of a portion of the Facility may require additional costs and expenses to be incurred by Company to facilitate

such partial commissioning, including but not limited to multiple Control Systems Acceptance Tests (all such additional costs and expenses, the “Partial Commissioning Costs”). Seller agrees to pay for all Partial Commissioning Costs in advance upon request by Company. Company shall not be obligated to perform any work on the partial commissioning unless and until it receives payment of the Partial Commissioning Costs. Alternatively, to the extent Company reasonably believes there are available funds in the Total Estimated Interconnection Cost paid by Seller to cover the Partial Commissioning Costs, Company shall be authorized to use such funds for such purpose. The Partial Commissioning Costs shall be included in the Total Actual Interconnection Cost for the purposes of the true-up specified in Section 3(C) (True-Up) of Attachment G (Company-Owned Interconnection Facilities).

(B) Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, and only to the extent a partial commissioning of the Facility has been approved by Company consistent with the requirements of this Section 2 (Partial Commissioning) of Attachment O (Control System Acceptance Test Criteria), Company may accept electric energy delivered by Seller in accordance with and at the rates set forth in Section 1(A) (Energy Charge) and Section 4 (Test Energy) of Attachment J (Energy Charge and Capacity Payment Formulas).

## ATTACHMENT P

### SALE OF FACILITY BY SELLER

(See Article 21 (Sale of Facility by Seller))

1. Company's Right of First Negotiation Prior to End of the Term.

(A) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "Exempt Sale" (as defined below):

(1) 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."

(2) 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".

(3) 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.

(4) 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 Right of First Negotiation Period set forth in Section 1(A)(2) 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.

(5) 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) of Attachment P (Sale of Facility by Seller) 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; 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 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 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 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)(1) through (5) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period"). Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.

(C) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(A) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(B) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).

(D) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(B) (Negotiations) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

### 3. Procedure to Determine Fair Market Value of the Facility.

(A) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 3.2(I)(5) (Consolidation) or an assumption of Seller's interest in or sale of the Facility pursuant to Section 8.2(B)(2)(a) (Company's Assumption of Seller's Interest or Purchase of the Facility) 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. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka “baseball” arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.

(D) The “Appraised Fair Market Value of the Facility” means the fair market value determined by appraisal pursuant to Section 3(A) or Section 3(C) of this Attachment P (Sale of Facility by Seller) as applicable.

4. Purchase and Sale Agreement. The purchase and sale agreement (“PSA”) concluded by the Parties pursuant to this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:

(A) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(B) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;

(C) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

(D) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;

(E) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;

(F) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to

Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;

(G) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;

(H) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;

(I) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;

(J) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Seller in conformity with all Laws;

(K) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller);

(L) If applicable, Seller's lease of the Site from Company will terminate, and Seller will relinquish all rights, privileges and obligations relating to such lease; and

(M) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Seller), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen,

and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

(A) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.

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

(C) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.

(D) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of

the Facility executed pursuant to Section 3.2(I)(5) (Consolidation) or Section 8.2(B)(2)(a)(ii) (Purchase of the Facility) 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).

(1) 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.

(2) 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 3.2(I)(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 Operations Date, (b) Seller's book value of all actual verifiable costs and expenses acquiring real estate rights for the Facility and Interconnection Facilities, (c) Seller's book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Seller's book value of all actual verifiable costs of financing the Facility and the Interconnection Facilities, including fees and expenses of bankers, consultants and counsel, and any discounts or premiums paid in connection with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company's purchase of the Facility, (g) tax costs, including recapture of federal or state tax

credits and payment of transfer taxes, and (h) interest on the foregoing amounts at annual rate equal to the Prime Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Seller with support and verified by Company. The items described in clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the "Financial Termination Costs."

**ATTACHMENT Q**

**[RESERVED]**

## ATTACHMENT R

### REQUIRED INSURANCE

(See also Article 15 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable Hawai'i state or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident  
Bodily Injury by Disease - \$1,000,000 each Employee  
Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

(A) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (1) Premises, operations, and mobile equipment,
- (2) Products and completed operations,
- (3) Claims resulting from alleged sudden and accidental 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,
- (4) Blanket contractual liability,
- (5) Broad form property damage (including completed operations),
- (6) No exclusion for (XCU) explosion, collapse and underground hazard, and
- (7) Personal injury liability.

(B) Limits of liability for Bodily Injury & Property Damage shall be:

\$10,000,000 combined single limit per occurrence and;  
\$20,000,000 aggregate annually

(C) Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned (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, named 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 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, named 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. 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. Pollution Liability Insurance. This insurance shall provide coverage for losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Facility, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. The coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates. Such policy shall have minimum limits of \$5,000,000 each occurrence; and \$5,000,000 annual aggregate

8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

9. Project Liability Errors and Omissions. Seller shall obtain adequate protection against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the design and/or construction of the Facility.

## ATTACHMENT S

### FORM OF MONTHLY PROGRESS REPORT

(See Section 3.2(A)(7) (Monthly Progress Reports))

#### 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 Dispatchable Generation by and between [REDACTED] (“Seller”), and [Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai‘i Electric Light Company, Inc.], a Hawai‘i corporation, dated \_\_\_\_\_, (the “Agreement”).

In addition to the remedial action plan requirement set forth in Section 2.3(B)(1) (Seller’s Remedial Action Plan), 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:

(A) 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;

(B) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Construction Milestone;

(C) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(D) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

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.

Please provide a copy of the current version of the overall Facility schedule in MS Project in a format acceptable to Company. Include all major activities and milestones for Governmental Approvals for development, design and engineering, procurement, construction, interconnection and testing.

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project and Facility (provide details in subsequent sections of this report):

<b>Project Name:</b>		Guaranteed Commercial Operations Date	
<b>Size:</b>		<b>Technology:</b>	RFP: Stage 3
<b>PPA Status</b>	PPA Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX	
	Overhead Line Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX	
	PPA Amendment	Filed on XXXXX XX, XXXX	
<b>System Impact Study</b>			
<b>Facility Study</b>		ARTICLE 3 -	
<b>Engineering/ Design</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>
	Seller	Generation facility	
	Seller	Step up Substation	
	Seller	COIF <sup>3</sup>	
	Company	COIF – Transmission line	
	Company	COIF – Telecom	
	Company	Remote Work	

<sup>3</sup> Capitalized terms used but not defined in this update have the meaning given to them in the PPA.  
 Model Firm Capacity RDG PPA  
 Hawaiian Electric Company, Inc.

	Company	Inter-dependent system		
	General Comments	•		
<b>Permits</b>	<b>Agency / Jurisdiction</b>	<b>Approval / Permit</b>	<b>Date of Approval</b>	<b>Status Summary</b>
	LUC	Amendment/Restatement of State Land Use Boundary Amendment		
	County	Conditional Use Permit		
	County	Waiver Permit		
	County	Grading/NPDES Permit (Solar/Battery)		
	County	Grading/NPDES Permit (Substation)		
	County	Building Permit (Solar/Battery)		
	County	Building Permit (Substation)		
	County	Building Permit (Switchyard)		
		General Comments		
<b>Land Rights</b>	<b>Type</b>	<b>Status</b>		<b>(Estimated) Receipt Date</b>
	COIF/SOIF: Right of Entry			
	COIF/SOIF: Easement			
	General Comments			
<b>Procurement</b>	<b>Responsible Party</b>	<b>Type of equipment</b>	<b>Order date</b>	<b>(Estimated) Arrival date</b>
	Seller	PV Modules		
	Seller	Inverters		
	Seller	Energy Storage		
	Seller	Racking		
	Seller	GSU transformer		
	Seller	Circuit Breakers		
	Seller	Instrument transformers		
	Seller	Control Building		
	Company	Revenue meter		

	Company	T&D Poles, Conductors		
	General Comments			
<b>Construction</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>	
	Seller	Generation facility		
	Seller	SOIF		
	Seller	COIF		
	Company	COIF – Transmission line		
	Company	COIF - Telecom		
	Company	Remote Work		
	Company	Inter-dependent system		
	General Comments			
<b>Testing</b>	Acceptance Test			
	CSAT			

**APPENDIX A**  
**GUARANTEED PROJECT MILESTONES**

*Please list all Milestones specified in Attachment K and K-1 and state the current status of each.*

<b>Construction Milestone</b>	<b>Milestone Date Specified in the Agreement</b>	<b>Date Completed</b>	<b>Status</b> (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
<b>[For Developer Interconnection Build]</b>			
Construction Financing Milestone: Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility or (ii) the financial capability to construct the Facility (“Construction Financing Closing Milestone”)			
Right of Entry: Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).			
Completion of Site Preparation: Seller or Seller’s Contractor shall complete preparation of the site(s) of the Company-Owned Interconnection Facilities consistent with the requirements of all applicable permits including, but not limited to, the grading permit, including closing of all applicable permits, for start of construction by Company.			
Guaranteed Commercial Operations Date.			
<b>[For Hawaiian Electric Interconnection Build]</b>			
Procurement Payment Milestone: Seller shall make payment to Company of amount required under Section 3(B)(3) (Balance of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).			
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: [INSERT LIST OF GOVERNMENTAL APPROVALS]			

Construction Financing Milestone: Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility or (ii) the financial capability to construct the Facility (“Construction Financing Closing Milestone”)			
Right of Entry: Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).			
Building Permit: Seller or Seller’s Contractor shall obtain building permit.			
Completion of Site Preparation: Seller or Seller’s Contractor shall complete preparation of the site(s) of the Company-Owned Interconnection Facilities consistent with the requirements of all applicable permits including, but not limited to, the grading permit, including closing of all applicable permits, for start of construction by Company.			
Guaranteed Commercial Operations Date.			

## APPENDIX B REPORTING MILESTONES

Please list all Construction Milestones specified in Attachment L and state the current status of each.

Reporting Milestone Date	Milestone Specified in the Agreement	Date Completed	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
<b>[For Developer Interconnection Build]</b>			
[Date]	Seller shall provide Company with a copy of the executed Facility equipment, engineering, procurement and construction (" <del>EPC</del> "), <del>or agreement and</del> other general contractor, agreements, <u>which shall each require a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities. Under no circumstances shall redactions conceal information that is necessary for Company to verify Company's rights or Seller's obligations under the Agreement.</u>		
[Date]	Seller shall provide Company with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s).		
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements, <b>[electric transmission and/or interconnection agreements (?).]</b>		
[Date]	Construction Start Date (as defined in the Definitions section of the Agreement).		

[Date]	Seller shall provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: [INSERT LIST OF GOVERNMENTAL APPROVALS]		
[Date]	Seller or Seller's Contractor shall obtain grading permit.		
[Date]	Building Permit: Seller or Seller's Contractor shall obtain building permit.		
<b>Reporting Milestone Date</b>	<b>Milestone Specified in the Agreement</b>	<b>Date Completed</b>	<b>Status</b> (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
[Date]	Close Grading Permit: Seller or Seller's Contractor shall close the grading permit.		
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.		
[Date]	The turbine(s)/inverter(s) shall have been installed at the Site		
[Date]	The step-up transformer shall have been installed at the Site.		
[Date]	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.		
No later than three (3) months prior to the commencement of the Acceptance Test	Seller or Seller's Contractor shall have Hawaiian Telcom Backup installed which shall consist of a 1.5Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at 820 Ward Avenue, Honolulu, Hawaii.		

[Date]	Seller or Seller's Contractor shall complete construction of the Seller-Owned Interconnection Facilities and be ready to conduct the Acceptance Test.		
[Date]	The Acceptance Test of the Facility commences.		
<b>[For Developer Interconnection Build]</b>			
[Date]	Seller shall provide Company with a copy of the executed Facility equipment, engineering, procurement and construction ("EPC"), or other general contractor, agreements.		
[Date]	Seller shall provide Company with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s).		

<b>Reporting Milestone Date</b>	<b>Milestone Specified in the Agreement</b>	<b>Date Completed</b>	<b>Status</b> (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements, [electric transmission and/or interconnection agreements (?).]		
[Date]	Construction Start Date (as defined in the Definitions section of the Agreement).		
[Date]	Grading Permit: Seller or Seller's Contractor shall obtain grading permit.		
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.		
[Date]	The turbine(s)/inverter(s) shall have been installed at the Site.		
[Date]	The step-up transformer shall have been installed at the Site.		

[Date]	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.		
No later than three (3) months prior to the commencement of the Acceptance Test	Seller or Seller's Contractor shall have Hawaiian Telcom Backup installed which shall consist of a 1.5Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at 820 Ward Avenue, Honolulu, Hawaii.		
[Date]	Seller or Seller's Contractor shall complete installation up to the demark point as necessary to interconnect.		
[Date]	Seller or Seller's Contractor shall complete construction of the Seller-Owned Interconnection Facilities and be ready to conduct the Acceptance Test.		
[Date]	Close Grading permit: Seller or Seller's Contractor shall close the grading permit.		



**APPENDIX D**  
**LAND RIGHTS SCHEDULE FOR COIF**

*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 COIF (e.g., purchase, lease).*

Activity	Expected Completion Date	Actual Completion Date
ROE to HECO		
HECO executes Lease for COIF		

**APPENDIX E**  
**MAJOR EQUIPMENT TO BE PROCURED**

*Please list all major equipment to be procured by Seller or the EPC Contractor:*

<b>Equipment Description</b>	<b>Manufacturer</b>	<b>Quantity Ordered</b>	<b>Quantity Made</b>	<b>Quantity On site</b>	<b>Quantity Installed</b>	<b>Quantity Tested</b>	<b>Expected Installation Date</b>	<b>Actual Installation Date</b>
Modules								
Racking								
PV Inverters								
BESS								

**APPENDIX F**  
**INTERCONNECTION ACTIVITIES**

*Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.*

Activity	EPC Contractor / Subcontractor / Seller	Expected Completion Date	Actual Completion Date
IRS Prelim Facility Study	Company		
IRS Sys Impact Study	Company		
IRS Report – Final Facility Study	Company		
IRS amendment to PUC	Company, Seller		

**APPENDIX G**  
**FINANCING**

*Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.*

Activity (e.g., obtain \$xx for yy stage from zz)	Expected Completion Date	Actual Completion Date
Confidential information memorandum (CIM)		
Independent engineering study		
Financial closing		



**APPENDIX I**  
**CERTIFICATION**

I, **[Representative]**, on behalf of and as an authorized representative of **[Company]**, do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By:	
Name:	
Title:	
Date:	

**ATTACHMENT T**

[RESERVED]

**ATTACHMENT U**

[RESERVED]

**ATTACHMENT V**

**SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED  
IN PRIOR CALENDAR YEAR**

(See Section 7 (Maintenance Records) of Attachment Y (Operation and Maintenance of the Facility))  
(EXAMPLE)

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

### CAPACITY TEST PROCEDURES

(See Section 5.1(E) (Capacity Test))

Prior to achieving Commercial Operations, the Capacity Test shall be complete to the satisfaction of both the Company and the Seller as defined and further described below.

1. Capacity Test Timing. When the Facility is ready for the Capacity Test, Seller shall notify Company at least seven (7) Days prior to such test and shall coordinate with Company. Seller shall perform and Company shall monitor such test no earlier than seven (7) Days after Company's receipt of such notice.

2. Capacity Test Procedures. The Capacity Test shall be performed as follows:

(A) The test shall be scheduled at a time mutually agreed between the Company and Seller. During the test period, the Facility shall operate in accordance with the dispatch instructions of the Company System Operator, subject in all cases to Good Engineering and Operating Practices, Seller's permit limits, and the safety and design limits of the Facility as specified by the applicable equipment manufacturers. The Company System Operator may specify a lower level of electric output for portions of the test period and the Demonstrated Firm Capacity may still be declared without taking into account the reduction specified by the Company System Operator if the Facility thereafter returns to the declared level during the test period or the level requested by the Company System Operator, whichever is lower.

(B) [RESERVED]

(C) If Seller and Company are satisfied with the Capacity Test, Demonstrated Firm Capacity shall be designated by Seller up to the minimum average capacity level that the Facility is able to sustain over a fifteen (15) minute interval in which the Facility is being dispatched at maximum capacity; provided that Seller may not set the Demonstrated Firm Capacity at a level in excess of the Contract Firm Capacity nor less than [ninety percent (90%)] of the Contract Firm Capacity in accordance with the terms of this Agreement.

(D) If either Seller or Company reasonably believes that an abnormal condition occurred which may have adversely impacted the Capacity Test, such Capacity Test shall be deemed to be invalid and a re-test shall be done.

(E) If, following two re-tests, the Parties cannot agree that such Capacity Test produced accurate and reliable results, the Parties shall hire a Qualified Independent Engineering Company, from the list set forth in Attachment D (Consultants List - Qualified Independent Engineering Companies), pursuant to Section 3.3(B)(1) (Implementation of Independent Engineering Assessment) to the Agreement, to observe a third test and declare the Demonstrated Firm Capacity. The cost of such Qualified Independent Engineering Company shall be shared equally by the Parties.

(F) The Parties shall not hire a Qualified Independent Engineering Company if following two or more re-tests both Parties agree that such Capacity Test produced inaccurate or unreliable results; provided that the provisions regarding the hiring of a Qualified Independent Engineering Company shall apply if the Parties fail to agree to the results of any subsequent test.

3. Substitute Capacity Test. If Seller's capacity test under its construction contract includes the requirements set forth for the Capacity Test provided hereby, and Company has an adequate opportunity to monitor such test, the Facility shall, upon passing such capacity test, be deemed to have passed the Capacity Test provided herein, without the need to conduct a separate test.

4. Initial Capacity Shortfall; Corrective Period. In the event the Commercial Operations Date is achieved and the initial Capacity Tests conducted in accordance with this Attachment W (Capacity Test Procedures) demonstrate that the Facility is unable to provide a Demonstrated Firm Capacity equal to the Contract Firm Capacity at the time of the Commercial Operations Date, the following provisions shall apply:

(A) The Guaranteed Commercial Operations Date will be deemed to be met, provided that the Seller shall, during the next twelve (12) months or such shorter period ("Corrective Period") use commercially reasonable efforts to increase the Facility's capacity level to the Contract Firm Capacity as verified through a Capacity Test in accordance with the procedures in Section 7 (Subsequent Capacity Test) of this Attachment W (Capacity Test Procedures) and CSAT in accordance with Attachment O (Control System Acceptance Test Criteria) for the entire Facility. During the Corrective Period, the Capacity Charge shall be calculated in accordance with the Capacity Charge formula using the Demonstrated Firm Capacity determined in the initial Capacity Test as the Demonstrated Firm Capacity in the formula. Subject to Company's ability to accommodate under its operational and scheduling constraints, Seller may, at any time during the Corrective Period, request a Subsequent Capacity Test.

(B) If the Facility has not achieved the Contract Firm Capacity after the Corrective Period, then the Demonstrated Firm Capacity may only be increased by a Subsequent Capacity Test pursuant to Section 7 (Subsequent Capacity Test) of this Attachment W (Capacity Test Procedures).

5. No Additional Capacity Charge. The Company shall not be required to pay any additional capacity payment for any additional power supplied by the Seller, either at the Company's or the Seller's request, above the Demonstrated Firm Capacity.

6. Reduced Capacity Charge. A failure by the Seller to provide the required Demonstrated Firm Capacity to the Company shall result in the reduction in the capacity payment due to the Seller from the Company in accordance with Section 5.1(D) (Capacity Charge). The Company shall not have any obligation to pay Capacity Charge payments to the Seller for periods in which the Seller is unable to fulfill its obligations under this Agreement, including but not limited to circumstances which are subject to Article 18 (Force Majeure) of this Agreement relating to Force Majeure.

7. Subsequent Capacity Test. The procedures set forth for a Capacity Test will apply to any Subsequent Capacity Test, except that (1) such Subsequent Capacity Test will last twenty-four (24) hours; (2) such Subsequent Capacity Test will be observed by appropriate qualified Company personnel; and (3) as part of the Subsequent Capacity Test, the Company will also, as it deems appropriate test the Facility's ability to meet the requirements of Section 1.g (Active Power Control Interface) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller).

8. Permanent Reduction in Firm Capacity. If, at any time after the Commercial Operations Date, the Facility monthly Average Available Capacity is less than the Demonstrated Firm Capacity level for a period of twelve (12) or more consecutive months, then Company shall have the right to give written notice to Seller requiring a Subsequent Capacity Test in accordance with Section 7 (Subsequent Capacity Test) of this Attachment W (Capacity Test Procedures). If the Subsequent Capacity Test demonstrates that the Facility is unable to deliver Demonstrated Firm Capacity continuously, then the Demonstrated Firm Capacity amount shall be revised to reflect the capacity established by such Capacity Test as the maximum firm capacity that the Facility is capable of delivering under Company Dispatch. The maximum firm capacity thus established shall thereupon become the Demonstrated Firm Capacity under this Agreement, and this revised Demonstrated Firm Capacity will be used for the Capacity Charge and in the EAF and EFOF calculations. The revised Demonstrated Firm Capacity will be effective with the next Monthly Invoice following the date of receipt of the results of the Capacity Test. Demonstrated Firm Capacity which is reduced through a Subsequent Capacity Test (or otherwise reduced pursuant to this section) may not be increased by another Subsequent Capacity Test unless otherwise agreed to by Company in its sole and absolute discretion.

**ATTACHMENT X**

**UNIT INCIDENT REPORT**

(See Section 6(C) (Notification of Forced Outages) of Attachment Y (Operation and Maintenance of the Facility))

Date: \_\_\_\_\_ No. \_\_\_\_\_

Start Time	
End Time	
Duration (Hr/Min)	
Derating (MW)	

- Disconnection Event
- Test
- Forced Outage
- Failure to Start
- Risk Condition
- Force Majeure
- Other
- Maintenance Derating
- Forced Derating
- Maintenance Outage
- Scheduled Outage
- Trip Due to Grid Fault
- Trip Due to Frequency Excursions
- Trip Due to Voltage Excursions

The on-duty Control Room Operator is responsible for the completion of this report each time a unit experiences an unplanned Shutdown, Start Failure or Derating. Attach Trip Log and Sequence of Events Log to this report for Disconnection Events or when appropriate. Before resetting alarms and relays, verify that all alarms and protective relay actions are listed on the printout. If not listed, record them and attach to report.

Unit Status Prior to Incident:  Start-Up    Net Plant Load Prior: \_\_\_\_\_ MW  
 On-Line    Net Plant Load During: \_\_\_\_\_ MW  
 Off-Line

Load:  Constant    Type of Energy Resource (Fuel): \_\_\_\_\_  
 Increasing  
 Decreasing

Cause of Incident:  Boiler Trip  
 Turbine Trip  
 Generator Trip  
 Inverter Trip  
 Other: \_\_\_\_\_

Brief Explanation of Incident:

Control Room Operator: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Corrective Action Taken:

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(Plant Manager)

## ATTACHMENT Y

### OPERATION AND MAINTENANCE OF THE FACILITY

#### 1. Standards.

(A) Operation and Maintenance. Seller shall operate the Facility in accordance with the terms of this Agreement, including the operating procedures in this Attachment Y (Operation and Maintenance of the Facility), and Section 2 (Operating Procedures) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller). After the Commercial Operations Date, Seller agrees that no changes or additions to the Facility shall be made without the prior written approval by Company and, as necessary, amendment to the Agreement and/or any of the Attachments. Subject to those standards, Seller shall deliver to Company the available Net Electric Energy Output of the Facility under Company Dispatch and shall operate the Facility in a manner that maximizes the overall reliability of the Company System.

#### 2. Control of Facility.

(A) Seller's Centralized Control System. Seller shall provide and maintain in good working order all equipment, computers and software necessary to send telemetry data and place the Facility under the secure control, as approved by the Company, of Company's centralized control system. Such Seller equipment, computers and software shall be referred to as the "Seller's Centralized Control System." Company shall review and provide prior written approval of the design for Seller's Centralized Control System to ensure security and compatibility with Company's SCADA, centralized control system, and/or similar Company control devices. If at any time Seller materially changes the approved design of Seller's Centralized Control System, such changes will also require Company's review and prior written approval. Seller's Centralized Control System shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's RTU or other specified interface, located in Company's portion of the Facility switching station, which shall provide the control signals to Facility and send feedback status to Company's SCADA. Seller's Centralized Control System must, at a minimum:

- (1) Interface with Company's RTU (or other specified device):
  - (a) monitor and control both the capacity and the energy output of the Facility consistent with this Agreement;
  - (b) as required for the Company System Operator to dispatch the Facility as specified and approved by Company;
  - (c) for telemetry of electrical quantities such as gross MW, gross MVAR, net MW, net MVAR, power factors, voltages and currents and other quantities as identified by Company;
  - (d) monitor and control equipment such as circuit breakers and

switches and other equipment as identified by Company.

(e) Provide alarms for abnormal conditions.

(B) Manual Control. Manual control for Company dispatch shall only be permitted in the event the Seller's Centralized Control System is not available or no functioning as designed for remote dispatch control.

3. Communications, Telemetry and Generator Remote Control Equipment.

(A) At Seller's expense, Company shall purchase, install and own such communications, telemetry, remote control equipment, and all equipment related thereto as may reasonably be required in order to allow Company to dispatch the electric energy from the Facility as required to optimize economic and reliable operation of the Company System.

(B) In addition, at Seller's expense, Company shall purchase, install and own communications, telemetry, and other related equipment, as Company deems appropriate, so Company can access information from Seller's operation including, but not limited to, the information necessary for Company to utilize its centralized control system and information on breaker position, the number of generating units on line, the amperage produced by each generator, the voltage produced by each generator, the kW's produced by each generator, and the kVAr produced by each generator to insure that Seller maximizes the overall reliability of the Company System.

(C) All equipment in this Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility) shall meet Company's reasonable specifications for transmission of data to locations specified by Company. Seller shall reimburse Company for its reasonable engineering, procurement, installation, equipment testing, and maintenance costs for installing and maintaining such communications, telemetry and remote-control equipment (including but not limited to the Remote Terminal Unit, generator control unit, and generator control panel). Seller shall install transducers as specified by Company, metering equipment as described in Section 13 (Metering) of this Attachment Y (Operation and Maintenance of the Facility), Company specified test switches for transducers and metering, AC and DC sources, telephone lines and/or microwave communication, and interconnecting wiring with proper identification for supervisory and communications equipment at no cost to Company. Subsequent to the Commercial Operations Date, Company may purchase and install additional communications, telemetry, and remote-control equipment and may require Seller to install, any reasonably necessary additional transducers, test switches, AC and DC sources, telephone lines and interconnecting wiring at any time during the Term. If Company requires Seller to install additional communications, telemetry, and remote-control equipment through no fault of the Seller, Seller's installation of such equipment shall be at the Company's expense.

4. Protective Equipment. Seller shall operate the Facility with all applicable installed system protective equipment in service whenever the generator(s) is connected to or is operated in parallel with the Company System, except for normal testing purposes in accordance with Good Engineering and Operating Practices. Seller shall have qualified personnel test and

calibrate all protective equipment at regular intervals not to exceed one (1) calendar year. A unit functional trip test (which shall include an overspeed trip test on a steam turbine) shall be performed annually in accordance with industry standards. Following a Major Generating Equipment Overhaul, a functional trip test shall be performed and shall simulate abnormal trip conditions separately at each primary element that initiates a trip and shall demonstrate that the trip system produces the appropriate equipment response. In no event shall any trip test conducted pursuant to this Section 4 (Protective Equipment) of Attachment Y (Operation and Maintenance of the Facility) constitute a Unit Trip. If at any time Company has reason to doubt the integrity of the Facility's protective equipment and reasonably suspects that such purported loss of integrity would jeopardize the reliability of Company's supply of electric energy to its customers, Seller shall be required to reasonably demonstrate to Company's satisfaction the correct calibration and operation of the equipment in question. Company shall not be liable for any damage to Seller's equipment resulting from the failure of Facility protective equipment.

5. Personnel and System Safety. As required by the IRS, Seller shall provide, at a location approved by Company, a manual disconnect device which provides a visible break to electrically separate the Facility from the Company System. Such disconnect device shall be lockable in the OPEN position and accessible to Company personnel at all times. Notwithstanding any other provision of this Agreement, if at any time Company determines that the continued operation of the Facility (i) is likely to endanger the safety of persons and/or property, (ii) is likely to endanger the integrity of the Company System or (iii) is likely to have an adverse effect on the equipment of Company's customers, then in each case (i) through (iii), Company shall have the right to disconnect the Facility from the Company System as provided in Section 4.1(A) (Safety of Persons and/or Property).

6. 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 individual generator unit, and using definitions provided by, and/or consistent with, NERC GADS 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, hours on-control and hours on-line. Company shall have the right, upon reasonable notice to request for electronic copies of 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 electronic copies of applicable correspondence between Seller and the insurance underwriters for the Facility equipment pertaining to Seller's maintenance practices, Seller's procedures and scheduling (including deferral) of maintenance at the Facility.

(C) Notification of Forced Outages. Seller shall notify Company of the existence, nature, start time, and expected duration of the Forced Outage as soon as practicable, but in no event later than one (1) hour after the Forced Outage occurs. Seller shall immediately inform Company of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company for the duration of each Forced Outage. As required by Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned By Seller), Seller shall provide Company with subsequent written confirmation any time Seller experiences a Unit Trip or other unplanned outages or deratings. Such written confirmation shall contain information in sufficient detail for Company to analyze the incident, including the date and time of occurrence as well as the cause of the Unit Trip, if such cause is known. Attachment X (Unit Incident Report) is an example of a written confirmation. Company shall have the right to request reasonable additional information if necessary, to evaluate the incident.

(D) Additional Data Requests By Company. In addition, if so requested by Company, Seller shall by 9:00 a.m. HST of each Day provide Company with hourly, electric output data for the prior Day. Correction of any errors in this data shall be provided to Company by noon HST of the following Day.

(E) Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the fueling, operation and maintenance of the Facility shall be maintained by Seller for a period of not less than six (6) years. Company shall have the right to review and copy any such items upon request.

## 7. Maintenance Records.

(A) Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit via electronic copies to Company, 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, Company may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility limited to addressing equipment problems or operating and maintenance issues identified in Seller's summary. Company's making or failing to make recommendations with respect to operation and maintenance of the Facility 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's recommendations with respect to such identified issues, Seller shall, within a reasonable time after Company makes such recommendations, not to exceed ninety (90) Days, implement Company's recommendations. If Seller disagrees with Company, it shall within fifteen (15) 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, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineers List pursuant to Section 3.3(B)(1)(b) and the Qualified Independent Engineering Company will make a recommendation to remedy the situation pursuant to such Independent Engineering Assessment. Seller shall abide by the Qualified Independent Engineering Company's recommendation contained in such Independent Engineering Assessment. Both Parties shall equally share in the cost for the Independent Engineering Assessment. However, Seller shall pay all costs associated with implementing the recommendation contained in such Independent Engineering Assessment.

8. Schedule of Outages.

(A) 60-Month Schedule. Prior to July 1 of each year, Seller shall submit for review and comment by Company an initial schedule of expected electric energy delivery periods for the sixty (60) month period beginning with January of the following calendar year (the "60-Month Schedule"). The 60-Month Schedule shall supersede any previous 60-Month Schedule and state the periods of operation, the dates and duration of all scheduled shutdowns, reductions of output, and scheduled maintenance, and the reasons therefor, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility. Seller shall (i) revise such 60-Month Schedule to accommodate reasonable requests made by Company no later than December 1 of the calendar year preceding the calendar year in which a scheduled revision is requested to take place; provided that, if the requested revision is one of timing, the revised date(s) shall be within the same calendar year as scheduled, so long as such revised schedule is consistent with Good Engineering and Operating Practices and does not, or is not reasonably likely to, have a material adverse effect on the performance of the Facility; and (ii) use commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such 60-Month Schedule (either delaying or advancing such 60-Month Schedule) reasonably requested by Company in the event that Company is experiencing or expecting to experience a short-term shortage of supply of energy, capacity or both or any other operational or electrical problems with the Company System.

(B) Company's Replacement Costs. If the actual duration of a planned outage for the Facility exceeds the scheduled time planned for such outage, Seller shall pay to Company the difference between Company's costs for the unscheduled replacement energy and the energy costs, including, without limitation, Fuel costs, that would have been incurred if the Facility had produced the energy for the entire time the unscheduled replacement energy was necessary.

Replacement costs in these cases will be for the specific equipment which Company designates as having produced such replacement energy. This provision shall not apply in the event that Seller demonstrates that the extension is due to the discovery and prompt reporting to Company of a major equipment problem which Seller could not have reasonably anticipated prior to beginning the outage, provided that, following the discovery Seller makes commercially reasonable efforts (to include, but not be limited to, supplemental manpower, extended overtime, expedited work by service shops, and expedited shipment of parts and material) to take measures which will return the Facility to service as soon as possible.

(C) Normal Annual Maintenance Requirements. The normal annual maintenance requirements for the Facility are the equivalent of [ ] weeks of full plant outage. Notwithstanding the foregoing, Seller shall not take units down for other maintenance such that the capability the Facility falls below [ ] MW at any given time, except with the Company's approval. During any scheduled or rescheduled maintenance event, Seller shall provide updates to Company's operating personnel if 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.

(D) Approval By Company. Seller shall not schedule any maintenance not listed on the 60-Month Schedule that will reduce or eliminate electric output of the Facility without coordination with and approval of Company, which approval shall not be unreasonably withheld, delayed or conditioned, and shall use commercially reasonable efforts to provide Company with as much advance notice as is practicable prior to removing the Facility from service for such maintenance. Such removal from service will be treated as a Forced Outage if so required under NERC GADS.

(E) Duration of Planned Outage. If the actual duration of a planned outage for the Facility is shorter than the scheduled time planned for such outage, Seller shall not be allowed to restart the Facility and be synchronized to Company System prior to the scheduled time without the prior consent of the Company System Operator. If, in the Company System Operator's sole discretion, Seller is allowed to restart the Facility and be synchronized to Company System prior to the scheduled time, Seller shall be compensated for the energy produced by the Facility and delivered to Company as provided in Section 5.1(C) (Energy Charge). However, the Facility's production and delivery of energy prior to the scheduled ending date of the planned outage shall have no effect on the calculation of EAF, EFOF or the Capacity Charge as to the duration of the Planned Outage.

9. Operating and Maintenance Manuals. Not later than the Commercial Operations 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.

10. Facility Personnel. Prior to the Commercial Operations Date, personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility or capable of being at the Facility on no more than thirty (30) minutes' notice, and shall be

continuously reachable by phone or pager. Prior to the Commercial Operations Date, if Company notifies Seller of a period of potentially critical turbine starts at least thirty (30) minutes prior to the beginning of such period, then personnel capable of starting, running, and stopping the Facility shall be continuously available at the Facility during such identified critical period. Beginning with the date that Seller achieves the Commercial Operations Date, personnel capable of starting, operating, and stopping the Facility shall be continuously available at the Facility twenty-four (24) hours a day, seven (7) days a week.

11. Seller's Obligation to Maintain Workforce. If Seller experiences a work stoppage, work slowdown or walkout as a result of a labor dispute with its employees, or between any entity with which Seller has subcontracted or to which Seller or any affiliate of Seller has assigned its rights and obligations, pursuant to the operation and maintenance contract between Seller and any affiliate of Seller, and the employees of such entity, Seller shall provide an adequate, qualified workforce to operate and maintain the Facility within ninety-six (96) hours after such stoppage, slowdown or walkout begins. If Seller experiences a work stoppage, work slowdown or walkout as a result of a storm, casualty or other catastrophic event, Seller shall provide an adequate, qualified workforce to operate and maintain the Facility within twenty-four (24) hours after such event ends and it is reasonably safe to restore operations and maintenance of the Facility. If Seller fails to meet either of these obligations, it shall pay to Company pursuant to Section 9.2(E) (Damages in the Event Seller Fails to Maintain Workforce) the sum of \$5,000 for each Day or partial Day during which such adequate, qualified workforce was not provided and there is a reduction in output below the level called for by normal Company Dispatch. Seller shall provide prompt written notice to Company as to the date and time at which it has met this obligation. If, at any time after the aforesaid ninety-six (96) hour period or twenty-four (24) hour period, as applicable, has expired, but during the continuation of Seller work stoppage, slowdown or walkout, the Facility is experiencing a reduction in output below the level called for by normal Company Dispatch, it shall be presumed that such reduction is the result of a lack of an adequate, qualified workforce unless Seller proves to Company's satisfaction, or, in the event of a dispute pursuant to Article 17 (Dispute Resolution), Seller proves in such an arbitration, that such reduction is attributable to other causes.

12. 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.

13. Metering.

(A) Meters.

(1) Seller shall furnish, install and maintain in accordance with Company's requirements and at no charge to Company, all conductors, service switches, fuses, meter sockets and cases, switchboard meter test switches, meter panels, steel structures and similar devices required for service connection and meter installations. Attachment B (Facility Owned by Seller) shall identify in greater detail the equipment and devices to be

furnished by Seller and the specifications and technical and operational requirements for such equipment and devices.

(2) Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of Net Electric Energy Output from the Facility sold to Company in kilowatts and kilowatthours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovarhours. 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 and install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to the meter sockets, meter panel, junction boxes, pull boxes, duct lines, PT/CT structures, and pads, subject to Company's review and approval. Company shall test such revenue meter prior to installation and shall test such revenue meter annually. Seller shall reimburse Company for all reasonably incurred costs for procurement, installation, maintenance and testing work associated with the Revenue Metering Package (including applicable Hawai'i General Excise Taxes). Seller may, at its own expense, monitor (by electronic means or otherwise) any meters described in this Section 13(A) (Meters) of Attachment Y (Operation and Maintenance of the Facility).

(B) Meter Testing. Company shall provide at least forty-eight (48) hours' notice to Seller prior to any test it may perform on the metering or telemetering equipment. Seller shall have the right to have a representative present during each such test. Either Party may request additional tests in addition to the annual test provided for in Section 13(A)(2) of this Attachment Y (Operation and Maintenance of the Facility) and shall pay the cost of such additional test. If any of the metering equipment is found to be inaccurate at any time, Company shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as the estimate for correct meter readings, shall be determined in accordance with Section 13(C) (Corrections) of this Attachment Y (Operation and Maintenance of the Facility).

(C) Corrections. If any test of metering equipment conducted by Company indicates that its meter readings are in error by one percent (1%) or more, the meter readings from such equipment shall be corrected as follows: (i) determine the error by testing the meter at approximately ten percent (10%) of the rated current (test amperes) specified for the meter; (ii) determine the error by testing the meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the meter; (iii) the average meter error shall then be computed as the sum of one-fifth (1/5) the error determined in (i) and four-fifths (4/5) the error determined in (ii). The average meter error shall be used to adjust the bills for the amount of electric energy supplied to Company for the previous six (6) months from the Facility, unless Company's or Seller's records conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error, except as specified in Section 6.4 (Adjustments) of the Agreement.

#### 14. Fuel and Other Materials.

(A) Fuel. Seller assumes full risk and responsibility for acquiring long-term firm supplies of fuel and other necessary materials and transportation therefor for the Term of this

Agreement. In connection with the foregoing, Seller shall be responsible for acquiring, transporting and storing at the Facility and on-island adequate supplies of Fuel and other materials used in the operation of the Facility during the Term. An adequate supply of Fuel at the Facility shall ensure sufficient Fuel and other necessary consumables required for unconstrained dispatch and Fuel storage to operate the Facility for at least fourteen (14) days of sixteen (16) hours of full load (i.e., Contract Firm Capacity) operation per day [**DRAFTING NOTE: If offsite storage connected via pipeline is utilized (or is otherwise similarly immediately accessible), the on-site requirement can be reduced to seven (7) days of 16 hours of full load operation with the additional 7 days off site. In no event will there be less than seven days of Fuel (based on 16 hours of operation) available on site.**]. This shall be calculated using the following Fuel Floor Requirement Calculation:

Average Fuel Usage Per Day (Based on 16 hours Full Load Operation) x Minimum Floor Requirement (Minimum Number of days required on hand - see example below to determine the Minimum Floor Requirement amount)

- **Example for Illustration Purposes (numbers below are for illustration purposes only):**
  - Average Fuel Usage Per Day (Based on 16 Hours Full Load Operation) = 2,000 barrels
  - Minimum Floor Requirement = 14 days (2 weeks) for Fuel being stored onsite; 7 days (1 week) for additional Fuel being stored offsite but connected via pipeline
  - 2,000 barrels x 14 days = 28,000 barrels

28,000 barrels is the Minimum Floor Requirement based on average fuel usage of 16 hours full load (i.e., Contract Firm Capacity) operation

In addition, Seller shall be responsible for securing, maintaining and storing on-island, either at the Facility or offsite, whether owned by Seller or under guaranteed contract for Seller's use, an adequate supply of reserve Fuel (i.e., any fuel that the Facility is permitted to consume) and other necessary consumables on-island to operate the Facility for at least an additional thirty (30) days of normal expected operation based upon (i) the average level of Company Dispatch during the previous six (6) months and (ii) the expected level of Company Dispatch during the following month as indicated by Company. Seller is responsible for providing to Company its fuel storage design and plan prior to execution of the PPA, which plan shall guarantee that any fuel and other necessary consumables stored off-site will be timely delivered to the Facility, particularly during an emergency event, when fuel is required.

(B) Fuel Report. Seller shall be responsible for providing Company with a Fuel Report in a format acceptable to Company pursuant to Section 2.3(A)(2) (Executed Project Documents) which demonstrates the Seller's ability to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term of the Agreement. If Company determines in its sole discretion that the Fuel Report fails to demonstrate Seller's ability to support the operation of the Facility, Company shall have the right to direct Seller to modify its Fuel Report and take all actions required to ensure that Seller has the ability to support operation of the Facility as set forth in this Agreement.

(C) Audit Rights for Inspection of Fuel Storage. Company shall have the right throughout the Term, upon reasonable prior notice, to (i) inspect the Fuel stored at the Facility, and (ii) audit the books and records of Seller to verify Seller's compliance with Section 14(A) (Fuel) of this Attachment Y (Operation and Maintenance of the Facility). Seller shall make such records available at its offices in Hawai'i during normal business hours.

(D) Low Fuel Supply. A finding of partial unavailability calculated pursuant to EAF shall be made at the end of the current Contract Year if Company determines in its sole discretion that Company must lower its dispatch due to Seller's failure to maintain an adequate Fuel supply.

**ATTACHMENT Z  
CRITICAL SPARE PARTS**

(See Section 3.2(F) (Adequate Spare Parts) of the Agreement)

**[TO BE DETERMINED FOLLOWING COMPLETION OF IRS]**

**ATTACHMENT AA**  
**RENEWABLE PORTFOLIO STANDARDS**

(See also Section 2.1(G) (Renewable Portfolio Standards) of the Agreement)

1. [RESERVED]
2. Renewable Portfolio Standards. Pursuant to Section 2.1(G) (Renewable Portfolio Standards), Seller shall develop Seller's RPS Modifications Proposal in the event that as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as "renewable electrical energy". Seller shall provide the RPS Modifications Proposal to Company within a reasonable period of time following Company's request under Section 2.1(G) (Renewable Portfolio Standards), but in no event more than ninety (90) Days after Seller's receipt of such request (or such other period of time as Company and Seller may agree in writing).
3. Seller's RPS Modifications Proposal. Upon receipt of Seller's RPS Modifications Proposal, Company will evaluate Seller's RPS Modifications Proposal. Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).
4. RPS Modifications Document. If, following Company's evaluation of Seller's RPS Modifications Proposal, Company desires to consider the implementation by Seller of the changes recommended in Seller's RPS Modifications Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within one hundred eighty (180) Days of receipt of Seller's RPS Modifications Proposal, and Company and Seller shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Energy Charge and Capacity Charge pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS Modifications Document as to the effective date for the RPS Modifications shall be measured from the date the PUC order with respect to such RPS Modifications becomes non-appealable as provided in Section 6 (PUC RPS Order) of this Attachment AA (Renewable Portfolio Standards) ("PUC RPS Order").
5. Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a RPS Modifications Document within one hundred eighty (180) Days of Company's written notice to Seller pursuant to Section 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards), 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 9 (Dispute) of this Attachment AA (Renewable Portfolio Standards). 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 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards).

6. PUC RPS Order. No RPS Modifications Document shall constitute an amendment to the Agreement unless and until a PUC RPS Order issued with respect to such Document has become non-appealable. 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 6 (PUC RPS Order) of Attachment AA (Renewable Portfolio Standards), 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). Neither Company or Seller shall be required to implement any RPS Modification without a PUC RPS Order and the Agreement shall remain in effect in its current form at the time until such PUC RPS Order is received.

7. Company’s Rights. The rights granted to Company under Section 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards) and Section 5 (Failure to Reach Agreement) of this Attachment AA (Renewable Portfolio Standards) 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 9 (Dispute) of this Attachment AA (Renewable Portfolio Standards), as a result of a failure to agree upon and execute any RPS Modifications Document.

8. Limited Purpose. This Attachment AA (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 the Agreement. Revisions to the Agreement in accordance with the provisions of this Attachment AA (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default.

9. 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 5 (Failure to Reach Agreement) of this Attachment AA (Renewable Portfolio Standards), it shall provide written notice to that effect to Seller. Within twenty (20) Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Technical and Operational Requirements, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such twenty (20)-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained

under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within thirty (30) Days of the application.

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

- (1) 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;
- (2) How Seller would implement such measures;
- (3) 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;
- (4) The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and
- (5) Contractual consequences for non-performance that are commercially reasonable under the circumstances.

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

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

(D) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Seller to 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.

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

**ATTACHMENT BB**

[RESERVED]

**ATTACHMENT CC**

[RESERVED]

**ATTACHMENT DD**  
**FUEL DESIGNATION AND SWITCHING**

1. Fuel Designation.

(A) Designation of Renewable Fuel and Fossil Fuel. Company and Seller have agreed that (i) the Renewable Fuel to be used at the Facility shall be \_\_\_\_\_; (ii) the Fossil Fuel that may be used at the Facility shall be \_\_\_\_\_; and (iii) the Fuel Blend that may be used at the Facility shall be \_\_\_\_\_. Seller shall have contracts in place for supply of all agreed fuels.

(B) Fuel Nomination Process prior to Commercial Operations.

(1) No later than 24 months prior to the Guaranteed Commercial Operations Date under this Agreement, Seller will have conducted and completed an evaluation of the responses to its firm Request For Proposals (“RFP”) (or other process agreed upon by the Seller and Company) to obtain firm proposals to supply, treat, deliver, store and transport the Renewable Fuel, the Fossil Fuel, and the Fuel Blend, to/for the Facility.

(2) No later than 12 months prior to the Guaranteed Commercial Operations Date, the Company shall provide written notification to Seller of the one (1) Fuel that Seller shall be obligated to provide for operation of the Facility for the initial nominating period. The first nominating period shall be determined by the Company but is expected to be no less than 12 months; provided that, upon written request from Company, Seller shall use commercially reasonable efforts to adjust such initial fuel nomination within the first nominating period.

2. Fuel Switching Options.

(A) Fuel Nomination Process after Commercial Operations.

(1) No later than 15 months prior to the end of the prior nomination period, Seller will have conducted and completed its evaluation of the responses to its RFP (or other process agreed upon by the Seller and Company) to obtain firm proposals to supply, treat, deliver, store and transport the Renewable Fuel, the Fossil Fuel, or the Fuel Blend to/for the Facility for the next nominating period.

(2) No later than 12 months prior to the end of the prior nominating period, the Company shall provide written notification to Seller of the one (1) Fuel that Seller shall be obligated to provide for operation of the Facility for the next successive nominating period. The nominating period shall be determined by the Company but is expected to be no less than 12 months; provided that, upon written request from Company, Seller shall use commercially reasonable efforts to adjust fuel nominations within a nominating period.

(B) Seller Failure to Timely Implement Fuel Switch.

(1) Renewable Fuel to Fossil Fuel. In the event that Seller is required to Fuel Switch from a Renewable Fuel to a Fossil Fuel but cannot implement the Fuel Switch within the aforementioned time required, Company, at its option and in its sole discretion, may: (a) require a shutdown of the Facility until the Fuel Switch can be completed and the entire shutdown time shall be considered a forced outage; or (b) permit Seller to continue to operate the Facility using the Renewable Fuel and be reimbursed for fuel costs at the lower of the Fossil Fuel or Renewable Fuel price.

(2) Fossil Fuel to Renewable Fuel. In the event that Seller is required to Fuel Switch from a Fossil Fuel to a Renewable Fuel but cannot implement the Fuel Switch within the aforementioned time required, Company, at its option and in its sole discretion, may: (a) require a shutdown of the Facility until the Fuel Switch can be completed and the entire shutdown time shall be considered a forced outage; or (b) permit Seller to continue to operate the Facility using the Fossil Fuel and be reimbursed for fuel costs at the lower of the Fossil Fuel or Renewable Fuel price. In addition to the foregoing, if the failure to complete the Fuel Switch results in Company being subject to penalties or other consequences of not meeting the requirements of the RPS Law, Seller shall also indemnify, defend, and hold harmless Company and Indemnified Company Parties from and against any losses, damages, costs or expenses suffered, incurred or sustained by Company or any Indemnified Company Party resulting from, arising out of, or relating to any penalty or assessment issued under the RPS Law.

(C) Seller-Requested Fuel Switch. In the event of a Fuel Emergency (as defined below), Seller may request that Company permit Seller to implement a Fuel Switch (a “Seller-Requested Fuel Switch”), which shall be made, in writing, as soon as such switch is deemed reasonably necessary by Seller and no later than seven (7) Days prior to the date of the desired Seller-Requested Fuel Switch. Any Seller-Requested Fuel Switch, which shall be limited solely to a designated Renewable Fuel, Fossil Fuel, or Fuel Blend, shall be subject to Company’s prior review and approval, in Company’s reasonable discretion, before the switch is implemented. A “Fuel Emergency” shall mean an immediate or imminent supply condition affecting Seller that results in Seller not being capable of procuring the required supply of Fuel then being used at the Facility to meet anticipated Company Dispatch and/or the terms of this Agreement, and is: (1) not the direct or indirect result of any fault or neglect by Seller; and (2) outside of the control of Seller despite Seller’s reasonable efforts having been made to prevent or avoid such condition. A Fuel Switch made as a result of a Fuel Emergency shall be evaluated monthly by the Parties and shall terminate, unless the Parties otherwise agree to maintain the current Fuel or Fuel Blend then in use, as soon as the condition leading to the Fuel Emergency is terminated or alleviated, unless the Company decides otherwise.

(D) Operational Covenants, Restrictions and/or Revisions.

(1) Permitting. Seller represents, warrants and covenants that all permitting required of Seller to operate the Facility under either the Renewable Fuel, Fossil Fuel, or Fuel Blend is in place and no other Governmental Approvals are required to implement a Fuel Switch or Seller-Requested Fuel Switch when requested.

**(2) [TO BE DETERMINED AND/OR NEGOTIATED FOLLOWING SELLER'S RESPONSES TO COMPANY QUESTIONS]**

(E) No Relief From Other Obligations. Except as may be specifically agreed to in Section 2(D) (Operational Covenants, Restrictions and/or Revisions) above, any Fuel Switch or Seller-Requested Fuel Switch under this Attachment DD (Fuel Designation and Switching) shall not relieve Seller of its obligations under this Agreement including, without limitation, providing for a continuous reliable supply of Fuel and other consumables necessary to operate the Facility at the Contract Firm Capacity, responding to Company Dispatch, and meeting all applicable Performance Standards. Except as may be specifically provided in this Attachment DD (Fuel Designation and Switching), under no circumstances shall a Fuel Switch or Seller-Requested Fuel Switch be interpreted to provide a means for either Party to renegotiate the terms and conditions of this Attachment DD (Fuel Designation and Switching) or any other terms of the Agreement.

(F) Payment of Costs Associated with Fuel Switch.

(1) Except as specified in Section 2(F)(2) of this Attachment DD (Fuel Designation and Switching) and regardless of whether Company or Seller initiates a Fuel Switch or Seller-Requested Fuel Switch, Seller shall be responsible for all costs associated with a Fuel Switch or Seller-Requested Fuel Switch including, without limitation, any change in the method of Fuel delivery, process, cleaning, equipment, and storage required for the Fuel Switch or Seller-Requested Fuel Switch.

(2) Seller shall be entitled to include the actual change in Fuel cost and associated consumables resulting from the Fuel Switch into the Energy Charge in accordance with the terms of Attachment J (Energy Charge and Capacity Charge Formulas). Changes in the costs of consumables shall only be permitted to the extent such consumable costs are included in the Variable O&M component of the Energy Charge.

(G) Fuel Supply. Seller shall store or secure sufficient Fuel and other necessary consumables required for unconstrained dispatch to operate the Facility at the Available Capacity for each type of Fuel, or, if Seller intends to use the same storage equipment for the new Fuel to be used, implement procedures to exhaust the current Fuel supply before delivery of the new Fuel to minimize any inadvertent blending of Fuel that is not contemplated or requested. Unless specifically agreed to by Company, Seller shall effect any storage changes for Fuel in connection with a Fuel Switch or Seller-Requested Fuel Switch (i) without any outage or disruption to Seller's ability to respond to Company Dispatch, and (ii) while maintaining the Fuel and consumable storage requirements set forth in Section 14(A) (Fuels) of Attachment Y (Operation and Maintenance of the Facility).

3. Designation of New Fuel After Commercial Operations Date.

(A) Fuel Change Option. After the Commercial Operations Date, Company shall have the option (the "Fuel Change Option") to request a Fuel change to designate a Fuel other

than the Renewable Fuel, Fossil Fuel, or Fuel Blend that may be used at the Facility, as may be necessary or desirable over the Term to allow flexibility with respect to fuels, fuel storage, and fuel inventory to meet changing needs, greenhouse gas reduction requirements, or State of Hawai'i energy policy objectives (if agreed, a "Fuel Change") that may arise due to new technology or other changed circumstances. The intent of such a Fuel Change is to seek agreement with Seller to implement an easily substitutable fuel that does not require substantial and/or material revisions to the Facility or this Agreement in order to implement such change. Company may exercise the Fuel Change Option at any time during the Term; provided, however, that the terms and conditions of any Fuel Change Amendment agreed to by the Parties pursuant to this Attachment DD (Fuel Designation and Switching) shall have no effect without PUC approval.

(B) Process to Exercise and Negotiate the Fuel Change Option.

(1) Notice of Intent to Exercise Fuel Change Option. If Company reasonably concludes that a Fuel Change is necessary or important for the operation of the Company System and such Fuel Change is capable of being performed by Seller, Company may deliver to Seller written notice of its intent to exercise the Fuel Change Option ("NOI"). The NOI will specify the relevant desired parameters of the Fuel Change, which shall include type of fuel and/or mix of fuels.

(2) Fuel Change Proposal. Seller shall, within ninety (90) Days after receipt of the NOI (or such longer time as the Parties agree in writing), respond to Company's NOI by submitting to Company a fuel change proposal responsive to the NOI ("Fuel Change Proposal"). The Fuel Change Proposal shall include Seller's proposal for the requirements of the Fuel Change and such supporting information as necessary to provide an understanding of the Fuel Change Proposal. Such proposal shall include, at least, the following: a Fuel Change implementation plan and schedule, Fuel Change pricing impact, Fuel Change contracting plan and requirements, any operations and maintenance revisions and a verification procedure to confirm that the Fuel Change meets all applicable laws, permits and other administrative requirements, including, without limitation, the RPS Law.

(3) Discussion of Fuel Change Proposal. Upon receipt of the Fuel Change Proposal submitted in response to an NOI, Company will evaluate such Fuel Change Proposal, and Seller shall cooperate with Company in performing such evaluation including, but not limited to, providing such additional information as Company may reasonably request. The Parties shall have ninety (90) Days (or such longer period of time as the Parties may agree to in writing) to negotiate the terms of the Fuel Change Proposal with the intent to enter into an agreement for the requested Fuel Change (the "Fuel Change Amendment").

(4) Fuel Change Amendment. If the Parties reach agreement during their negotiations for the Fuel Change, then the Parties shall proceed to negotiate in good faith a Fuel Change Amendment setting forth the specific changes to this Agreement that are necessary to implement the Fuel Change. Concurrently, and within thirty (30) Days of

the Parties executing a Fuel Change Amendment, Seller shall obtain fuel supply agreement(s) (or amendments) that are consistent with the terms of the Fuel Change Amendment and this Agreement. Seller shall provide copies of such fuel supply agreements or amendments to Company within the aforementioned time-period for Company's consent, as may be required by this Agreement ("Company Consent"). If a Company Consent requires approval by the PUC, the provisions of Section 3(C) (PUC Approval of Fuel Change and Company Consent) of this Attachment DD (Fuel Designation and Switching) shall apply to such Company Consent.

(C) PUC Approval of Fuel Change and Company Consent.

(1) Approval of the Fuel Change Amendment. No Fuel Change Amendment shall constitute an amendment to the Agreement unless and until an order from the PUC approving the Fuel Change Amendment has been issued and becomes non-appealable (the "PUC Fuel Change Order"). To be "non-appealable" for the purposes of this Section 3(C) (PUC Approval of Fuel Change and Company Consent) of Attachment DD (Fuel Designation and Switching), such PUC Fuel Change Order shall be either (i) 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 Appeal Period has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court, Intermediate Court of Appeals, or 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).

(2) Approval of Company Consent. If required, any Company Consent of a fuel supply agreement amended to accommodate a Fuel Change Amendment shall not be effective unless and until an order from the PUC approving the Company Consent has been issued and becomes non-appealable. Company, to the extent feasible, shall seek approval of the Company Consent contemporaneously with Company's request for approval of the Fuel Change Amendment.

(D) Company Rights; Costs; Alternative Processes.

(1) Company's Rights. The right to issue an NOI hereunder is exclusive to Company. While Seller may submit to Company information that might lead to the issuance of an NOI, Seller shall not have a right to initiate an NOI or a Fuel Change Proposal. Company shall have no obligation to evaluate a proposal submitted at Seller's own initiative.

(2) Costs of Proposals. Each Party shall be responsible for its costs of preparation and review of the NOI, Fuel Change Proposal and Fuel Change Amendment, except that if either Party brings a claim against the other Party for failure to comply with the terms to effectuate a Fuel Change pursuant to Article 17 (Dispute Resolution), then such costs may be claimed as part of the Party's damages.

(3) Parties May Agree on Different Process. The Parties may agree to employ a process to reach agreement on a Fuel Change Amendment other than the process described above, provided, however, that in no event shall any Fuel Change Amendment become effective or be construed to amend the Agreement without the existence of a non-appealable PUC Fuel Change Order.

(4) RPS Modifications and/or Performance Standard Modifications. The process for the Parties to agree to a Fuel Change is not applicable to a Fuel change that may be necessitated in connection with any RPS Amendment or a Company-initiated Performance Standard revision. In such an event, as applicable, the terms and conditions of Section 2.1(G) (Renewable Portfolio Standards) and Attachment AA (Renewable Portfolio Standards) to address a RPS Amendment, or Article 24 (Process for Addressing Revisions to Performance Standards) to address a required amendment to this Agreement's Performance Standards, shall apply.

(5) Failure to Implement a Fuel Change. If the Parties are unable, despite their use of commercially reasonable efforts, to finalize and execute a Fuel Change Amendment, or if the PUC or Seller's lenders do not grant any necessary approvals for a Fuel Change Amendment, then this Agreement, including this Attachment DD ((Fuel Designation and Switching) shall remain in effect without modification.

**REQUEST FOR PROPOSALS**  
**FOR**  
**ENERGY STORAGE**  
**ALL ISLANDS**

~~MAY 2~~June 6, 2025

*Appendix M – Model ESPA PPA*



**Hawaiian  
Electric**



*Energy Storage*

*Purchase Agreement*

*All Islands*

*Project Type: Standalone Storage*

*BESS Contract Capacity:* \_\_\_\_\_ *MW/MWh* *of*  
*Storage*

*Facility Location:* \_\_\_\_\_

*Execution Date:* \_\_\_\_\_

~~May 2~~June 6, 2025 Version

## PREFATORY NOTES

- This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of energy storage services to be executed by Hawaiian Electric Company, Inc., Maui Electric Company, Limited or Hawai'i Electric Light Company, Inc. The terms and conditions that may be offered by Hawaiian Electric Company, Inc., Maui Electric Company, Limited or Hawai'i Electric Light Company, Inc. in an energy storage purchase agreement may be modified to reflect factors such as different storage technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such energy storage purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions.
- The documents evidencing the complete contract for this Facility consist of (1) this Energy Storage Purchase Agreement, and all Attachments, Exhibits and related documents attached to this document, (2) the IRS Letter Agreement, (3) the GHG Letter Agreement and (4) any confidentiality or non-disclosure agreements entered into by the Parties during the process of contract negotiations and/or discussions of the specifications of the Facility.
- This document assumes that the proposed facility will be a battery energy storage system. If a proposal containing technology other than a battery for the energy storage system is selected for the RFP's final award group, replacement provisions accounting for such differing technology will need to be developed for the energy storage purchase agreement for such project proposal.

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

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ENERGY STORAGE PURCHASE AGREEMENT

THIS ENERGY STORAGE PURCHASE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Execution Date"), by and between [Hawaiian Electric Company, Inc.,] [Maui Electric Company, Limited,] [Hawai'i Electric Light Company, Inc.,] a Hawai'i corporation (hereinafter called the "Company") and \_\_\_\_\_ (hereinafter called the "Seller").

WHEREAS, Company is an operating electric public utility on the island where the Facility is located, 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" or "Commission"); and

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

WHEREAS, Seller is a developer of energy storage systems and intends to hire a properly licensed general contractor to construct, and, thereafter, Seller intends to own and operate a safe, reliable and operationally flexible battery energy storage system ("BESS") so as to provide the Company System with those benefits and services associated with the Energy Storage Services, as defined herein; and

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

WHEREAS, Facility will be located at the location identified on the cover page of this Agreement, and is more fully described in Attachment A (Description of Storage Facility) and Attachment B (Facility Owned by Seller); and

WHEREAS, Seller desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein, the availability of the Energy Storage Services provided by the Facility 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 in parallel with the Company System to provide the Energy Storage Services; 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 DISPATCHABILITY;  
RATE FOR PURCHASE AND SALE; BILLING AND PAYMENT

- 2.1 Purchase and Sale of 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 the availability of the Facility's Energy Storage Services to respond to Company Dispatch in accordance with this Agreement. 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 [RESERVED]
- 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) of Attachment J (Company Payments for Dispatchability and Availability of BESS) 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 or any portion of the Facility is 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 or any portion of the Facility available for Company Dispatch, as more fully set forth in Section 3(d) of Attachment J (Company Payments for Dispatchability and Availability of BESS) to this Agreement.
- 2.4 Assurance of Capability of Facility to Deliver Energy Storage Services.
- (a) Design, Operation and Maintenance to Achieve Required Performance Metrics. In order to provide Company with reasonable assurance that the Facility's Energy Storage Services will be available for Company Dispatch: (i) the BESS Capacity Performance Metric shall be used to confirm the capability of the Facility to discharge continuously for [two (2)/four (4)] hours at BESS Contract Capacity (MW) or to discharge continuously for a total energy (MWh) equal to the BESS Contract Capacity (MWh) if the test is conducted at less than BESS Contract Capacity (MW); (ii) the BESS EAF Performance Metric shall be used to determine whether the Facility is meeting its expected

availability; (iii) the BESS EFOF Performance Metric shall be used to evaluate whether the Facility is experiencing excessive unplanned outages; and (iv) the RTE Performance Metric shall be used to evaluate the storage efficiency of the Facility. 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 2.8 (BESS Capacity; Liquidated Damages; Termination Rights) through Section 2.11 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights) of this Agreement shall be interpreted consistent with the North American Electric Reliability Corporation Generating Availability Data System ("NERC GADS") Data Reporting Instructions. In the event of a conflict between NERC GADS and the terms of this Agreement, the terms of this Agreement will control.

- (b) Charging Energy Obligations. Except as otherwise set forth in this Section 2.4(b) (Charging Energy Obligations) or as expressly set forth in this Agreement, Company shall be responsible for and bear the cost of delivering all of the Charging Energy for the Facility to the Point of Interconnection (i) for the Partial Installation, if applicable, prior to the Commercial Operations Date and (ii) for the Facility following the Commercial Operations Date. So long as the State of Charge is less than 100%, Seller shall take all actions necessary to accept the Charging Energy, as delivered by Company by manual dispatch or automatic signals, at and from the Point of Interconnection as part of making available to Company the Facility's Energy Storage Services in accordance with the terms of this Agreement and Company tariffs, including, without limitation, maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility. Seller shall only use the Charging Energy

for Company's benefit in accordance with the terms of this Agreement. Prior to the Commercial Operations Date, Seller shall be allowed to receive up to five (5) times the BESS Contract Capacity (in MWh), or a total of [**insert applicable value**] MWh, of Charging Energy for the purposes of testing, commissioning, and satisfying the conditions to achieve the Commercial Operations Date (the "Pre-COD Charging Energy Allowance"). Following the exhaustion of the Pre-COD Charging Energy Allowance, any costs for Charging Energy provided to Seller thereafter and prior to the Commercial Operations Date in excess of such Pre-COD Charging Energy Allowance ("Excess Charging Energy Costs") shall be borne by Seller, which costs shall be based on the Energy Cost Recovery Factor for the applicable month and as calculated below:

Excess Charging Energy Costs = (Pre-COD Excess Charging Energy (kWh) - Pre-COD Discharge Energy (kWh)) × Energy Cost Recovery Factor (cents/kWh) for the applicable month

Where:

Pre-COD Excess Charging Energy = the total kWh of Energy delivered by Company to the Point of Interconnection for the Facility in excess of the Pre-COD Charging Energy Allowance

Pre-COD Discharge Energy = the total kWh of Energy discharged from the Facility, as applicable, to the Point of Interconnection in accordance with Company Dispatch following the exhaustion of the Pre-COD Charging Energy Allowance

Energy Cost Recovery Factor is defined in the Schedule of Defined Terms.

- 2.5 [RESERVED]
- 2.6 [RESERVED]
- 2.7 [RESERVED]
- 2.8 BESS Capacity; Liquidated Damages; Termination Rights.

(a) BESS Capacity and Liquidated Damages. Prior to achieving Commercial Operations, and for each BESS Measurement Period following the Commercial Operations Date, the Facility shall be required to complete a BESS Capacity Test or otherwise demonstrate satisfaction of the BESS Capacity Performance Metric, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the Facility fails to demonstrate that it satisfies the BESS Capacity Performance Metric, Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the BESS Measurement Period in question:

<b>BESS Capacity Ratio</b>	<b>Liquidated Damage Amount</b>
Tier 1 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 100% and is equal to or greater than 95.0%, an amount equal to one-tenth of one percent (0.001) of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 2 85.0% - 94.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 95% and is above 84.9%, an amount equal to one and a half-tenths of one percent (0.0015) of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 75.0% - 84.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 85% and is above 74.9%, an amount equal to two-tenths of one

	percent (0.002) of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 4 60.0% - 74.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 75% and is above 59.9%, an amount equal to two and a half-tenths of one percent (0.0025) of the 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 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 Lump Sum Payment for the BESS Measurement Period in question.

For purposes of determining liquidated damages under this Section 2.8(a) (BESS Capacity and Liquidated Damages), the starting and end points for the duration of the period that the Facility discharges shall be rounded to the nearest MWh. Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the 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 monthly Lump Sum Payment is \$1,000,000

The BESS Contract Capacity (MW) for the Facility is 25 MW.

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

BESS Contract Capacity (MWh) = 25 MW x 4 hours = 100 MWh

BESS Capacity Ratio = MWh Discharged/BESS Contract Capacity = 65 MWh/100 MWh = 0.65

Lump Sum Payment for the BESS Measurement Period in question = 3 calendar months x \$1,000,000 = \$3,000,000

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

= [0.05 + 0.15 + 0.2 + 0.25] x \$3,000,000 = \$1,950,000

- (b) BESS Capacity Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.8(a) (BESS Capacity and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility 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 Facility 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 and Liquidated Damages) for those BESS Measurement Periods during which the Facility 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 Termination Rights). If the Facility 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 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, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), 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 current BESS Measurement Period:

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

For purposes of determining liquidated damages under this Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), the BESS

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

EXAMPLE: The following is an example calculation of liquidated damages for the BESS Annual Equivalent Availability Factor Performance Metric and is included for illustrative purposes only. Assume the following:

The monthly Lump Sum Payment is \$1,000,000

The BESS Annual Equivalent Availability Factor Performance Metric was calculated to be 72.9%.

Lump Sum Payment for the BESS Measurement Period in question = 3 calendar months x \$1,000,000 = \$3,000,000

Liquidated Damages = [((0.970-0.850)x1)+((0.850-0.800)x2)+((0.800-0.750)x3)+((0.750-0.729)x4)] x \$1,500,000

= [0.120 + 0.100 + 0.150 + 0.084] x \$3,000,000 = \$1,362,000

- (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 Facility 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 (4) 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 (4) 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 Facility and/or Storage Unit(s) necessary to remedy the failure of the Facility to achieve the BESS Capacity Performance Metric.

2.10 BESS Annual Equivalent Forced Outage Factor; Liquidated Damages; Termination Rights.

- (a) BESS Annual Equivalent Forced Outage Factor and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Forced Outage Factor shall be 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 4.0% (the "BESS EFOF Performance Metric"), Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), 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:

<b>BESS Annual Equivalent Forced Outage Factor</b>	<b>Liquidated Damage Amount</b>
Tier 1 0.0% - 4.0%	-0-
Tier 2 4.1% - 6.9%	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 4.0% but less than 7.0%, an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 7.0% and above	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 6.9%, an amount equal to four-tenths of one percent (0.004) of the Lump Sum Payment for the BESS Measurement Period in question.

For purposes of determining liquidated damages under this Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages; Termination Rights), 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 Annual Equivalent Forced Outage Factor was 4.1% as calculated in the example in Attachment Y (BESS Annual Equivalent Forced Outage Factor) to this Agreement and 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:

4.1% - 4.0% = 0.1%  
0.1%/0.001 = 1  
\$1,000,000 x .002 = \$2,000  
\$2,000 x 1 = \$2,000

- (b) BESS Annual Equivalent Forced Outage Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to maintain the BESS Annual Equivalent Forced Outage Factor in conformance with the BESS EFOF 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 exceed the BESS EFOF Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages) for those BESS Measurement Periods during which the Facility fails to demonstrate satisfaction of the BESS EFOF Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.10(b) (BESS Annual Equivalent Forced Outage Factor Termination Rights). If the BESS Annual Equivalent Forced Outage Factor is not in Tier 1 of the immediately preceding table for any two BESS Measurement Periods in a 12-month period, a 12-month cure period (the "BESS EFOF 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 EFOF Cure Period, if the BESS Annual Equivalent Forced Outage Factor does not meet the BESS EFOF Performance Metric, e.g., the BESS Annual Equivalent Forced Outage Factor for any such BESS Measurement Period exceeds 4.0%, liquidated damages shall be paid and accepted as set forth in Section 2.10(a) (BESS Annual Equivalent Forced Outage Factor and Liquidated Damages); provided, however, that during a BESS EFOF Cure Period, should Seller achieve a BESS Annual Equivalent Forced Outage Factor of 4.0% or lower in each of two consecutive BESS Measurement Periods, then the BESS

EFOF Cure Period shall terminate on the Day following the close of the second such BESS Measurement Period. If Seller fails to demonstrate satisfaction of the BESS EFOF Performance Metric at the expiration of the BESS EFOF Cure Period, namely, the BESS Annual Equivalent Forced Outage Factor exceeds 4.0% as of the end of the BESS EFOF Cure Period, such failure shall constitute an Event of Default under Section 15.1(j) 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).

2.11 BESS Round Trip Efficiency; Liquidated Damages; Termination Rights.

- (a) RTE and Liquidated Damages. Prior to achieving Commercial Operations, and for each BESS Measurement Period following the Commercial Operations Date, the Facility shall be required to complete a RTE Test or otherwise demonstrate satisfaction of the RTE Performance Metric, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the Facility fails to demonstrate that it satisfies the RTE Performance Metric, Seller shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept liquidated damages for such shortfall, in the amount to be calculated as provided in this Section 2.11(a) (RTE and Liquidated Damages), upon proper demand at the end the BESS Measurement Period in question.

The RTE Performance Metric represents the lowest acceptable efficiency of the Facility for a full charge and discharge cycle as set forth in Attachment W (BESS Tests).

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

Seller shall be liable for liquidated damages if:

$$(PM - RTE \text{ Ratio}) > 2\%$$

Where:

PM = RTE Performance Metric stated as percentage

RTE Ratio = RTE Ratio from operational data or most recently completed RTE Test during the applicable BESS Measurement Period, measured in accordance with Attachment W (BESS Tests), stated as percentage.

For each percentage point by which the RTE Ratio is below the LDT, Seller shall pay, and Company shall accept, liquidated damages in an amount equal to two-tenths of one percent (0.002) of the Lump Sum Payment for the BESS Measurement Period in question, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages).

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 Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.11(a) (RTE and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Facility fails to demonstrate satisfaction of the RTE Performance Metric during a 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 Facility 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 and Liquidated Damages) for those BESS Measurement Periods during which the Facility fails to demonstrate satisfaction of the RTE Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.11(b) (RTE Termination Rights). If the RTE Ratio 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 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 Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages.

(a) Payment of Performance Metrics LDs by Seller. With respect to the liquidated damages payable under Section 2.8(a) (BESS Capacity 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; Termination Rights) and Section 2.11 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights) (collectively, the "Performance Metrics LDs"), Company shall set-off such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement; provided, however, that Company shall retain the right, at any time on or after the LD Assessment Date for the liquidated damages in question, to draw such liquidated damages from the Operating Period Security, as follows:

(i) [RESERVED]

(ii) [RESERVED]

(iii) if a Quarterly Report shows a failure to achieve one or more of the Performance Metrics

required for the BESS Measurement Period that concludes with the most recent calendar month covered by such Quarterly Report, and Company does not submit a Notice of Quarterly Report Disagreement with respect to such Quarterly Report, the Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated in Section 2.8(a) (BESS Capacity 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; Termination Rights) and Section 2.11 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights), as applicable;

- (iv) in all cases in which Company submits a Notice of Quarterly Report Disagreement for a given Quarterly Report, Company shall have the right to set-off or draw all or any portion of the amount of liquidated damages for the BESS Measurement Period in question, 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 Quarterly Report Disagreement; and
- (v) in the event of any disagreement as to the liquidated damages owed under this Section 2.12(a) (Payment of Performance Metric LDs by Seller):
  - (A) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages that are eventually found to be payable for the BESS Measurement Period(s) in question as determined under Section 2 (Quarterly Report Disagreements) or Section 4 (Independent AF Evaluator Process) of Attachment T (Quarterly 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

- (B) if Company does not exercise its rights to set-off or draw liquidated damages for such BESS Measurement Period(s), or does not set-off or draw the full amount of the liquidated damages that are eventually found to be payable for the BESS Measurement Period(s) in question as determined under Section 2 (Quarterly Report Disagreements) or Section 4 (Independent AF Evaluator Process) of Attachment T (Quarterly 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 from 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 2.12(a) (Payment of Performance Metrics LDs by Seller), 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 2.17 (Payment Procedures). For avoidance of doubt: A monthly Lump Sum Payment that is payable for, e.g., the twelfth (12<sup>th</sup>) calendar month of Contract Year N, is to be invoiced by Seller to Company pursuant to Section 2.16 (Seller's Preparation of the Monthly Invoice) during the first month following Contract Year N and paid by Company to Seller during the third month following Contract Year N pursuant to Section 2.17 (Payment Procedures), and, thus, for purposes of determining the limitation on Performance Metrics LDs under this Section 2.12(b) (Limitation on Liquidated Damages), shall be included in the total of the twelve (12) monthly Lump Sum Payments payable during the Contract Year that immediately follows Contract Year N. 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 2.12(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 2.12(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.

- 2.13 Payments Prior to Commercial Operations Date. Company shall not be obligated to make any payment for the availability of Energy Storage Services prior to the Commercial Operations Date other than with respect to the availability of the Partial Installation's Energy Storage Services, as applicable, in accordance with Attachment J (Company Payments for Dispatchability and Availability of BESS).
- 2.14 Sales of Electric Energy by Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Seller).
- 2.15 Outage Costs.
- (a) Seller Outage. Seller shall bear the costs for all Energy that was lost from the Facility during a BESS Outage, as defined in Attachment X (BESS Annual Equivalent Availability Factor), with such costs to be based on the Energy Cost Recovery Factor and as calculated below (the "Outage Energy Cost"):
- $$\text{Outage Energy Cost} = [\text{Pre-Outage Discharge Energy (kWh)} - \text{Post-Outage Discharge Energy (kWh)}] \times [\text{Energy Cost Recovery Factor (cents/kWh)}]$$
- Where:
- Pre-Outage Discharge Energy = the total kWh of Energy stored at the Facility and available for discharge in accordance with Company Dispatch immediately prior to the beginning of the Outage
- Post-Outage Discharge Energy = the total kWh of Energy stored at the Facility and available for discharge in accordance with Company Dispatch immediately following the end of the Outage
- Energy Cost Recovery Factor is defined in the Schedule of Defined Terms.
- EXAMPLE: The following is an example calculation of the Outage Energy Cost and is included for illustrative purposes only. Assume the following:

A BESS Outage occurs in the month of October 2021.

The Pre-Outage Discharge Energy = 200 kWh.

The Post-Outage Discharge Energy = 190 kWh.

The Energy Cost Recovery Factor = 18.447 cents (or \$0.18447), pursuant to Company's September 28, 2021 "Hawai'i Electric Light Energy Cost Recovery Factor" filing submitted to the PUC, which specifies an Energy Cost Recovery Factor of 18.447 cents per kWh.

Outage Energy Cost = [200 kWh - 190 kWh] x 18.447 cents/kWh = 184.47 cents (\$1.85)

For billing purposes, during full Facility outages, revenue meter readings shall be taken at the start of the BESS Outage and upon completion of the BESS Outage.

- (b) Outage Due to Company Request. Seller shall not be required to restore any Energy available for discharge that was lost during an outage requested by the Company for reasons other than Seller-Attributable Unavailability; provided, however, that Seller shall mitigate any losses of Energy due to such an outage such that losses are limited to the Facility's standby consumption, specifically, no more than (\_\_\_\_) kWh per twenty-four (24) hours of outage duration. If Energy losses of more than (\_\_\_\_) kWh are due to Seller's failure to use commercially reasonable efforts to mitigate all such Energy losses, Seller shall bear the costs of any Energy lost in excess of (\_\_\_\_) kWh per twenty-four (24) hours of outage duration, with such costs to be based on the Energy Cost Recovery Factor and as calculated below ("Excess Standby Consumption Cost"). **[Drafting Note: Parties to determine the amount of standby consumption losses based on project design.]**

Excess Standby Consumption Cost = [Pre-Outage Discharge Energy (kWh) - Post-Outage Discharge Energy (kWh) - [Allowed Losses (kWh/24-hour period) x Outage Duration (hours)]] x [Energy Cost Recovery Factor (cents/kWh)]

Where:

Pre-Outage Discharge Energy = the total kWh of Energy stored at the Facility and available for discharge in accordance with Company Dispatch immediately prior to the beginning of the outage

Post-Outage Discharge Energy = the total kWh of Energy stored at the Facility and available for discharge in accordance with Company Dispatch immediately following the end of the outage

Allowed Losses = ( ) kWh per 24 hours, or the total kWh of Energy permitted as losses per twenty-four (24) hours of outage duration due to the Facility's standby consumption in accordance with Section 2.13(b) (Outage Due to Company Request).

Outage Duration = the total duration of the outage in hours

Energy Cost Recovery Factor is defined in the Schedule of Defined Terms.

EXAMPLE: The following is an example calculation of the Excess Standby Consumption Cost and is included for illustrative purposes only. Assume the following:

An outage occurs at the request of the Company for reasons other than Seller-Attributable Unavailability in the month of October 2021 and lasts for 72 hours. Seller fails to use commercially reasonable efforts to mitigate losses of Energy in excess of its Allowed Losses of 1,000 kWh/24-hour period.

Pre-Outage Discharge Energy = 20,000 kWh

Post-Outage Discharge Energy = 14,000 kWh

Allowed Losses = 1,000 kWh/24 hours

Outage Duration = 72 hours

The Energy Cost Recovery Factor = 18.447 cents (or \$0.18447), pursuant to Company's September 28, 2021 "Hawai'i Electric Light Energy Cost Recovery Factor"

filing submitted to the PUC, which specifies an Energy Cost Recovery Factor of 18.447 cents per kWh.

Excess Standby Consumption Cost = [20,000 kWh - 14,000 kWh - ((1,000 kWh/24 hours) × 72 hours)] × 18.447 cents/kWh = (6,000 kWh - 3,000 kWh) × 18.447 cents/kWh = 3,000 kWh × 18.447 cents/kWh = 55,341 cents (\$553.41).

- 2.16 Seller's Preparation of the Monthly Invoice. By the tenth (10<sup>th</sup>) Business Day of each calendar month, Seller shall submit to Company an invoice that separately states the following for the preceding calendar month: (i) the monthly Lump Sum Payment for the preceding calendar month; and (ii) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement.
- 2.17 Payment Procedures. By the fifth (5<sup>th</sup>) Business Day of the second calendar month following the month for which the invoice was submitted (i.e., for January charges, invoice submitted in February, to be paid by the 5<sup>th</sup> Business Day of April), Company shall, subject to Company's right to set-off liquidated damages as provided in Section 2.12 (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 Quarterly Report for the BESS Measurement Period in question pursuant to Section 1 (Quarterly Report) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement; or (ii) the information required under Section 2.16 (Seller's Preparation of the Monthly Invoice) of this Agreement.
- 2.18 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.12(a)(iii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20<sup>th</sup>) 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 2.17 (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.

2.19 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 28.4 (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.

2.20 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.

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 technical and operational requirements as more fully described in Attachment B (Facility Owned by Seller). 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 Capacity Available for Dispatch from the Facility may exceed the BESS Contract Capacity. Company may dispatch up to the Capacity Available for Dispatch in accordance with Article 8 (Company Dispatch). Company may limit the net instantaneous MW 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 Discharge Energy.
- 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 Partial Commissioning.
- (a) If Seller desires to partially commission the Facility prior to the Commercial Operations Date, Seller shall provide notice to Company of its readiness for partial commissioning of the Facility and shall inform Company of the portion of the Facility (in MWs) being proposed for partial commissioning. Any proposed partial

commissioning shall be subject to Company's written acceptance and approval, which may be withheld in Company's sole discretion. In the event the Parties agree to partial commissioning of the Facility, the Guaranteed Commercial Operations Date shall not be extended.

(b) [RESERVED]

(c) Partial commissioning of a portion of the Facility may require additional costs and expenses to be incurred by Company to facilitate such partial commissioning, including but not limited to multiple Control System Acceptance Tests (all such additional costs and expenses, the "Partial Commissioning Costs"). Seller agrees to pay for all Partial Commissioning Costs in advance upon request by Company. Company shall not be obligated to perform any work on the partial commissioning unless and until it receives payment of the Partial Commissioning Costs. Alternatively, to the extent Company reasonably believes there are available funds in the Total Estimated Interconnection Cost paid by Seller to cover the Partial Commissioning Costs, Company shall be authorized to use such funds for such purposes. The Partial Commissioning Costs shall be included in the Total Actual Interconnection Cost for the purposes of the true-up specified in Section 3(d) (True-Up) of Attachment G (Company-Owned Interconnection Facilities).

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 Grant of Easement).

ARTICLE 5  
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Seller's Logs. Seller shall maintain, at least daily, a log, which may be in digital form, 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, information on charging and discharging, electric energy consumption and efficiency, the electrical characteristics of each Storage Unit (including settings or adjustments of such Storage Unit(s) control equipment/power conversion system and protective devices), 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 individual unit, 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 starts/failed starts, hours on-control and hours on-line. Company shall have the right, upon reasonable notice to request for electronic copies of 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 electronic 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 via electronic copies to the Company 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 BESS Annual Equivalent Availability Factor was less than **94%** and/or the BESS Capacity Ratio was less than the Tier 1 bandwidth under Section 2.8(a) (BESS Capacity and Liquidated Damages) for such Contract Years, then the parties shall commission a study by a Qualified Independent Consultant selected from among the entities listed in Attachment D (Consultants List) 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, no 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 by June 30 of each year a written schedule for the next two-year period, beginning with January of the following year, of any maintenance outages that will reduce the capacity of the Facility by an amount equal to or greater than 5 MW or 25% of the Net Nameplate Capacity. 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 (a) void or violate any warranties of equipment that is part of, or used in connection with, the Facility, (b) violate any long-term service agreement with respect to such equipment, or (c) 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. 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 make the Energy Storage Services available 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 individual Storage Unit, including for high wind speed. Any Storage Unit shut-down shall be coordinated with Company in advance to the extent practicable to allow a reasonable amount of time for Company to make adjustments required by the loss of availability from a Storage Unit shut-down.
- 5.6 Operating and Maintenance Manuals. Not later than each Partial In-Service Date and the Commercial Operations Date, as applicable, Seller shall provide Company with (i) any and all manufacturer's equipment manuals and recommendations for maintenance, and a copy of the operating and maintenance manual for each Partial Installation, if applicable, and for the Facility within three (3) Business Days after Seller's receipt of same; and (ii) a copy of all updates, supplements or amendments thereto, if any, within three (3) Business Days after such updates, supplements or amendments are adopted (subsequent to the first Partial In-Service Date and the Commercial Operations Date, as applicable). In addition, throughout the Term, Seller shall deliver to Company, promptly upon Seller's receipt of the same, any reports, studies or assessments of the Facility prepared by an independent engineer for the benefit of the Seller.

ARTICLE 6  
MONITORING

6.1 [RESERVED]

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 data required in order for Company to monitor Seller's compliance with the operational and Technical and Operational Requirements set forth in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller) and, (ii) recording and transferring such data to Company in real time in accordance with Section 1(b)(iii)(E) (Company Telemetry and Control) of Attachment B (Facility Owned by Seller). Requirements made in this section with reference to Attachment B (Facility Owned by Seller) shall still apply even if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in Attachment G (Company-Owned Interconnection Facilities). Seller shall maintain at the Site sufficient replacement parts for the Monitoring and Communication Equipment 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 recalibrated.

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 as 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 to 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 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 shut down the Facility due to the unavailability of such reliable real time 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 shut down the Facility and the Facility shall remain shut down 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 Unavailability, such period of time shall be allocated as such for purposes of calculating the BESS Annual Equivalent Availability Factor under Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) of this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Seller to

Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Seller requests in writing for confirmation that the Facility's data is available to Company, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with E-mail being acceptable) confirming that either (1) the Facility's data is available to Company (at which point no additional time after such request shall count as Seller-Attributable Unavailability), or (2) the Facility's data is not available so that Seller can take further appropriate corrective actions.

6.5 [RESERVED]

6.6 [RESERVED]

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 2.14 (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. Consistent with Company Dispatch, Company shall have the right to dispatch all aspects of the Energy Storage Services, at any time, as it deems appropriate in its reasonable discretion, subject only to and consistent with the restrictions set forth in Section 9(d) (Battery Energy Storage System) of Attachment B (Facility Owned by Seller), Good Engineering and Operating Practices, the requirements set forth in Section 3 (Technical and Operational Requirements) 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). Seller shall make the full capability of the Facility available for Company to discharge (export) or charge (import) MW to/from the Company System, in accordance with Company Dispatch.
- 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.
- 8.3 Company Rights of Dispatch. Company may require derating or outage in response to the Facility's failure to comply with Company Dispatch or to any conditions of Seller-Attributable Unavailability. A derating or outage required by Company pursuant to the preceding sentence shall be considered Seller-Attributable Unavailability and, until the conditions that led to the derating or outage are resolved by Seller and Seller notifies Company of the same, any such derating or outage shall "count against" Seller for the purpose of calculating the BESS Annual Equivalent Availability Factor and BESS Annual Equivalent Forced Outage Factor. If, after such notification, Company attempts to dispatch the Facility and determines that such conditions that led to the derating or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the derating or outage until the conditions that led to such outage or derating 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 derating or outage were successfully completed, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with E-mail 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 Quarterly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each BESS Measurement Period thereafter during the Term, Seller shall prepare and provide to Company a Quarterly Report by the tenth (10<sup>th</sup>) Business Day of the following month in accordance with Section 1 (Quarterly Report) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) of this Agreement. Beginning with the Quarterly Report for the last BESS Measurement Period of the initial Contract Year, Seller shall include calculations of (a) the BESS Capacity Ratio, the BESS Annual Equivalent Availability Factor, the BESS Annual Equivalent Forced Outage Factor and the RTE Ratio for the BESS Measurement Period, as well as (b) any liquidated damages to be assessed, as set forth in the form of Quarterly Report set forth in Section 1 (Quarterly Report) of said Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator). The rights and obligations of the Parties with respect to each Quarterly Report and any disagreements arising out of any Quarterly Report are set forth in Section 1 (Quarterly Report), Section 2 (Quarterly Report Disagreements) and Section 4 (Independent Evaluator Process) of Attachment T (Quarterly 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 determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to disconnect the Facility from the Company System, as determined in the sole discretion of the Company System Operator. The Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain disconnected (and in Seller-Attributable Unavailability status if so determined), until such time as Company is satisfied that the condition(s) referred to above have been corrected. If Company disconnects the Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Seller by telephone, and thereafter make reasonable efforts to confirm, in writing (with E-mail being acceptable), within three (3) Days of the disconnection, the reasons for the disconnection. If the reason for the disconnection constitutes Seller-Attributable Unavailability, Company will notify Seller (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 Unavailability); 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 Unavailability until Company is satisfied that the condition resulting in the disconnection has been corrected. Company shall use reasonable efforts to inspect such corrective measures (if necessary) and confirm the resolution of such condition within three (3) Business Days after Seller's notification.

ARTICLE 10  
METERING

10.1 Revenue Metering Package Meters. Company shall purchase, own, install and maintain the Revenue Metering Package dedicated exclusively to the Facility and by which all measurable aspects of the Energy Storage Services must be measured to be eligible for payment under this Agreement. The metering point shall be located as close as possible to the Point of Interconnection as allowed by Company. Seller shall make available a mutually agreeable location for the Revenue Metering Package, to measure the Discharge Energy and the Charging Energy. Seller shall separately meter Station Service and BESS Aux Load with the Station Use Metering Equipment, and shall cause the installation, maintenance, operation and replacement (as needed) of the Station Use Metering Equipment. Seller will design, construct, and operate the Facility such that (i) no BESS Aux Load is measured and served via the Revenue Metering Package; and (ii) Energy Storage Services do not serve Station Service. Seller shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package and the Station Use Metering Equipment, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval, as further described in Section 1(e) (Other Equipment) of Attachment B (Facility Owned by Seller). The Seller shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) for the primary metering point of the latest edition of the Company's Electric Service Installation Manual (ESIM), as applicable to each metering point. Company shall test such revenue meter prior to installation and shall test such revenue meter in accordance with Section 10.3 (Meter Testing) as often as Company deems reasonably necessary, but no more than once every seven (7) years. Seller shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with

the Revenue Metering Package and the Station Use Metering Equipment.

10.2 Meter Testing. Company shall provide at least forty-eight (48) 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 Company initiated tests, and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to tests conducted within a seven-year timeframe 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 2.19 (Adjustment to Invoices After Payment) for the Energy Storage Services made available to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11  
GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

11.1 Governmental Approvals for Facility. Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Under no circumstances 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. No later than the applicable Partial In-Service Date, Seller shall obtain all Governmental Approvals necessary for the ownership, operation and maintenance of the corresponding Partial Installation and shall satisfy any condition or requirement set forth in any such Governmental Approvals for the ownership, operation and maintenance of such Partial Installation (excluding on-going reporting or monitoring requirements that may continue beyond the applicable Partial In-Service Date in accordance with such Governmental Approval). No later than the Commercial Operations Date, Seller shall obtain all other Governmental Approvals necessary for the ownership, operation and maintenance of the Facility and shall satisfy any condition or requirement set forth in any such Governmental Approvals for the ownership, operation and maintenance of the Facility (excluding on-going reporting or monitoring requirements that may continue beyond the Commercial Operations Date in accordance with such Governmental Approval).

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, and in the case where Seller has satisfied the requirements of Section 11.2(a) by way of an option agreement or binding letter of intent, Seller shall have: (i) affirmatively exercised such option agreement or fulfilled the requirements of such binding letter of intent, and (ii) delivered to Company the completed Land Rights resulting therefrom, no less than sixty (60) Days prior to commencing any construction activity.

Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Seller's failure to identify and/or timely obtain necessary Land Rights. In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to determine whether such documents establish the Land Rights of Seller to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

11.3 Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Company, Seller shall, prior to commencement of construction thereof, provide the necessary Governmental Approvals and Land Rights for the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Seller, then Seller shall provide the necessary Governmental Approvals and Land Rights required for the commencement of construction and, prior to the start of each subsequent phase of construction, Seller shall provide the necessary and appropriate Governmental Approvals and Land Rights necessary for such related construction activity. Regardless of whether Company or Seller constructs the Company-Owned Interconnection Facilities, Seller shall provide Company with an accounting of all necessary Governmental Approvals (in a list or spreadsheet) at the commencement of construction including relevant information regarding status and estimated completion. Seller shall update Company on the status of all necessary Governmental Approvals, including the addition of any new Governmental Approvals that may be discovered and required, in Seller's Monthly Progress Report submitted to Company. Notwithstanding the above, to the extent not already provided to Company, all required Governmental Approvals for the Company-Owned Interconnection Facilities shall be provided to Company on the Transfer Date in accordance with Section 9 (Governmental Approvals for Any 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.

12.2 Effectiveness of Obligations. Only Article 3 (Facility Owned and/or Operated by Seller), Section 11.4 (Compliance With Laws), 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 21 (Force Majeure), 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 Schedule of Defined Terms of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.

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 Order 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 as information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether 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 [RESERVED]

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(g) of Attachment A (Description of Storage Facility).
- (b) Seller is in material breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) and Section 22.2(d) requiring Seller to have all Land Rights and Governmental Approvals as provided therein; and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amounts specified within the time periods provided therein.
- (c) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (d) [RESERVED]

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 its terms (i.e., if the applicable conditions entitling a Party to declare the Agreement null and void are satisfied or present and such Party notifies the other Party of its election to declare this Agreement null and void), 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 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, 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 its terms 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 14.3 (Return of Development Period Security), 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 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) 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; provided, that any extension will run concurrently with (and not in addition to) any other extension permitted under this Agreement:

- (a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Seller and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates, Seller's Conditions Precedent Dates and Company Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond \_\_\_\_\_; or **[DRAFTING NOTE: OUTSIDE DATE TO BE INSERTED BASED ON TYPE OF PROPOSAL.]**

- (b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this Section 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 (Seller's Conditions Precedent and Company Milestones), 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 the Daily Delay Damages for each Day following the tenth (10<sup>th</sup>) Day after 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").

(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 tenth (10<sup>th</sup>) Day after 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 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 (10<sup>th</sup>) 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 event, 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 (Seller's Conditions Precedent and Company Milestones). 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) (each such +\*---date, a "Seller's Conditions Precedent Date"), 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) Business Days of the Execution Date and the remaining 50% of the Development Period Security within ten (10) Business Days of the Effective Date.
- 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 its terms; (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 \$125/kW based on the BESS 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 Security and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form set forth in Attachment M (Form of Letter of Credit) to this Agreement from a bank doing business in the United States and subject to United States state or federal regulation, 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 doing business in the United States and subject to United States state or federal regulation, 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 Agreement or the GHG Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities), any amounts for which Company is entitled to reimbursement or indemnification under this Agreement, and any amounts necessary under Section 29.21(a)(2)(f) to fund Seller's Community Benefits Program. 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 Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security), which substitute letter of credit shall be procured no later than five (5) Business Days after expiration of the Letter of Credit.

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 for 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) ("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." The establishment of an L/C Proceeds Escrow shall not abrogate Seller's obligation to provide a substitute letter of credit under this Article 14 (Credit Assurance and Security). Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement, the IRS Letter Agreement or the GHG Letter Agreement, 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 the issuance of a substitute letter of credit satisfying the requirements of this Article 14 (Credit Assurance and Security), 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. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Security Funds through the L/C Proceeds Escrow shall be borne by Seller.

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 electric energy that was not stored from the Company System and discharged in accordance with this Agreement;
- (b) [RESERVED]
- (c) [RESERVED]
- (d) [RESERVED]
- (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 as provided in Section 2.8(b) (BESS Capacity Termination Rights);
- (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 four (4) consecutive BESS Measurement Periods as provided in Section 2.9(b) (BESS Annual Equivalent Availability Factor Termination Rights);
- (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 as provided in Section 2.11(b) (RTE Termination Rights);
- (h) if at any time subsequent to the Commercial Operations Date, the Facility is unavailable to provide any of the Energy Storage Services to Company 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 subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the BESS EFOF Performance Metric at the expiration of the BESS EFOF Cure Period, as provided in Section 2.10(b) (BESS Annual Equivalent Forced Outage Factor Termination Rights);
- (k) if at any time during the Term, Seller fails to comply with the requirements of Section 19.1 (Sale of the Facility) and Attachment P (Sale of Facility by Seller);
- (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;
- (l) Seller fails to comply with the Charging Energy obligations under Section 2.4(b) (Charging Energy Obligations); or
- (m) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, any portion or component of the Energy Storage Services (e.g., Discharge Energy), or the availability thereof, to any party other than Company.

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) a decision under Article 28 (Dispute Resolution), (ii) or an Independent Evaluator's decision under Article 23 (Process for Addressing Certain Revisions), 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 Certain Revisions), 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 technical and operational requirements 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 BESS 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 due to an Event of Default where Seller is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the BESS 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 pursuant Section 16.1 (Termination Due to Failure to Meet a Guaranteed Project Milestone Date) or Section 16.2 (Termination Due to an Event of Default). 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 under such sections, 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, any Partial Installation and the Company-Owned Interconnection Facilities, including, without limitation, closure of such permitting for the Facility, any Partial Installation and the Company-Owned Interconnection Facilities prior to or after the Transfer Date (but excluding, (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, provided, however, that such exclusion shall not apply to matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or (B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party, except as and to the extent that such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller

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

(c) Notice. If Seller shall obtain knowledge of any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.

(d) Indemnification Procedures.

(1) In case any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims) or Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.

(2) Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a

conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply, or shall cause an Indemnified Company Party to supply, Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim to the extent permitted by this Section 17.1(d)(2). Company shall not enter, and shall restrict any Indemnified Company Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

(3) Upon payment of any Losses by Seller, pursuant to this Section 17.1 (Indemnification of Company) or other similar indemnity provisions contained herein, to or on behalf of Company, Seller, without any further action, shall be subrogated to any and all claims that an Indemnified Company Party may have relating thereto.

(4) Company shall fully cooperate and cause all Company Indemnified Parties to fully cooperate, in the defense of or response to, any Claim subject to Section 17.1 (Indemnification of Company).

## 17.2 Indemnification of Seller.

(a) Indemnification Against Third Party Claims. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by or under common ownership and/or control with Seller relating to (i) (A) if Seller constructs the Company-Owned Interconnection Facilities, the

ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, excluding, however, matters discovered after the Transfer Date attributable to acts or omissions of Seller before the Transfer Date, or (B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the negligence or willful misconduct of an Indemnified Seller Party.

- (b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Seller but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Seller Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Company to comply with any Laws.
- (c) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.
- (d) Indemnification Procedures.
  - (1) In case any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under

this Section 17.2 (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld or delayed.

- (2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, if and to the extent that, in the opinion of Seller, such Claim involves the potential imposition of criminal liability on an Indemnified Seller Party or a conflict of interest between an Indemnified Seller Party and Company, in which case Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. Seller shall supply, or shall cause an Indemnified Seller Party to supply, Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section 17.2(d)(2). Seller shall not enter, and shall restrict any Indemnified Seller Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.
- (3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.

(4) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Seller).

ARTICLE 18  
INSURANCE

18.1 Required Coverage. Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. The insurance coverage required hereunder shall provide that it is primary with respect to Seller and Company. 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), Section 3 (Automobile Liability Insurance) and Section 9 (Pollution 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 30 Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. During the Term, Seller, upon Company's reasonable request, shall make available to Company for its inspection at Seller's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.

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

18.6 Application of Proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown 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 (a) its EPC Contractor is separately covered by liability insurance policies equivalent in type and monetary limits as those required of Seller, as specified in Attachment R (Required Insurance) excluding, however, the Failure to Supply endorsement required under Section 2(a)(viii) of Attachment R (Required Insurance); and (b) its EPC Contractor has required each of its subcontractors performing tasks directly related to the engineering, procurement, construction, energizing, pre-Commercial Operations testing and/or commissioning of the Facility are covered by insurance policies in type and in monetary amounts appropriate for the type of work such subcontractor is performing, including commercial general liability insurance that shall not be less than the greater of \$500,000 or the value of work to be performed by such subcontractor. All such insurance shall be provided at the sole cost of Seller or EPC Contractor or its aforementioned subcontractors.

18.10 General Insurance Requirements.

- (a) Each policy and certificate of insurance shall specifically provide the following: "This policy shall be considered to be primary liability insurance, which shall apply to any loss or claim before any contribution by any insurance that Company, its employees and/or agents may have in force."
- (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 the 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 the 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 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, 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 ("Subsequent Owner"), such Subsequent Owner shall, prior to operating the Facility for such purpose, have provided 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 availability of the Facility to provide the Energy Storage Services in response to Company Dispatch 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 the Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained, except, in the case of Seller's inability to obtain Governmental Approvals, such inability is attributable solely to the Governmental Authority responsible for issuing such approval where Seller has provided satisfactory evidence that: (i) all commercially reasonable measures have been taken by Seller to timely apply for such Governmental Approval and to timely respond to questions, revisions and clarifications required by such Governmental Authority in connection with such Governmental Approval; and (ii) all required information, requirements and conditions necessary to issue such Governmental Approval have been met;
- (e) [RESERVED]
- (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 receive 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 (Events 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 nor 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 the Parent Entity, a company with extensive experience developing, constructing, owning and operating utility-scale energy storage 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 each Partial In-Service Date and as of the Commercial Operations Date, as applicable, and for the extent of the Term, Discharge Energy shall be delivered to Company free and clear of all liens, security interests, claims and encumbrances or any other interest therein or thereto by any person.

(f) Prior to the commencement of, and at all times during the performance of any construction work on the Facility or Company-Owned Interconnection Facilities until Commercial Operations is achieved, all contractors, at any tier, including, but not limited to, the EPC Contractor and any subcontractors performing such construction work, shall enter into and be subject to a project labor agreement with the Covered Entities.

ARTICLE 23  
PROCESS FOR ADDRESSING CERTAIN REVISIONS

23.1 Revisions to Technical and Operational Requirements and Resilience Requirements.

- (a) Revisions to Technical and Operational Requirements. The Parties acknowledge that, during the Term, certain Technical and Operational Requirements 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 technical and operational requirements. 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.
- (b) Revisions to Resilience Requirements. The Parties acknowledge that, during the Term, certain Resilience Requirements may be revised or added to facilitate necessary improvements to improve the resilience of the Company System with respect to withstanding environmental risks, such as hurricanes, wildfires, earthquakes and/or flooding.

## 23.2 Company Request.

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

23.3 Seller Proposal. Upon receipt of a Seller Proposal submitted in response to a Company Request, Company will evaluate such Seller 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 Seller Proposal submitted at Seller's own initiative.

23.4 Revision Document. If, following Company's evaluation of a Seller Proposal, Company desires to consider implementing the changes addressed in such Proposal (including, if applicable, any Technical and Operational Requirements Revisions or Resilience Requirements Revisions), Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Seller Proposal, and Company and Seller shall proceed to negotiate in good faith a Revision Document setting forth the specific revisions to the Agreement that are necessary to implement the changes addressed in the Seller Proposal (including, if applicable, any Technical and Operational Requirements Revisions or any Resilience Requirements Revisions). 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 the Seller Proposal in question, including but not limited to the proposed revisions to the Agreement and the Modification Pricing Impact. Any adjustment to the payments due from Company under this Agreement pursuant to a Technical and Operational Requirements Revision Document shall be limited to the Technical and Operational Requirements Pricing Impact (other than with respect to the financial consequences of non-performance as to a Technical and Operational Requirements Revision). The time periods set forth in a Revision Document as to the effective date for the Revision Modification shall be measured from the date the PUC Revision Order becomes non-appealable as provided in Section 23.6 (PUC Revision Order).

23.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Revision Document within 180 Days of Company's written notice to Seller pursuant to Section 23.4 (Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such 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 Revision Document as described in Section 23.4 (Revision Document).

23.6 PUC Revision Order. No Revision Document shall constitute an amendment to the Agreement unless and until a PUC Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Revision Order), such PUC 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 (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 Revision Document or to initiate dispute resolution under Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Revision Document.

23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Certain Revisions) to the contrary, Seller shall have no obligation to respond to more than one Technical and Operational Requirements Information Request and one Resilience Requirements Information Request during any 12-month period.

23.9 Limited Purpose. This Article 23 (Process for Addressing Certain Revisions) is intended to specifically address: (a) necessary revisions to the Technical and Operational Requirements and Telemetry and Control interfaces to

enhance integration of intermittent resources and energy storage resources onto the 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 (b) necessary revisions to the Resilience Requirements to support the resilience of the Facility and/or Company-Owned Interconnection Facility. This Article 23 (Process for Addressing Certain Revisions) is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions in accordance with the provisions of this Article 23 (Process for Addressing Certain Revisions) 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 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 Revision Document. The Independent Evaluator shall be reasonably qualified and expert in battery energy storage systems, matters relating to the Technical and Operational Requirements, Resilience Requirements, financing, and energy storage 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) If the Revision Document is for purposes of implementing Technical and Operational Requirements Revision(s):
  - (A) The Technical and Operational Requirements Revision(s);
  - (B) The technical feasibility of complying with the Technical and Operational Requirements Revision(s) and likelihood of compliance;
  - (C) How Seller would comply with the Technical and Operational Requirements Revision(s); and
  - (D) Reasonably expected net costs and/or lost revenues associated with the Technical and Operational Requirements Revision(s);
- (2) [RESERVED]
- (3) If the Revision Document is for purposes of implementing Resilience Requirements Revision(s):
  - (A) The Resilience Requirements Revision(s);
  - (B) The technical feasibility of complying with the Resilience Requirements Revision(s) and likelihood of compliance;
  - (C) How Seller would comply with the Resilience Requirements Revision(s); and
  - (D) Reasonably expected net costs and/or lost revenues associated with the Resilience Requirements Revision(s);
- (4) The appropriate level, if any, of the Modification Pricing Impact in light of the foregoing; and
- (5) Contractual consequences for non-performance (including any non-performance of any revised Technical and Operational Requirement(s) and any revised Resilience Requirement(s)) that are commercially reasonable under the circumstances.

- (b) Within ninety (90) Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed forty-five (45) Days, to render a decision.
- (c) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.
- (d) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Technical and Operational Requirements Revision: (i) if it is not technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Technical and Operational Requirements Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to comply with a Technical and Operational Requirements Revision, the Independent Evaluator shall incorporate such Technical and Operational Requirements Revision into a Revision Document including (aa) Revision Modifications, (bb) pricing terms that incorporate the Technical and Operational Requirements 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 Technical and Operational Requirements Revision(s). In addition to the 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) [RESERVED]
- (f) The following standards shall be applied by the Independent Evaluator in rendering his or her decision with respect to a Resilience Requirements Revision:
  - (i) if it is not technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Resilience Requirements Revision (unless the Parties agree otherwise);
  - (ii) if it is technically or operationally feasible for Seller to comply with a Resilience Requirements Revision, the Independent Evaluator shall incorporate such Resilience Requirements Revision into a Revision Document including (aa) Resilience Requirements Modifications, (bb) pricing terms that incorporate the Resilience Requirements Modification 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 Resilience Requirements Revision(s). In addition to the 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.
- (g) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above \$30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

23.11 HERA Law. The provisions of this Article 23 (Process for Addressing Certain Revisions) 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 ("ASC") 810, Consolidation ("FASB ASC 810"), (ii) FASB ASC 842, Leases, (iii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 842 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. Such financial statements shall be provided by Seller to Company within sixty (60) Days after Company's request but no later than fifteen (15) Days after the first reporting period upon which Company must consolidate Seller's financial results, and thereafter without the need for any prior request, as soon as reasonably practicable but in no event later than fifteen (15) Days after the end of each subsequent reporting period. If Seller does not normally prepare audited financial statements for the periods requested, Company shall reimburse Seller fifty percent (50%) of

the reasonable and verifiable costs of having necessary audits performed and preparation of the audited financial statements; provided that the foregoing reimbursement shall not include the costs, whether actual or estimated, of preparing unaudited financial statements. 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 negotiate and may effectuate a sale of the Facility to Company at (i) if the sale occurs, if applicable, prior to Seller's tax equity investors have been paid their targeted internal rate of return, the greater of the Make Whole Amount determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by 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, if applicable, on or after the date that Seller's tax equity investors have been paid their targeted internal rate of return, 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).

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 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller).

ARTICLE 26  
EQUAL EMPLOYMENT OPPORTUNITY

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

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

ARTICLE 27  
SET OFF

Company shall have the right to set off any payment due and owing by Seller, including but not limited to any payment under this Agreement and any payment due under any award made under Article 28 (Dispute Resolution), against Company's payments of subsequent monthly invoices as necessary.

ARTICLE 28  
DISPUTE RESOLUTION

28.1 Good Faith Negotiations. Before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the dispute resolution procedures set forth in Article 28 (Dispute Resolution), the presidents, vice presidents, or authorized delegates from both Seller and Company, having full authority to settle the Dispute(s), shall personally meet in Honolulu, Hawai'i and attempt in good faith to resolve the Dispute(s) (the "Management Meeting"). The Parties shall endeavor to meet within fourteen (14) Days of a Party's request for a Management Meeting and the Parties may agree to meet remotely via an agreed upon video conferencing platform (e.g., Microsoft Teams, Zoom, Cisco Webex, etc.) if such would facilitate scheduling the Management Meeting within the desired fourteen (14) Days. A Party's refusal to meet within thirty (30) Days of a request for such a meeting by a Party shall be deemed a material default of this Agreement.

28.2 Mediation. Any and all Dispute(s) arising out of or relating to this Agreement which remain unresolved for a period of twenty (20) Days after the Management Meeting takes place 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 Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules") of the American Arbitration Association ("AAA") then in effect. If the Parties agree to submit the Dispute(s) 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 AAA) and shall otherwise each bear their own mediation costs and attorneys' fees.

28.3 Arbitration. If the Parties do not agree to mediation of the Dispute(s) within thirty (30) Days after the Management Meeting, or if the Parties submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within thirty (30) Days after completion of the mediation, either Party may initiate arbitration by submitting a demand for arbitration within thirty (30) Days after the date of either of the above events. Such Dispute(s) shall be resolved in Honolulu, Hawai'i by arbitration administered by AAA under its then-current Commercial

Rules, including, if appropriate, the Procedures for Large Complex Commercial Disputes.

- (a) Initiation of Arbitration. A Party submitting the Dispute(s) to arbitration shall initiate the arbitration pursuant to the Commercial Rules and shall identify provisions of this Agreement that such Party alleges is subject to the Dispute(s). A respondent shall file an answering statement and/or counterclaim within twenty-one (21) Days of receipt of notice from AAA of the initiation of the arbitration. Any response to a counterclaim shall be filed within twenty-one (21) Days of receipt of such counterclaim.
- (b) Selection of Arbitrator. If a Party initiates arbitration of the Dispute(s), the Parties shall attempt to mutually agree on one person to serve as arbitrator of the Dispute(s). If the Parties are unable to mutually select an arbitrator within fourteen (14) Days of filing an answering statement and/or counterclaim, the arbitrator will be appointed pursuant to the Commercial Rules, provided, however, that the Parties may agree to extend the time to mutually select an arbitrator. The Parties agree that, regardless of the amount in controversy in the Dispute(s), one person shall serve as arbitrator.
- (c) Authority of Arbitrator, Judicial Review. The award rendered by the arbitrator shall be final, non-appealable and binding on the Parties and may be entered in any court having jurisdiction. The arbitrator need not enter a reasoned award unless a Party requests such award prior to the selection of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate. Judgment on the award shall be final and non-appealable.
- (d) Confidentiality. Except as may be required by applicable law or to enter an award pursuant to Section 28.3(c) (Authority of Arbitrator, Judicial Review), neither Party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right.

28.4 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 Certain Revisions) or (ii) an Independent AF Evaluator under Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator).

28.5 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.

28.6 Waiver of Trial by Jury. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding, suit, or action arising out of or related to this Agreement.

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 by the Parties. Any waiver hereunder shall not be valid unless in writing and signed 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 Technical and Operational Requirements in Section 3 (Technical and Operational Requirements) 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](mailto:legalnotices@hawaiianelectric.com)

Seller

By Mail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Delivered by Hand or Overnight Delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By E-mail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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

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 Energy Storage Purchase Agreement, the IRS Letter Agreement and the GHG Letter Agreement (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. Each of the Parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding, suit, or action arising out of or related to this Agreement.

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      [RESERVED]

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 Technical and Operational Requirements 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 storage costs (and related revenue taxes) that Company incurs under this Agreement in Company's Energy Cost Recovery Clause, or equivalent, to the extent such costs are not included in Base Rates for the Term;
  - (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 storage costs and the Lump Sum Payment to be incurred by Company as a result of this Agreement are reasonable;
  - (5) Company's energy storage arrangements under this Agreement, pursuant to which Company will purchase the availability of the Facility's Energy Storage Services from Seller, are prudent and in the public interest; and
  - (6) determine that the \_\_\_\_ kV line extension that is included in the Company-Owned Interconnection Facilities should be constructed above the surface of the ground, if applicable.
- (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 Engagement.

- (a) The Parties acknowledge that, prior to the Execution Date, Seller provided to Company a comprehensive community engagement and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project ("Community Engagement Plan").
  - (1) General Requirements. Seller agrees to work with the Host Community and 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, Governmental Approvals, Project schedule, plan for reporting construction related updates, labor and prevailing wage commitment (if any), and a Community Outreach Plan which factors in monthly Project status updates. The "Host Community" shall refer generally to the residential community in the immediate vicinity of the Project that would be affected by the ongoing development, construction, operation and maintenance of the Project, including but not limited to increased traffic, construction noise, odors, dust and debris, modified or affected view planes and other environmental effects. Seller's determination of the Host Community shall be subject to review by Company to ensure that the Host Community has been satisfactorily identified and that the benefits of Seller's Community Benefits Program are targeting specific needs identified by the Host Community.

- (2) Community Benefits Program. Seller shall also provide Seller's plan for the creation of the mandatory community benefits program (the "Community Benefits Program") required under the RFP and included in Seller's RFP Proposal. [NOTE: COMPANY RESERVES THE RIGHT TO REQUIRE REVISIONS AND/OR ADDITIONAL PROVISIONS TO SELLER'S COMMUNITY BENEFITS PROGRAM TO ADDRESS ISSUES IDENTIFIED IN THE RFP EVALUATION PROCESS].

- (a) The Community Benefits Program shall be designed to specifically benefit the needs identified by the Host Community affected by the Project by addressing the Host Community's identified needs, including but not limited to, one or more of the following: infrastructure improvements, enhanced educational opportunities, jobs and job training, historical and/or cultural protection, neighborhood beautification, identified mitigation of Project effects on the Host Community, and any other similar community benefit. Any material revision(s) to the Community Benefits Program (from that

proposed in Seller's RFP Proposal) shall be subject to Company's prior review and approval before implementation and funding by Seller.

- (b) Seller shall implement the Community Benefits Program no later than six (6) months after the Commercial Operations Date, with the requirement that decisions on the community benefits and distribution of the first annual payment of funds be completed no later than six (6) months after program implementation.
- (c) Annually, Seller shall re-fund the Community Benefits Program with the required amount even if all or any portion of prior year's funds remains to be distributed. The annual funding amount for Seller's Community Benefit Program shall be no less than \$3,000 per MW of BESS Contract Capacity per year, provided however, that Seller's Community Benefits Program may commit to fund a higher amount above the applicable minimum at Seller's option (the "Community Benefits Funding Amount"). With Company's review and prior approval, other methods and timing of funding the Community Benefits Funding Amount may be proposed provided that such alternative methods do not materially alter or diminish the intended effects of an annual funding requirement. Approval will be at Company's sole discretion.
- (d) Results of the Community Benefits Program, including but not limited to, disclosure of the community benefit(s) funded, the recipients and amounts distributed and a summary of the community benefit(s) to be expected from such funding, shall be annually reported and publicly available for review at any time on Seller's website and upon request.
- (e) It shall be Seller's sole responsibility to ensure that the Community Benefits Program

is properly funded by Seller and that funds are distributed for the benefit of the needs identified by the Host Community on a timely basis. The Community Benefits Program shall be subject to audit by Company no more than once every two years during the Term to ensure compliance by Seller, provided, however, that if Company receives credible evidence and/or reports of abuse or neglect of the Community Benefits Program by Seller or any of its partners administering the program (a "Program Complaint"), Company may conduct an immediate audit notwithstanding that a prior audit had been conducted in the year immediately preceding the Program Complaint. Seller shall cooperate with Company's reasonable requests to Seller in its efforts to complete any audit. Seller shall reimburse Company for actual expenses incurred in completing any audit (whether biennial or as a result of a Program Complaint) of Seller's Community Benefits Program. Seller shall additionally pay Company for Company's time and effort, e.g., labor and overhead, to complete an audit necessitated by a Program Complaint.

- (f) If Seller fails to fund any annual funding requirement for the Community Benefits Program, then Seller, upon demand by Company, shall make the required annual funding within thirty (30) Days of Company's demand. If Seller does not make such funding after demand by Company within the time required, Company shall be entitled to, at Company's sole option, setoff the funding requirement from amounts due to Seller or draw upon Operating Period Security in the amount necessary so that Company can direct such funds to the Community Benefits Program.
- (g) If an audit discovers and confirms that funds previously distributed under the Community Benefits Program were misused or otherwise not expended for the benefit of

the needs identified by the Host Community in accordance with the program, Seller shall, in addition to the annual funding requirement for the next year of the program, also re-fund the program with the amount of the misused funds for reallocation and distribution.

- (h) If Seller, with Company's prior approval, administers its own Community Benefits Program (including any program administered by an affiliate or non-profit foundation of Seller), and it is discovered and confirmed that Seller has not funded its Community Benefits Program and/or has not distributed such funds in accordance with the program (as such may be revised with Company's prior review and approval) in any year during the Term, Seller shall double its funding to and distribution of funds from the program in the subsequent year. If Seller fails to properly fund or distribute funds in accordance with the program for two (2) years or more, Company may disqualify Seller's Community Benefits Program and require Seller to administer a new program with a Host Community-based non-profit entity capable of administering a new Community Benefits Program for and on behalf of Seller.
- (3) Seller's Community Outreach 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 Plan.
- (b) The Parties also acknowledge that, within thirty (30) Days of Proposal submission, Seller provided reasonable advance notice of a minimum of fourteen (14) days and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with:
  - (i) a reasonable opportunity to learn about the

proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; (iii) information regarding the Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have fourteen Days from the date of said public meeting to submit written comments to Company and/or Seller for inclusion for evaluation of the RFP Proposal and 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, within 21 days after the public meeting; provided, however, that if members of the public submit comments to the Company directly, then Company shall share such comments with Seller for inclusion in Company's PUC Application. 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) The Parties also acknowledge that, subsequent to selection to the RFP final award group and prior to the Execution Date, Seller provided reasonable advance notice and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided the neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; (iii) an update regarding the Seller's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report as required by the RFP; and (iv) 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.

- (d) 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.
- (e) 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 Engagement) 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.

- (f) 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 and the E-mail address and phone number for Seller's Community Representative are as follows:

Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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, 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 the islands of Maui, Moloka'i and Lāna'i (totaling 4.0% as of the Execution Date) would include an additional 4.166%] [plus surcharge on Hawai'i island (totaling 4.5% as of the Execution Date) would include an additional 4.712%]** **[plus surcharge on the island of O'ahu (totaling 4.5% as of the Execution date) would include an additional 4.712%]** so 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 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), Section 29.25 (Survival of Obligations), Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities) and Section 1(d) (Seller's Right to Transfer) and Section 2(d) (Right of First Refusal) of Attachment P (Sale of Facility by Seller); and
- (f) Seller's obligations under Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of Attachment G (Company-Owned Interconnection Facilities) to pay interconnection costs and Section 4 (Ongoing Operation and Maintenance Charges) of Attachment G (Company-Owned Interconnection Facilities) to pay operation and maintenance costs incurred up to the date of termination of the Agreement.

29.26 Certain Rules of Construction. For purposes of this Agreement:

- (a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.

- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.
- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
- (f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.
- (g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

29.27 Agreement is Not a Design or Construction Contract.

This Agreement is not a design or construction contract. The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the laws of the State of Hawai'i. Notwithstanding anything to the contrary, all work related to the design, engineering, and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawai'i and intend to develop the Facility in full compliance with all applicable state laws. For the avoidance of doubt, in all instances where this Agreement refers to Seller performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Seller in accordance with laws of the State of Hawai'i.

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

IN WITNESS WHEREOF, Company and Seller have executed this Agreement as of the day and year first above written.

**HAWAIIAN ELECTRIC COMPANY, INC.**  
or  
**MAUI ELECTRIC COMPANY, LIMITED**  
or  
**HAWAI'I ELECTRIC LIGHT COMPANY,  
INC.**

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

("Company")

**[NAME OF PROJECT ENTITY]**

By \_\_\_\_\_  
Name:  
Its:

By \_\_\_\_\_  
Name:  
Its:

("Seller")

## SCHEDULE OF DEFINED TERMS

For the purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"Acceptance Notice": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Seller) to this Agreement.

"Acceptance Test": A test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in Section 2(f) (Acceptance Test Procedures) 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.

"Agreement": Shall have the meaning set forth in the preamble before the "Whereas" clauses on page 1 of the document captioned "Energy Storage Purchase Agreement".

"Appeal Period": Shall have the meaning set forth in Section 29.20(b) (Non-appealable PUC Approval Order) of this Agreement.

"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.

"BAFO": Shall mean Seller's Best and Final Offer, as such term is defined in the RFP.

"BAFO Lump Sum Payment": Shall be as described in Section 2 (Lump Sum Payment) of Attachment J (Company Payments for Dispatchability and Availability of BESS) to this Agreement.

"Battery Energy Storage System" or "BESS": The battery energy storage system as described in Section 5 of Attachment A (Description of Storage Facility) to this Agreement, together with all other equipment, devices, and associated appurtenances owned, controlled, operated and managed by Seller in connection with or to facilitate, the storage, transmission, delivery or furnishing by Seller to Company of the electric energy stored in the BESS.

"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 Aux Loads": The energy that the Facility loses and/or uses in the process of charging and discharging energy under Company dispatch. BESS Aux Loads do not include the load consumed by the BESS when not charging or discharging energy, but connected to the Company System, as those loads are considered Station Service. BESS Aux Loads are expected to be variable with charging or discharging, and represent an increase in consumption above Station Service while charging or discharging energy.

"BESS Capacity Cure Period": Shall have the meaning set forth in Section 2.8(b) (BESS Capacity Termination Rights).

"BESS Capacity Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"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": \_\_\_/\_\_\_ MW/MWh, which represents the anticipated maximum net instantaneous active power and maximum energy storage capability (MWh stored that represents a 100%

State of Charge) for export to the Point of Interconnection upon Commercial Operations as proposed by Seller in its RFP Proposal. The BESS Contract Capacity (MW) shall not be less than the Net Nameplate Capacity.

"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; Termination Rights).

"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.

"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.

"Business Day": Any calendar day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.

"Capacity Available for Dispatch": The calculated net 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 (iii) the BESS State of Charge and (iv) Station Service and BESS Aux Loads.

"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.

"Charging Energy" means the amount of Energy withdrawn from the Company System to be stored by the Facility and discharged at a later time, as measured in MWh by the Revenue Metering Package. Charging Energy does not include Energy used to serve BESS Aux Load or Energy required to charge the Facility for the purposes of an Outage or testing.

"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 Storage Units for the entire Facility have passed a Control System Acceptance Test, (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, Seller has issued a Source Code LC as required in Section 6(b)(ii)(A) (Establishment of Source Code Security) of Attachment B (Facility Owned by Seller), (v) Seller has demonstrated that the Facility satisfies the BESS Capacity Performance Metric and RTE Performance Metric, in accordance with the terms of Attachment W (BESS Tests), and (vi) 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 the Agreement.

"Company Dispatch": Company's right, through supervisory equipment or otherwise, to direct or control the provision of all aspects of the Energy Storage Services consistent with this Agreement (including, without limitation, Good Engineering and Operating Practices and the requirements set forth in Section 3 (Technical and Operational Requirements) 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 Milestone Date": Shall have the meaning set forth in Section 13.8 (Company Milestones).

"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 Request": Each Technical and Operational Requirements Information Request and each Resilience Requirements Information Request.

"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 of resources 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 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 any Partial Installation, as applicable, and 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 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.
- Active Power control interface - dispatch MW setpoint, etc.
- Voltage control interface - voltage kV setpoint, etc.
- Power factor control interface - power factor setpoint, etc.

"Covered Entities": Shall mean the International Brotherhood of Electrical Workers, Local 1260, the Bricklayers & Allied Craftworkers, Local Union 1, the Operating Engineers, Local Union 3, District Council 50 (Local Union 1791, Local Union 1889, Local Union 1926, and Local Union 1944), the Elevator Constructors, Local Union 126, the Heat & Frost Insulators & Allied Workers, Local Union 132, the United Union of Roofers, Waterproofers & Allied Workers, Local Union 221, the International Association of Sheet Metal, Air, Rail & Transportation Workers, Local Union 293, the Laborers International Union of North America, Local Union 368, the Iron Workers, Local Union 625, the International Brotherhood of Boilermakers, Local Union 627, the Operative Plasterers and Cement Masons, Local Union 630, the Plumbers and Fitters, Local Union 675, the Hawaii Teamsters & Allied Workers, Local Union 996, and the International Brotherhood of Electrical Workers, Local Union 1186.

"Daily Delay Damages": \$ \_\_\_\_\_ per Day. **[DRAFTING NOTE: Calculate as follows: (Contract Capacity x \$50/kW ÷ 180 Days = Daily Delay Damages.)]**

"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.

"Development Period Security": An amount equal to \$75/kW of the BESS Contract Capacity.

"Discharge Energy": All Energy discharged from the Facility as measured in MWh by the Revenue Metering Package.

"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).

"E-mail": Shall have the meaning set forth in Section 29.3 (Notices).

"Effective Date": Shall mean the same date as the Non-appealable PUC Approval Order Date.

"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": Alternating current electrical energy measured in kilowatthours (kWh).

"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.

"Energy Cost Recovery Factor": The "Energy Cost Recovery Factor" for customers specified by Company, filed publicly with the PUC and also made available online at Company's website (or upon request). The Energy Cost Recovery Factor is based on Company's costs for fuel and purchased energy, which is recalculated on a monthly basis in cents/kWh. If the Energy Cost Recovery Factor filed by the Company is discontinued, the Parties shall mutually agree upon a suitable and substantially similar factor or rate to use as a successor to the Energy Cost Recovery Factor.

"Energy Storage Services": Collectively or individually, the acceptance of Charging Energy at the Point of Interconnection from the Company System, the storing of Energy in the Partial Installation or the Facility, as applicable, the delivery of Discharge Energy to the Point of Interconnection from the Facility, in accordance with Company Dispatch and the technical and operational requirements of Attachment B (Facility Owned by Seller) and the terms of 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)(3) (Endpoint and Server Security) of Attachment B (Facility Owned by Seller) to this Agreement.

"EPC Contractor": Shall mean Seller's engineering, procurement and construction contractor for the Facility.

"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 Charging Energy Costs": Shall have the meaning set forth in Section 2.4(b) (Charging Energy Obligations) of this Agreement.

"Excess Standby Consumption Cost": Shall have the meaning set forth in Section 2.13(b) (Outage Due to Company Request).

"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.

"Facility": Seller's battery energy storage system that is the subject of this Agreement, including all Storage Units, 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 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).

"FASB ASC 842": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"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.

"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 Cost Comparison": Shall mean a cost comparison, confirmed as accurate by an officer of Seller (or other documentation reasonably acceptable to Company), and which illustrates the difference between the (1) financing costs Seller estimated for each of its construction financing and its long-term financing, as applicable, when it submitted its BAFO, consistent with the indicative costs and fees and any other documentation Seller received from potential lenders and financing parties (and submitted as part of its RFP Proposal) supporting such estimated financing costs, and (2) Seller's actual financing costs for its construction financing or long-term financing, as applicable, as supported by executed financing agreements and/or other documentation of costs paid by Seller to lenders or other financing parties to complete the Construction Financing Closing Milestone or to close on long-term financing, as applicable.

"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.

"Force Majeure": An event that satisfies the requirements of Section 21.1 (Definition of Force Majeure) and is consistent with Section 21.2 (Events That Could Qualify as Force Majeure) but not excluded by Section 21.3 (Exclusions From Force Majeure).

"Force Majeure Notice": Shall have the meaning set forth in Section 21.4 (Satisfaction of Certain Conditions).

"GAAP": Shall have the meaning set forth in Section 24.5(a) (Consolidation).

"GDPIPD" or "Gross Domestic Product Implicit Price Deflator": Shall mean the index value shown in the United States Department of Commerce, Bureau of Economic Analysis ("BEA") publication entitled "Implicit Price Deflators for Gross Domestic Product", Table 1.1.9, Line 1, for each quarter of the calendar year (BEA Interactive Data Application), or a successor publication or index, which may be used to adjust the BAFO Lump Sum Payment.

"GDPIPD<sub>BAFO Submission</sub>": [insert value], which represents the GDPIPD as of the calendar quarter in which Seller submitted its BAFO Lump Sum Payment.

"GDPIPD<sub>PUC Approval</sub>": Shall mean the latest GDPIPD released as of the PUC Approval Order Date.

"GDPIPD Compare Rate": Shall have the meaning set forth in Section 2(a) (BAFO Lump Sum Payment Adjustment) to Attachment J (Company Payments for Dispatchability and Availability of BESS).

"GHG Letter Agreement": Shall mean the letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the greenhouse gas emissions analysis to be completed in connection with the application with the PUC for regulatory approval of this Agreement.

"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, including fuel and spare parts inventories, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.
- (b) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.
- (c) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.
- (d) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
- (e) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as steam pressure, temperature, moisture content, chemical content, quality of make-up water, operating voltage, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.
- (f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for similarly situated battery energy storage systems/facilities, considering Company's isolated island setting, and will function properly

over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"Governmental Approvals": 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.

"Guaranteed Commercial Operations Date": \_\_\_\_\_, which is the date 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 Non-Refundable Tax Credit": Shall mean any Hawai'i state tax credit against Hawai'i source income for which (1) the Claiming Entity is eligible on the Commercial Operations Date or thereafter with respect to the Facility (whether such eligibility is based on investment in battery energy storage technologies incorporated into the Facility or otherwise); and (2) 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 Refundable Tax Credit": Shall mean any Hawai'i state tax credit against Hawai'i source income for which (1) the Claiming Entity is eligible on the Commercial Operations Date or thereafter with respect to the Facility (whether such eligibility is based on investment in battery energy storage technologies incorporated into the Facility or otherwise); and (2) 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.

"HEI": Shall have the meaning set forth in Section 19.7 (Assignment By Company).

"HERA": The Hawai'i Electric 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.

"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 AF Evaluator": A person empowered, pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to resolve disagreements due to failure of the Parties to resolve a Quarterly Report Disagreement.

"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 Revision Document.

"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 Hawai'i state tax credits relevant to battery energy storage technologies; and (ii) who is neutral, impartial and not predisposed to favor either Party.

"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, receive electric energy from, 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 Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreement to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Technical and Operational Requirements for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"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.

"Investment Grade Lump Sum Payment": Shall mean the Investment Grade Lump Sum Payment (\$/year) amount provided by Seller in its BAFO.

"Investment Grade Status": A credit rating for Company's senior unsecured long-term debt obligations or an issuer credit rating for the Company, in each case, without regard for third-party credit enhancements, meeting at least two out of three of the following:

- (1) BBB- or higher for S&P Global Ratings, or any successor by law;
- (2) BAA3 or higher by Moody's Investor Services, Inc., or any successor by law; or
- (3) BBB- or higher by Fitch Ratings, Inc., or any successor by law.

"IPP Bill": H.B. 974 and S.B. 1501 from the 2025 Hawai'i State Legislative Session, or any subsequent similar bill.

"IRS Letter Agreement": The system impact study and Facility study letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"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 (including, but not limited to, executive 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 purposes of assessing liquidated damages for failure to satisfy any of the Performance Metrics, the "LD Assessment Date" is the Day following the expiration of the 10-Business Day period provided for Company to submit, pursuant to Section 2(a) (Notice of Disagreement With Quarterly Report) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, a Notice of Quarterly Report Disagreement concerning any calculation material to the assessment of such liquidated damages.

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

"Lump Sum Payment": \$ \_\_\_\_\_, representing the payment to be made by Company to Seller in exchange for Seller making the Energy Storage Services of the Facility available for Company Dispatch. **[DRAFTING NOTE: TO BE INCORPORATED BASED ON RESPONSE TO RFP.]** When necessary to account for the availability of some but not all of the Facility, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each individual unit and shall be calculated and adjusted as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Dispatchability and Availability of BESS) 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 without manual intervention; (c) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

"Management Meeting": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"Modification Pricing Impact": Each Technical and Operational Requirements Pricing Impact and Resilience Requirements Modification Pricing Impact, as applicable.

"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).

"MW": Megawatt. Unless expressly provided otherwise, all MW values stated in this Agreement are alternating current values and not direct current values.

"NERC GADS": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics).

"Net Amount": Shall mean, with respect to any Hawai'i Refundable and/or Non-Refundable 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 Refundable and/or Non-Refundable 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 Refundable and/or Non-Refundable Tax Credit.

"Net Nameplate Capacity": Shall mean the kW value set forth as the Net Nameplate Capacity in Attachment A (Description of Storage Facility) to this Agreement.

"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 the Non-Defaulting Party; Forward Contract) of this Agreement.

"Non-Investment Grade Lump Sum Payment": Shall mean the Non-Investment Grade Lump Sum Payment (\$/year) amount provided by Seller in its BAFO.

"Non-performing Party": The Party who is in breach of, or is otherwise failing to perform, its obligations under this Agreement.

"Notice of Quarterly Report Disagreement": Shall have the meaning set forth in Section 2(a) (Notice of Disagreement With Quarterly Report) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"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.

"Operating Period Security": Shall have the meaning set forth in Section 14.4 (Operating Period Security).

"Outage Energy Cost": Shall have the meaning set forth in Section 2.13(a) (Seller Outage).

"Parent Entity": \_\_\_\_\_, a **[state type of entity and jurisdiction of organization]**.

"Partial Installation": Shall mean the aggregate of all partial installations (in MW) of the Facility's total BESS Contract Capacity, each approved in accordance with Section 3.4 (Partial Commissioning), which has successfully completed the Control System Acceptance Test.

"Partial Installation Capacity": Shall mean the total energy storage capacity of a Partial Installation, as measured during the CSAT for a Partial Installation.

"Partial In-Service Date": Each date from which a Partial Installation may commence normal operations in parallel with the Company System.

"Parties": Seller and Company, collectively.

"Party": Each of Seller or Company.

"Performance Metrics": Each of the BESS Capacity Performance Metric, the BESS EAF Performance Metric, the BESS EFOF Performance Metric, and the RTE Performance Metric.

"Performance Metrics LDs": Shall have the meaning set forth in Section 2.12(a) (Payment of Performance Metrics LDs by Seller).

"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.

"Point of Interconnection" or "POI": The point of delivery of electric energy and/or capacity supplied by Seller to Company, depicted in Attachment E (Single-Line Drawing and Interface Block Diagram) based on the results of the IRS, 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.

"Preliminary Phase": Shall mean the period of preliminary operations between the first Partial Installation In-Service Date and the Commercial Operations Date.

"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 have the meaning set forth in Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller).

"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 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" or "Commission": 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 Revision Order": The decision and order of the PUC (i) approving the application or motion by the Parties seeking (a) approval of each Technical and Operational Requirements Revision and each Resilience Requirements Revision in question (if applicable) and (b) approval of the associated Revision Document in question, (ii) finding that the impact of the changes to Company's payment obligations under this Agreement on Company's revenue requirements is reasonable (if applicable), and (iii) approving the inclusion of the costs arising out of pricing changes in Company's Energy Cost Recovery Clause and/or Company's Purchase Power Adjustment Clause (or equivalent).

"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.

"Purchased Power Adjustment Clause": The provision in Company's rate schedules that allows Company to pass through to its customers Company's costs of purchased power non-energy.

"Qualified Consultant": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Seller) to this Agreement.

"Quarterly Report": For each BESS Measurement Period, the report of the data necessary for the calculation of the Performance Metrics to be provided by Seller to Company as set forth in Section 1 (Quarterly Report) of Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement or such other form as the Company may approve in writing.

"Quarterly Report Disagreement": Any disagreement arising out of the same Quarterly Report, including whether the applicable Performance Metrics have been satisfied.

"Ramp Rate": The rate at which the active power output of the Facility is changed in a constant manner over a fixed time in units of MW/minute. The ramp should be a constant slope over the duration of the change in output, and not a step change(s). See Attachment B (Facility Owned by Seller) for the specifications and limits to the Facility Ramp Rate.

"Recipient": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Reporting Milestones": Each of the milestones identified as such in Attachment L (Reporting Milestones).

"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.

"Resilience Requirements": The various standards for the Facility and the Company-Owned Interconnection Facility specified in Section 1(b)(iii)(I) (Resilience Requirements) of Attachment B (Facility Owned by Seller) and Section 2(a)(iii) of Attachment G (Company-Owned Interconnection Facility), as such

standards may be revised from time to time pursuant to Article 23 (Process for Addressing Certain Revisions) of this Agreement.

"Resilience Requirements Information Request": A written notice from Company to Seller proposing revisions to one or more of the Resilience Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

"Resilience Requirements Modification": For each Resilience Requirements 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 requirements of such Resilience Requirements Revision that exceed the requirements of any applicable Laws.

"Resilience Requirements Modification Pricing Impact": Any reimbursement as may be necessary to specifically reflect the recovery of the net costs specifically attributable to any Resilience Requirements 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 Resilience Requirements Modification is made effective following a PUC Revision Modification 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) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Resilience Requirements Modification.

"Resilience Requirements Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Resilience Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Resilience Requirements Revision and the basis therefor; (ii) the Resilience Requirements Modifications proposed by Seller to comply with the Resilience Requirements 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 Resilience Requirements Modification 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, that would be commercially reasonable under the circumstances, for failure to comply with the Resilience Requirements Revision; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Resilience Requirements Proposal may be issued either in response to a Resilience Requirements Information Request or on Seller's own initiative; provided, however, that, in accordance with Section 23.3 (Seller Proposal), Company shall have no obligation to evaluate a Resilience Requirements Proposal submitted at Seller's own initiative.

"Resilience Requirements Revision": A revision, as specified in a Resilience Requirements Information Request or a Seller-initiated Resilience Requirements Proposal, to the Resilience Requirements in effect as of the date of such Request or Proposal.

"Resilience Requirements Revision Document": A document specifying one or more Resilience Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Resilience Requirements Revision(s). A Resilience Requirements 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.

"Revision Document": Each Technical and Operational Requirements Revision Document and Resilience Requirements Revision Document, as applicable.

"Revision Modification": Each Technical and Operational Requirements Modification and Resilience Requirements Modification, as applicable.

"Revenue Metering Package": The revenue meter, revenue metering PTs and CTs, and secondary wiring.

"RFP": Company's Request for Proposals for \_\_\_\_\_, Island of \_\_\_\_\_, issued on \_\_\_\_\_, 20\_\_\_\_, to which Seller responded in proposing this Project.

"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.

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

"RTE Performance Metric": \_\_\_%, which represents the lowest acceptable efficiency of the Facility for a full charge and discharge cycle as more fully set forth in Attachment W (BESS Tests). **[DRAFTING NOTE: RTE PERFORMANCE METRIC TO BE TAKEN FROM RESPONSE TO RFP.]**

"RTE Ratio": 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.

"Second NUB Contract": Shall have the meaning set forth in Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Section 5": Shall have the meaning set forth in Section 5(g) of Attachment A (Description of Storage Facility) to this Agreement.

"Security Funds": Shall have the meaning set forth in Section 14.6 (Security Funds) of this Agreement.

"Seller": Shall have the meaning set forth in the preamble to the Agreement.

"Seller-Attributable System Conditions": Conditions on the Company System:

- (i) that result from either (aa) the Facility's storage and/or 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.

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

- (i) The Facility's failure to comply with any of the Technical and Operational Requirements, Good Engineering and Operating Practices, Governmental Approvals, Resilience Requirements, 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 Representatives;
- (v) The Company has reasonably decided that it is inadvisable for such inverter (or the Facility as a whole) to continue normal operations without a further Control System Acceptance Test as provided in Section

7(a) (Testing Requirements) of Attachment B (Facility Owned by Seller);

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

(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; or

(viii) The Facility fails to comply with Company Dispatch or other outage or deration as provided in Section 8.3 (Company Rights of Dispatch).

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

"Seller-Owned Interconnection Facilities": The Interconnection Facilities constructed and owned by Seller.

"Seller's Conditions Precedent Date": Shall have the meaning set forth in Section 13.8 (Company Milestones).

"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 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 Partial Installation or the Facility, as applicable, stated as the MWh of stored energy and as a percentage of the Partial Installation Capacity or the BESS Contract Capacity, respectively.

"Station Service": The energy used by the Facility associated with the communication equipment, substation, lighting, and balance of plant equipment at all times. Station Service loads are relatively fixed or constant and do not vary with BESS charging/discharging activities. Station Service does not include BESS Aux Loads, but includes the loads associated with

the BESS when not charging/discharging energy under Company Dispatch.

"Station Use": The energy used by the Facility for Station Service Energy and BESS Aux Loads.

"Station Use Metering Equipment": For the Facility, a Company-approved revenue quality meter (or meters), Company-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy consumed by the Facility for Station Service and BESS Aux Load.

"Storage Unit(s)": The BESS unit or units specified in Attachment A (Description of Storage Facility) through which Seller has agreed to make available the Energy Storage Services to Company pursuant to this Agreement.

"Study": 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 (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Subsequent Owner": Shall have the meaning set forth in Section 19.4 (Financing Document Requirements).

"Technical and Operational Requirements": The various technical and operational requirements for the operation of the Facility and the delivery of electric energy from the Facility to Company specified in Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller), including the availability of Energy Storage Services to Company, as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Certain Revisions) of this Agreement.

"Technical and Operational Requirements Information Request": A written notice from Company to Seller proposing revisions to one or more of the Technical and Operational Requirements then in effect and requesting information from Seller concerning such proposed revision(s).

"Technical and Operational Requirements Modifications": For each Technical and Operational Requirements 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 Technical and Operational Requirements Revision.

"Technical and Operational Requirements Pricing Impact": Any reimbursement, adjustment in the payment obligations of Company under this Agreement and/or the calculation of Performance Metrics LDs, as may be necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Technical and Operational Requirements Modification necessary to comply with a Technical and Operational Requirements 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 Technical and Operational Requirements Revision is made effective following a PUC Technical and Operational Requirements 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; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Technical and Operational Requirements Modification; and (iv) an adjustment in pricing or Performance Metrics, as applicable, necessary to compensate Seller for a reasonably expected reductions, if any, in the Lump Sum Payment, or reasonably expected increases in Performance Metrics LDs directly related to the Technical and Operational Requirements Modification.

"Technical and Operational Requirements Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Technical and Operational Requirements Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Technical and Operational Requirements Revision and the basis therefor; (ii) the Revision Modifications proposed by Seller to comply with the Technical and Operational Requirements 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 the Energy Storage Services provided to Company; (iv) the Technical and Operational Requirements 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, that would be commercially reasonable under the circumstances, for failure to comply with the Technical and Operational Requirements Revision; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Technical and Operational Requirements Proposal may be issued either in response to a Technical and Operational Requirements Information Request or on Seller's own initiative; provided, however, that, in accordance with Section 23.3 (Seller Proposal), Company shall have no obligation to evaluate a Technical and Operational Requirements Proposal submitted at Seller's own initiative.

"Technical and Operational Requirements Revision": A revision, as specified in a Technical and Operational Requirements Information Request or a Seller-initiated Technical and Operational Requirements Proposal, to the Technical and Operational Requirements in effect as of the date of such Request or Proposal.

"Technical and Operational Requirements Revision Document": A document specifying one or more Technical and Operational Requirements Revisions and setting forth the changes to the Agreement necessary to implement such Technical and Operational Requirements Revision(s). A Technical and Operational Requirements 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.

"Telemetry and Control": The interface between Company's EMS and the physical equipment at the Facility.

"Term": Shall mean the Initial Term.

"Termination Damages": Liquidated damages calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of 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.

"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 commencement of the first CSAT, whether for a Partial Installation or the entire Facility, 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).

ATTACHMENT A  
DESCRIPTION OF STORAGE FACILITY

**ALL ISLANDS**

1. Name of Facility: \_\_\_\_\_
- (a) Location: \_\_\_\_\_ (TMK No. \_\_\_\_\_)
- (b) Telephone number (for system emergencies): \_\_\_\_\_
- (c) 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) Design and capacity

Total Facility Capacity:

Energy Storage \_\_\_\_\_ / \_\_\_\_\_ kW/kWh

Total Number of Energy Storage Units:

**[number and size of each unit, e.g., one (1) Brand x, 200 kW/800 kWh; one (1) Brand Y, 300 kW/1200 kWh. Brand is Make & Model.]**

Description of Storage Equipment:

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

Individual Unit (Storage): **[if more than one type, list information for each type]**

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

Storage Unit:

Type \_\_\_\_\_

Voltage \_\_\_\_\_ V, \_\_\_\_\_ phase

Frequency \_\_\_\_\_ Hz

Class of Protection \_\_\_\_\_

Rated Current \_\_\_\_\_ A

Rated Power Factor See Exhibit B-2

- (b) Description of Facility SCADA and control system(s)
- (c) 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.
- (d) Seller may propose revisions to this Section 5 of Attachment A (Description of 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 the storage method; (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 Storage Facility) or the Agreement as a result of this Section 5(g) 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.

ATTACHMENT A  
DESCRIPTION OF STORAGE FACILITY

**[ALL ISLANDS]**

1. Name of Facility: \_\_\_\_\_
- (a) Location: \_\_\_\_\_ (TMK No. \_\_\_\_\_)
- (b) Telephone number (for system emergencies): \_\_\_\_\_
- (c) 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: The Facility stores electric energy in \_\_\_\_\_ chemistry cells and converts the stored AC electricity using \_\_\_\_\_ converters.]**

- (b) Design and capacity

BESS Contract Capacity: The anticipated maximum net instantaneous active power and maximum energy storage capability (MWh stored that represents a 100% State of Charge) for export at the Point of Interconnection of the Facility BESS upon Commercial Operations. The BESS Contract Capacity (MW) shall not be less than the Net Nameplate

Capacity. The BESS Contract Capacity of this Facility shall be:

\_\_\_\_\_ MW / \_\_\_\_\_ MWh

**[DRAFTING NOTE: BESS Contract Capacity MWh rating must be two (2) or four (4) hours at the BESS Contract Capacity MW output.]**

Total Number of Energy Storage Units (BESS Modules and Inverters):

**[number and size of each unit e.g. ten (10) Brand X, 1650 kW DC, BESS Modules; ten (10) Brand Y, 1500 kW AC BESS Inverters. Brand is Make & Model]**

Description of Storage Equipment:

**[For example: Describe the type of battery energy storage system equipment, capacity, and any special features (i.e., Modules per converter; plant controller information)]**

Maximum Auxiliary load:

kW	kVAR Consumed	kVAR Produced
----	------------------	------------------

Energy Storage Unit:

Type \_\_\_\_\_

Rated Power \_\_\_\_\_ kW (AC)

Voltage \_\_\_\_\_ V, \_ phase

Frequency \_\_\_\_\_ Hz

Class of Protection \_\_\_\_\_

Rated Current \_\_\_\_\_ A

- (c) Installed Nameplate Capacity: Shall be the aggregate sum of the net nameplate active power capability of all equipment installed.

The Installed Nameplate Capacity of this Facility shall be: \_\_ kW

- (d) Net Nameplate Capacity: Shall be the net instantaneous active power capability of the Facility at the point of interconnection, considering all equipment and power plant controls which may act to limit the Facility capability. The Net Nameplate Capacity shall not be less than the BESS Contract Capacity and shall not limit expected transient dynamic responses to system events.

The Net Nameplate Capacity of this Facility shall be: \_\_\_\_\_ kW

The maximum kW value set forth in the Interconnection Requirements Study.

- (e) Description of Facility SCADA and control system(s): **Describe the SCADA and control system utilized for Facility monitoring and control.**

- (f) Rated Energy Capacity: Shall be the amount of energy that the Facility is capable of discharging in megawatt-hours (MWh), measured at the Point of Interconnection, and measured between the maximum and minimum allowable states of charge, net all BESS Aux Loads, and considering any equipment limits. The Rated Energy Capacity shall not be less than the BESS Contract Capacity.

The Rated Energy Capacity of this Facility shall be: \_\_\_\_\_ MWh

- (g) Seller may propose revisions to this Section 5 of Attachment A (Description of 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 equipment deployed at the Facility from a standalone battery energy storage system; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS.

Any revision to this Section 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 Storage Facility) or the Agreement as a result of this Section 5(g) of Attachment A (Description of Storage Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Company's review and approval of Seller's proposed revisions to this Section 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 availability of Energy Storage Services to Company 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 establishing 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. The preceding sentence is without limitation to the provisions Article 19 (Transfers, Assignments, and Facility Debt) of the Agreement.

EXHIBIT A-1  
GOOD STANDING CERTIFICATES

EXHIBIT A-2  
OWNERSHIP STRUCTURE

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 (Modeling Requirements).

(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 is subject to changes and additions as part of any Technical and Operational Requirements Modifications. If Company directs any changes in or additions to the Facility records and operating procedures that are not part of any Technical and Operational Requirements 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**
- **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**

- **Telecommunications equipment for communications, telemetry and control**

- (iii) The Facility shall comply with the following: **[includes excerpts of language that may be requested by Company]**
- (A) Seller shall install a \_\_\_\_\_ kV gang operated, load breaking, lockable disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection shall be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker shall be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure shall be provided for metering transformers. From the high-voltage circuit breaker, another bus connection shall be made to another pole mounted disconnect switch, with surge protection.
- (B) Seller shall provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller shall provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller shall also provide within such area, space for Company to install its communications, supervisory control and data acquisition ("SCADA") equipment (remote terminal unit or equivalent) and certain relaying if necessary for the interconnection. Seller shall also provide AC and DC source lines as specified by Company. Seller shall provide a telephone line for Company-owned meters. Seller shall work with Company to determine an acceptable location and size of the fenced-in area. Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

- (C) Seller shall ensure that the Seller-Owned Interconnection Facilities have a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum, the relaying equipment will provide over and under frequency (81), negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip (if required). The settings shall meet or exceed the requirements for over/under frequency and voltage ride-through set forth in IEEE 2800-2022 Section 9 "Protection". Seller shall install protective relays that operate a lockout relay (86), which in turn will trip the main circuit breaker and not allow it to be reclosed without reset.
- (D) 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 and a disturbance monitor fault recorder, as specified by Company, at the Facility POI, 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), reactive response, etc. Such high resolution measurement data collection and provisioning requirements are intended to be in accordance with IEEE 2800-2022

Section 11 "Measurement data for performance monitoring and validation".

- (E) Company Telemetry and Control. Seller's equipment 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, inverters, BESS equipment, 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 of the voltage, var, or pf target setpoint at the point of regulation when operating in each regulation control mode;
  - (iv) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide the active power control requirements of this Agreement;
  - (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) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide

telemetry of equipment availability, Station Service Load, BESS Aux Load, energy storage system state and status, and the Facility's Capacity Available for Dispatch.

(vii) Seller shall provide such analog telemetry to Company via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 2 seconds; and

(viii) 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.

(ix) The Facility shall have the capability of a variable, settable value that represents the minimum charge maintained in the BESS for Company Dispatch. This value shall be set remotely by the Company in order to preserve energy for blackstart or other purposes.

(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) Cybersecurity and Critical Infrastructure Protection.

While the State of Hawaii is not currently under North American Electric Reliability Corporation ("NERC") jurisdiction, the Facility shall be designed and maintained with the criteria to meet at all times applicable NERC Critical Infrastructure ("CIP") Medium Impact compliance requirements as the same may be amended, updated and/or replaced during the Term.

- (i) Security Policies and Documentation. Seller shall implement and document security policies and standards in accordance with industry best practices (e.g., aligned with the intent of the current version of NERC CIP-003 for Medium Impact Assets) and consistent with Company's security policies and standards. Seller shall submit documentation describing the approach, methodology, and design to provide physical and cyber security (i.e., aligned with the intent of the current version of NERC CIP-003 for Medium Impact Assets) with its submittal of the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Material, 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, consistent with the current version of the National Institute

of Standards and Technology ("NIST") guidelines as indicated in Special Publication 800-53 "Security and Privacy Controls for Federal Information Systems and Organizations" and Special Publication 800-82 "Guide to Industrial Control Systems (ICS) Security". The system shall be designed with the criteria to meet applicable compliance requirements and identify areas that are not consistent with NIST guidelines and recommendations.

- The cybersecurity 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.
- Seller shall, at the request of Company or, in the absence of any request from Company, at least annually during the term of this Agreement, provide Company with updated documentation and diagrams including a record of changes.

(ii) [RESERVED]

(iii) Endpoint and Server Security.  
Seller shall implement appropriate endpoint and server security processes and practices commensurate with the

level of risk as determined by periodic risk assessments.

Seller shall (consistent with the following sentence) ensure that no Malware or unauthorized code is 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 shall periodically review, analyze and implement improvements to and upgrades of its Malware prevention and detection 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.

(iv) Cybersecurity Program. Seller shall establish and maintain a continuous cybersecurity program (i.e., aligned with the current version of NERC CIP-003 for medium impact Bulk Energy System Cyber Systems and NIST standards) that enables Seller (or its designated third party) to:

(aa) Define the scope and boundaries, policies, and organizational structure of the cybersecurity program.

(bb) Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Seller's Organization consistent

with guidance provided in the current version of NIST Special Publication 800-30 "Guide for Conducting Risk Assessments".

- (cc) Implement appropriate mitigating controls and training programs and manage resources.
- (dd) Monitor and periodically test the cybersecurity program to ensure its effectiveness. Seller shall review and adjust their cybersecurity program as appropriate for any assessed risks.
- (ee) Applicability is extended to Cloud Service providers and other third-party services the Seller may use.
- (v) Security Monitoring and Incident Response. Company and Seller shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training (i.e., aligned with the current version of NERC CIP-008). Seller shall, at the request of Company or, in the absence of any request from Company, at least quarterly, provide Company with a report of the incidents that it has identified and describe measures taken to resolve or mitigate.

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 (aa) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information; (bb)

investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller; (cc) cooperate with Company with respect to any such breach or unauthorized access or use; (dd) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (ee) 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.

If malicious software or unauthorized code is found to have been introduced into the Environment, Seller will promptly notify Company. 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 shall promptly report to Company the nature and status of all efforts to isolate and eliminate malicious software or unauthorized code.

- (vi) Monitoring and Audit. Seller shall provide information on available audit logs and reports relating to cyber and physical security (i.e., aligned with the current version of NERC CIP-007 R4). Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1(b)(iii)(G) (Cybersecurity and 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.

(vii) Contingency Plans. Seller shall implement and maintain a business continuity plan, a disaster recovery plan, and an incident response plan ("Contingency Plans" - i.e., aligned with the current version of NERC CIP-009) appropriate for the level of risk based on the impact of Seller's associated facilities, systems and equipment, which, if destroyed, degraded, misused, or otherwise rendered unavailable, would affect the reliable operation of the Company System. The Contingency Plans shall be provided to Company upon request. Such Contingency Plans shall be updated to reflect lessons learned from real recovery events.

(viii) Supply Chain Risk Management. Seller shall implement and maintain a supply chain risk management plan with implementation of appropriate security controls (i.e., aligned with the current version of NERC CIP-013). Controls should address the following security considerations: (1) software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls.

H. [RESERVED]

I. Resilience Requirements.

(i) The Facility shall be equipped with a voice communication system capable of contact with the Company during a Company System outage.

(ii) Facility design and implementation shall be such as to avoid any single

points of failure resulting in a loss of greater than **[142 MW - O`ahu, 20 MW - Maui, 30 MW - Hawai`i]** MW net or the total loss of the Facility power output if the Facility Net Nameplate Capacity is less than **[142 MW - O`ahu, 20 MW - Maui, 30 MW - Hawai`i]** MW. For single points of failure, this would apply to settings on the equipment that will cause equipment shutdown.

- (iii) Seller shall reserve space within the Site for possible future installation of Company-owned meteorological and safety equipment (such as wind speed, direction and relative humidity monitors, SODAR and irradiance monitors, cameras, etc.) and AC and DC source lines and connectivity infrastructure for such equipment as may be required depending on the Facility resource type and location. In the event Company decides to install such meteorological and/or safety 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.
- (iv) The Facility shall, at a minimum, be assigned a risk category in accordance with, and satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

- (v) Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.
- (c) Design Drawings, Bill of Material, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility, and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings and protection coordination study, including fuse selection and AC/DC Schematic Trip Scheme (part of design drawings), for the Facility to Company during the 60% design. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.
- (d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

- (e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval. **[COMPANY TO REVISE THIS SECTION 1(e) PRIOR TO EXECUTION FOR SPECIFICS OF THE PROJECT.]**
- (f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with Good Engineering and Operating Practices.
- (g) Active Power Control Interface.
- (i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Active Power Control Interface") necessary to interface the Facility active power controls with the Company System Operations Control Center for real power control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the net real power import or export from the entire Facility remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center as required 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 SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval. Company's review shall include design description and parameters for Seller's control system(s), which determine provision of net real power from the BESS and charging of the BESS, 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) controls.
- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system immediately upon, and within 2 seconds of receiving the respective control signal from Company.
- (v) Seller shall provide an analog input to the Telemetry and Control for the gross MW input or output of the individual generating units, and an analog signal for the total net MW input or output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the net real power input or output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company, and the Facility shall be deemed to be in Seller-Attributable Unavailability status, unless the Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. The alternate means of dispatch, including but not limited to local controls, is to be the temporary dispatch mechanism until the Active Power Interface is returned to service and must be capable of changing the real power export or import as directed by the Company System

Operator within 5 minutes (or such other period as Company accepts in writing) of the Seller receiving the directive by the Company System Operator, verbal or otherwise permitted by such alternate means. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to import or export electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Unavailability status for such periods.

- If all local and remote active power controls become unavailable or fail, the Facility shall immediately alert and verbally inform the Company's System Operator.
- If protection is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to ramp down and shutdown Facility and open and lockout the main circuit breaker. Company shall approve the proposed design and implementation of this function. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

(vii) The rate at which the Facility changes net real power import or export shall comply with the Ramp Rate specified in Section 3(c) (Ramp Rates) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will provide the Company SCADA control of the Ramp Rate at which the active power output is changed in response to Company dispatch as specified in Section 3(c) (Ramp Rates) of Attachment B (Facility Owned by Seller). **[THESE REQUIREMENTS**

**MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**

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

- **Maximum Power Import and Export Limits:** The Facility is not allowed to exceed these settings under any circumstances. The primary frequency response control specified in Section 3(m) (Active-power - frequency response requirements) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.
- **Power Reference Set Point:** The Facility is to import or export active power at this level to the extent allowed by the energy storage and shall be within the tolerance defined in Section 3(b) (Active Power Control and Capacity Available for Dispatch Performance) of Attachment B (Facility Owned by Seller) of this setting when system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller). When system frequency exceeds the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller), the Facility's net real power import or export is allowed to deviate from this setting when commanded by the primary frequency response control specified in Section 3(m) (Active-power - frequency response requirements) of Attachment B (Facility Owned by Seller).
- Any additional remote controls necessary to enable, disable, dispatch and/or schedule the energy storage system real power and energy operations mutually agreed upon in writing by the Parties.
- **Inverter Enable/Disable Control:** The Facility shall include an inverter

Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its inverters. When Enable is selected, the Facility inverters can start up, ramp up, and remain in normal operations.

- Black start mode Enable/Disable control.
- Isochronous mode Enable/Disable control.
- The ability to allocate a portion of stored energy (MW and MWh) toward contingency response and black start reserves and the frequency response parameters required to control the response of these allocations.

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

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

(h) Control System Acceptance Test Procedures.

(i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting a Control System Acceptance Test on the entire Facility or a partial installation approved in accordance with Section 3.4 (Partial Commissioning), as applicable:

Facility:

- Successful completion of the Acceptance Test.
- Facility has been successfully energized.
- All of the Facility's inverters and storage units included in the test have been fully synchronized.
- The control system computer has been programmed for normal operations with respect to the Facility.

- All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, fire protection, HVAC systems, statcom, etc.) shall have been commissioned and be operating within normal parameters for the Facility.

Partial Installation:

- Successful completion of the Acceptance Test. Facility requirements will apply to all capacity and resources that have been declared commercial through a partial installation until the Facility is complete indicating all resources comprising the Facility have completed CSAT.
    - If a partial installation is requested for a project with multiple substation or circuit points of interconnection, Company will, in its sole discretion, determine if the Acceptance Test must be completed on a full substation.
  - Partial installation to be tested has been successfully energized.
  - Partial installation's inverters and storage units included in the test have been fully synchronized.
  - The control system computer has been programmed for normal operations based on the partial installation configuration being tested.
  - All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, fire protection, HVAC systems, statcom, etc.) shall have been commissioned and be operating within normal parameters for the partial installation being tested.
- (ii) Facility Energy Equipment. Unless all of the energy equipment of the Facility (or Partial Installation being tested, as applicable) in the Control System Acceptance Test is available for

the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's (or Partial Installation's) equipment 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. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. 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 Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.
  
- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
  
- (j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth

in such written notice, to meet the telemetry and control requirements specified in Section 1(b) (iii) (E) (Company Telemetry and Control) and/or the operational and performance requirements specified in Section 3 (Technical and Operational Requirements) of this Attachment B (Facility Owned by Seller), and to require documentation or testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice or such longer time period agreed to in writing by Company, a written report of both the results of such investigation and the corrective action taken by Seller; 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 it takes 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 recommendation 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. The Company shall have the right to declare the Facility derated and the Facility shall be deemed to be in Seller-Attributable Unavailability status until 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.

(k) Applicability of IEEE 2800-2022.<sup>1</sup> The requirements set forth in this Attachment B (Facility Owned by Seller) in its entirety shall be aligned and in accordance with the requirements of IEEE 2800-2022, for all intents and purposes. IEEE 2800-2022 is referenced herein as the Company has adopted specific sections of IEEE 2800-2022, unless otherwise specified or clarified. Should there be conflicts between IEEE 2800-2022 and the requirements specified herein, the requirements of this Agreement, including this Attachment B (Facility Owned by Seller), shall control, consistent with the flexibility afforded the Company serving as the TS Owner and TS Operator, as such terms are defined in IEEE 2800-2022 Section 1 "Overview".

(i) For purposes of referencing IEEE 2800-2022, the reference point of applicability ("RPA") in Section 4.2 of IEEE 2800-2022 shall apply to the POI.

(ii) For purposes of referencing IEEE 2800-2022, the applicable voltages and applicable frequency shall have the meaning set forth in Section 4.3

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<sup>1</sup> This Agreement does not adopt Sections 1 through 4 of IEEE 2800-2022. These sections, however, provide context for the sections of IEEE 2800-2022 incorporated into this Agreement. The IEEE 2800-2022 definitions may conflict with definitions in this Agreement and therefore the IEEE 2800-2022 definitions are referenced solely for the purpose of understanding the definition within the context of the specific IEEE 2800-2022 references and not for interpretation of other sections of this Agreement which are not reference sections of IEEE 2800-2022.

of IEEE 2800-2022, unless otherwise specified in this Agreement.

The nominal phase-to-phase voltage at the POI shall be \_\_\_ kV. **[drafting note: change to the appropriate POI voltage for the Facility].**

The nominal frequency is 60 Hz.

- (iii) Prioritization of IBR responses. The Facility shall comply with IEEE 2800-2022 Section 4.7 "Prioritization of IBR responses" in its entirety.

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 local or system-wide outage 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 Company System Operator 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) (Cybersecurity and Critical Infrastructure Protection) of this Attachment B (Facility Owned by Seller).
- (h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System only when the [\_\_\_\_\_] circuit is in normal operating configuration served by breaker [\_\_\_\_\_] at [\_\_\_\_\_] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Technical and Operational Requirements.

- (a) Reactive Power Control. Seller shall at minimum meet IEEE 2800-2022 Section 5 "Reactive power-voltage control requirements within the continuous operation region", as supplemented or modified by the following **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**
  - (i) Reactive Amount. The Facility shall have sufficient equipment, as specified in IEEE 2800-2022 Section 5 "Reactive power-voltage control requirements within the continuous operation region", so that the Facility will have the ability to deliver or receive, at the Point of Interconnection, dynamic reactive power at all active power levels including zero active power, as illustrated in the **[BESS capability]** curve(s) attached to this Agreement as Exhibit B-2 (Energy

Storage Capability Curve(s)) **[to be updated by IRS]**, which represents the Facility Composite Capability Curve(s). Full dynamic reactive power capability shall be maintained for all possible system equivalent impedances, and all voltage operating ranges. **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

(ii) Seller shall automatically regulate 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, var, or power factor specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller).

(iii) The Facility shall be able to accept a reactive power droop setting between 0 and 0.3 puV/puVAR **[settable range to be confirmed by IRS]** where puVAR is based on the Reactive Amount specified in Section 3(a)(i) of this Attachment B (Facility Owned by Seller). Company shall have the ability to specify the reactive power droop setting among other voltage control settings remotely through Company SCADA. The Seller shall not change the voltage control settings unless instructed or approved by the Company.

The default reactive power droop setting shall be: \_\_\_\_\_ puV/puVAR **[To be determined by the results of the IRS]**

(iv) For voltage disturbances at the Point of Interconnection, including faults on the transmission system, for which the applicable voltage is within +/- 5% of the nominal voltage inclusive, the Facility shall at minimum meet IEEE 2800-2022 Section 5.2.2 "Voltage Control" within the reactive power capabilities described in Section 3(a)(i) (Reactive Amount) of this Attachment B (Facility Owned by Seller). The step response time shall be 1 second or less. **[DRAFTING NOTE: LONGER STEP RESPONSE TIMES MAY BE**

**PERMITTED IF SHOWN TO PROVIDE A MORE STABLE  
RESPONSE IN THE IRS]**

- (v) For voltage disturbances at the Point of Interconnection, including faults on the transmission system, for which the applicable voltage falls outside of +/- 5% of the nominal voltage, the Facility shall at minimum meet IEEE 2800-2022 Section 7.2.2.3.5 "Response to TS abnormal conditions - Performance Specifications", where the IBR unit maximum current rating is to be provided in accordance with the Short-term Overcurrent Capability as described in Section 3(t) (Short-term Overcurrent Capability) of this Attachment B (Facility Owned by Seller).
  - (vi) 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 SCADA through Company's Telemetry and Control.
- (b) Active Power Control and Capacity Available for Dispatch Performance. The tolerance of active power control accuracy shall be +/- 0.1 MW. When system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller) the Facility shall maintain active power output as close to the latest received Power Reference Setpoint as possible, but within this tolerance.
- (i) The tolerance of Capacity Available for Dispatch accuracy shall be +/- 0.1 MW.
- (c) Ramp Rates.
- (i) (For changes in active power under Seller's local dispatch control Seller shall ensure that the rate of change is at or below a Ramp Rate specified by the Company. This should not constrain the primary frequency response control described in Section 3(m) (Active-power - Frequency Response Requirements) or the restoration of active power as described in Section 3(d) (Ride-Through Requirements).

(ii) Upon receiving a command from the Company active power control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility's net active power import or export at the Ramp Rate specified by the Company, as described in Section 1(g)(vii) of this Attachment B (Facility Owned by Seller), to the extent allowed by the energy storage. The Facility will respond to the change in Power Reference Setpoint immediately without intentional delay. The maximum dispatchable Ramp Rate shall be as fast as the Facility is able to support but at least the greater of 4 MW/min or 10% of the Facility Contract Capacity per minute; a slower dispatchable Ramp Rate may be specified by the Company.

(iii) The Ramp Rate requirements of this Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) shall not impede the response when the Facility net active power import or export is changed by the primary frequency response control described in Section 3(m) (Active-power - Frequency Response Requirements) of this Attachment B (Facility Owned by Seller) or when restoring active power output as described in Section 3(d) (Ride-Through Requirements) of this Attachment B (Facility Owned by Seller).

(d) Ride-Through Requirements.

(i) In meeting the voltage and frequency ride-through requirements in this Attachment B (Facility Owned by Seller), Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), Section 3(g) (Transient Stability Ride-Through), and Section 3(i) (Frequency Ride-Through), the Facility shall not enter momentary cessation of operations within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System and at minimum meet or exceed the capabilities required in IEEE 2800-2022 Section 7.1 "Response to TS abnormal conditions -

Introduction"; Section 7.2.2.3.2 "Low- and high-voltage ride-through capability"; Section 7.2.2.3.3 "Low- and high-voltage ride-through performance"; and 7.3.2.1 "Frequency disturbance ride-through requirements - General requirements and exceptions" as parameterized and modified in this Attachment B (Facility Owned by Seller). Any tripping on calculated frequency should be based on accurately calculated and filtered frequency measurement over a time frame of six cycles, or other period as specified by the Company, and should not use an instantaneously calculated value. In the many 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 in accordance with IEEE 2800-2022 Section 9 "Protection", and Section 7.2.1 "Voltage protection requirements" and Section 7.3.1 "Mandatory frequency tripping requirements". Any such protection driven limits of operation should be conveyed to the Company and represented in the provided models. **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF MOMENTARY CESSATION IS NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH LIMITATION SHALL BE PROVIDED TO COMPANY IN WRITING WITH THE SELLER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]**

- (ii) The Facility shall at minimum meet IEEE 2800-2022 Section 7.2.2.6 "Response to TS abnormal conditions - Restore output after voltage ride-through," as supplemented or modified by the following: During the voltage recovery, following an event resulting in abnormal voltage conditions, the Facility shall maintain its response and subsequently restore active power output to at least 100% of pre-disturbance levels or available active power, whichever is lower, within 1 second without any Ramp Rate limitation, and as adjusted by the Active-power - frequency response Active-power - Frequency Response Requirements) of this Attachment B (Facility Owned by Seller), or the GFM response described in Section 3(n) (Grid Forming "GFM") of

this Attachment B (Facility Owned by Seller). Changes of active power are permitted in response to control commands in accordance with Active Power Control or in response to other control settings.

(iii) The Facility shall meet or exceed the minimum requirements to ride-through consecutive voltage deviation events as required in IEEE 2800-2022 Section 7.2.2.4 (Consecutive voltage deviations ride-through capability) and as modified for the ride-through ranges of Section 3(e) (Undervoltage Ride-Through) and Section 3(f) (Over Voltage Ride-Through) of this Attachment B (Facility Owned by Seller).

(iv) The response of each generating resource while within the ride-through requirements of Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), Section 3(g) (Transient Stability Ride-Through), and Section 3(i) (Frequency Ride-Through) of this Attachment B (Facility Owned by Seller), 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 within the Facility and the Facility supports Company System reliability and provides a stable transient response to grid events.

(e) Undervoltage Ride-Through.

The Facility will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the lowest magnitude voltage of any three voltage phases at the Point of Interconnection): **[THESE VALUES MAY BE CHANGED BY COMPANY IN ITS SOLE DISCRETION UPON COMPLETION OF THE IRS IF REQUIRED FOR SYSTEM PERFORMANCE.]**

0.80 pu $\leq$ V $\leq$ 1.00 pu	The Facility remains connected to the Company System and in continuous operation.
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0.70 pu $\leq$ V < 0.80 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the voltage remains in this range.
0.40 pu $\leq$ V < 0.70 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for ten (10) seconds while the voltage remains in this range.
0.25 pu $\leq$ V < 0.40 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for 1200 milliseconds while the voltage remains in this range.
0.00 pu $\leq$ V < 0.25 pu	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for 600 milliseconds while the voltage remains in this range.

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

(f) Over Voltage Ride-Through.

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 highest magnitude voltage of any of the three voltage phases at the Point of Interconnection): **[THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM AT  $V > 1.2$  pu. RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEMS WILL BE DETERMINED IN THE IRS.]**

$1.00 \text{ pu} \leq V \leq 1.10 \text{ pu}$	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 for as long as the equipment allows and at minimum ride-through for thirty (30) seconds while the voltage remains in this range.
$V > 1.20 \text{ pu}$	The Facility remains connected to the Company System and ride-through for as long as the equipment allows.

(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. The Facility shall provide the options of being configured as active power priority or reactive power priority during the ride-through. The selection of the appropriate priority of the Facility shall be determined by the Interconnection Requirements Study. **[TO BE PROVIDED UPON COMPLETION OF IRS].**

- (h) Voltage Phase Angle Change Ride-Through.
- (i) The Facility shall ride through positive-sequence phase angle changes within a sub-cycle-to-cycle time frame of the voltage at the Point of Interconnection of less than or equal to 30 electrical degrees. In addition, the Facility shall remain in operation for any change in phase angle of individual phases caused by occurrence and clearance of unbalanced faults, provided that the positive-sequence angle change does not exceed the forestated criterion. Active and reactive current oscillations in the post-disturbance period that are positively damped shall be acceptable in response to phase angle changes. Momentary cessation in the post-disturbance period shall not be permitted.
  - (ii) 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.
- (i) Frequency Ride-Through. Seller shall at minimum meet IEEE 2800-2022 Section 7.3.2.1 "Frequency disturbance ride-through requirements - General requirements and exceptions" and Section 7.3.2.2 "Frequency disturbance ride-through requirements - Continuous operation region" with the frequency thresholds provided in the following Sections (3)(i)(i) (Underfrequency Ride-Through) and 3(i)(ii) (Overfrequency Ride-Through) replacing the values in the "Percent from  $f_{nom}$ " column in IEEE 2800-2022 Section 7.3.2.1, Table 15 -Frequency ride-through capability for an IBR plant):
- (i) Underfrequency Ride-Through. The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

57.0 Hz $\leq$ f $\leq$ 60.0 Hz	The Facility remains connected to the Company System and in continuous operation.
56.0 Hz $\leq$ f < 57.0 Hz	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the frequency remains in this range.
f < 56.0 Hz	The Facility remains connected to the Company System for as long as the equipment allows.
(ii) <u>Overfrequency Ride-Through</u> . The Facility shall meet the following overfrequency ride-through requirements during an overfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):	
60.0 Hz $\leq$ f $\leq$ 63.0 Hz	The Facility remains connected to the Company System and in continuous operation.
63.0 Hz < f $\leq$ 64.0 Hz	The Facility remains connected to the Company System for as long as the equipment allows and at minimum ride-through for twenty (20) seconds while the frequency remains in this range.
f > 64.0 Hz	The Facility remains connected to the Company System for as long as the equipment allows.

(j) [RESERVED]

- (k) Power Quality. Seller shall at minimum meet IEEE 2800-2022 Section 8 "Power Quality." Voltage harmonics at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-2014, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems".
- (l) [RESERVED]
- (m) Active-power - Frequency Response Requirements. Seller shall at a minimum meet IEEE 2800-2022 Section 6 "Active-power - frequency response requirements", as supplemented or modified by the following:
- (i) Seller's Facility and Partial Installation (as long as Company keeps the Partial Installation enabled and keeps enough power and energy in reserve) shall provide a primary frequency response (PFR) and fast frequency response (FFR) with the appropriate frequency droop characteristic in both the overfrequency and underfrequency directions except to the extent such response is not operationally possible because of the level of available renewable resource and/or energy storage State of Charge.
  - (ii) The frequency response control shall be in continuous operation when operating in parallel with the Company System including all continuous operation and ride-through ranges provided in Section 3(e) (Undervoltage Ride-Through), Section 3(f) (Over Voltage Ride-Through), and Section 3(i) (Frequency Ride-Through) of this Attachment B (Facility Owned by Seller), unless directed otherwise by the Company.
  - (iii) The Company shall have the ability to specify the PFR and FFR droops and deadband settings among other frequency response control settings, and enable or disable PFR or FFR remotely through Company SCADA.

Seller shall at minimum meet IEEE 2800-2022 Section 6 "Active-power - frequency response

requirements” with the following different and/or additional requirements:

- (iv) Primary Frequency Response. IEEE 2800-2022 Section 6, Table 7 - “Parameters of primary frequency response for IBR plant” shall be replaced as follows:

Parameter	Units	Default	Ranges of available settings	
			Min	Max
$db_{uf}$	Hz	0.02	0.01	0.1
$db_{of}$	Hz	0.02	0.01	0.1
$k_{uf}$	%	5	0.1	10
$k_{of}$	%	5	0.1	10

- (v) Fast Frequency Response. IEEE 2800-2022 Section 6, Table 10 - “Parameters of FFR1” shall be replaced as follows:

Parameter	Units	Default	Ranges of available settings	
			Min	Max
$f_{uf, FFR1}$	Hz	.3	0.1	1
$f_{of, FFR1}$	Hz	.3	0.1	1
$k_{uf, FFR1}$	%	1	0.1	4
$k_{of, FFR1}$	%	1	0.1	4

- (vi) Isochronous Frequency Response Mode. The Facility will provide the capability to supply isochronous mode of operation. The control design shall allow for a bumpless transfer between modes of operation. 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. When isochronous mode of operation is selected while connected to the live system the target frequency shall be initialized to the grid frequency and the target increased or decreased from the Company System through the control interface. In a black start configuration, the target shall be 60 Hz.

- (n) Grid Forming ("GFM"). **[REQUIRED FOR FACILITIES WITH STORAGE, CAPABILITIES OF WIND TURBINE GENERATOR INVERTERS TO PROVIDE THIS FUNCTION IS PREFERABLE AND WOULD BE STUDIED IN THE IRS IF OFFERED]**

GFM control sets an internal voltage waveform reference such that an inverter with the GFM control shall be able to synchronize with the grid and regulate active and reactive power generation appropriately, regardless of the grid's strength, or operate independently of other generation. An inverter with GFM control shall immediately respond to grid disturbances to support stability of the grid and maintain its own control stability during the system disturbance.

Seller Facility inverters shall be designed with GFM control and be capable of operating in GFM mode supporting system operation under normal and emergency conditions without relying on the characteristics of synchronous machines. While in GFM mode, the inverters shall support grid operation, consistent with tariff requirements, as a continuous ac voltage source during normal and transient conditions (as long as no limits are reached within the inverter) and be able to synchronize to other voltage sources and operate autonomously if a grid reference is unavailable, and shall be able to share active and reactive power burden with other voltage sources without impacts on system stability.

Seller shall provide information to the Company regarding control design, capabilities, characteristics, etc. of the GFM control of the Facility for Company review and approval. Additional

specifics of the GFM control may be defined during the IRS.

**Specifically, the GFM controls shall have the following functions and characteristics:**

Allow Seller Facility to operate in stable manner on low system strength grids (e.g. low short circuit ratio, low inertia, inertia-less system, etc.).

- (i) Sets an internal voltage waveform reference and is able to synchronize with the grid or operate independently of other generation.
- (ii) Responds to system condition changes (i.e. frequency change and voltage change) beyond the control deadband in a timely manner by contributing towards the subsequent recovery of system frequency and voltage to the pre-disturbance value, assuming energy and power margins are available.
- (iii) Provide damping control function which damps oscillation within the interconnection and other adverse interactions among GFM and Grid following Inverter Based Resources (IBRs) and other power electronic devices on the grid.
- (iv) Upon the loss of the last synchronous machine in the power system, GFM will have the ability to operate autonomously if a grid reference is unavailable and be able to share active and reactive power burden with other voltage sources without impacts on system stability.
- (v) Ability to transition from an electrical island to a grid-connect configuration without an impact to system stability.
- (vi) Provide active low-order harmonics cancellation (as applicable).
- (vii) Provide black-start capability (as applicable).
- (viii) 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 required to communicate to the Company its parameters and settings pertaining to grid forming mode.

- (ix) The grid forming control block diagram shall be submitted to the Company for review. The design shall be approved in writing by the Company and implemented by the Seller prior to control system testing. This shall include initial settings for tunable controls parameters based on modeling. The initial control parameters may be modified by seller on company request; based on field data and performance, subsequent system resource changes, etc. to achieve acceptable system stability.
- (o) Blackstart. The Facility shall be able to blackstart, start and energize itself without support from the Company System to the extent allowed by the operating limits of the Facility.
  - (i) At the Company System Operator's sole discretion and to the extent of the operating limits of the Facility, the Facility shall blackstart and energize a part of the Company System as directed by the Company System Operator.
  - (ii) Upon blackstart and energization of a part of the Company System, the Facility shall:
    - a. Voltage Regulation according to Section 3(a) (Reactive Power Control) of this Attachment B (Facility Owned by Seller).
    - b. Frequency Control with an isochronous governor to a frequency target initially set to 60 Hz and adjustable at the sole discretion of the Company System Operator.
    - c. Supply power to the part of the Company System that the Facility has energized, which shall include supplying power to start synchronous and other inverter-based generating resources.
    - d. Blackstart and operate in grid forming mode as described in Section 3(n) (Grid Forming

("GFM")) of this Attachment B (Facility Owned by Seller).

- (iii) The Facility shall seamlessly and bumplessly transition from blackstart mode to normal operating mode as directed by and at the sole discretion of the Company System Operator. The blackstart control mode status shall be telemetered to Company through SCADA.
- (iv) The Facility blackstart design and configuration, including the isochronous governor, shall be subject to the prior written approval of Company in its sole discretion and implemented by Seller prior to conducting the CSAT. The blackstart design and configuration may be modified by mutual agreement of Seller and Company.
- (p) [RESERVED]
- (q) Rate of Change of Frequency ("ROCOF"). Seller shall at minimum meet IEEE 2800-2022 Section 7.3.2.3.5 "Rate of change of frequency (ROCOF) ride-through".
- (r) Self-Energization. Seller's Facility shall be able to self-energize, i.e. start and energize itself without connecting with the Company System. The process of interconnecting the energized Facility with the Company System shall be seamless and bumpless using an auto-synchronizing circuit breaker. Immediately upon connecting to the Company System, the Facility shall transition to normal operation. The self-energization control status shall be telemetered to the Company through SCADA.
- (s) [RESERVED]
- (t) Short-term Overcurrent Capability. The Facility shall be capable of providing a Short-Term Overcurrent Capability at least 1.6 times the steady-state current that would correspond to the Contract Capacity at nominal voltage at the Point of Interconnection, for a minimum of 5 seconds per event. The Short-Term Overcurrent Capability shall be available during system disturbances through any post disturbance system recovery stage to provide system stability

support, during which the Facility net export can be temporarily above the Facility continuous net export limit. If the Facility has a Short-Term Overcurrent Capability greater than the 1.6 minimum provision, the entire Short-Term Overcurrent Capability must be made available to respond during system disturbances. The Facility short-term overcurrent capability is calculated by the formula:

$$\text{Facility Short-Term Overcurrent Capability} = \text{Per Unit BESS Inverter Overcurrent Capability} \times \frac{\text{Total of BESS Inverters MVA}}{\text{Facility Contract Capacity (MW)}}$$

**[TO BE PROVIDED UPON COMPLETION OF IRS]**

The Facility current injection shall meet or exceed the requirements of IEEE 2800-2022 Section 7.2.2.3.4 "Current injection during ride-through mode" as modified herein to apply for voltage disturbances within the continuous operation and all ride-through conditions up to the full equipment capability limits as described in Section 3(a) (Reactive Power Control), Section 3(d) (Ride-Through Requirements), and this Section 3(t) (Short-term Overcurrent Capability) of Attachment B (Facility Owned by Seller).

4. Disconnection of Seller Facility.

- (a) Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller). For this purpose, a "Disconnection Event" is a sudden change of active power at the Point of Interconnection of at least \_\_\_ MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** and/or disconnection of the Facility from the Company's System in a period of two (2) minutes or less, (i) that is not the result of Company dispatch, frequency droop response, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller). Company's

election to exercise its rights under said Section 1(j) (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this Section 4 (Disconnection of Seller Facility) of Attachment B (Facility Owned by Seller) for any future Disconnection Event during the pendency of such election or thereafter.

- (b) For every Disconnection Event, Seller shall investigate the cause. Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause of the Disconnection Event.
- (c) Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection Event ("Proposed Actions"). The aforementioned findings, data relied upon for such findings, and Proposed Actions, should at a minimum, mimic the reporting requirements outlined in NERC Standard PRC-030-1 (Unexpected Inverter-Based Resource Event Mitigation). 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 (Disconnection of Seller Facility) 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. Company shall have the right

to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices, and the Facility shall be deemed to be in Seller-Attributable Unavailability status, until the study has been completed and the study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Nothing in this provision shall affect Company's right 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 (Mediation) of this Agreement.

6. Modeling.

(a) Seller's Obligation to Provide Models. Within 30 Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the 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) of this Attachment B (Facility Owned by Seller), Seller shall, no later than such time periods, instead provide the Source Code LC as set forth below in Section 6(b)(ii) (Source Code Security) 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) (Seller's Obligation to Provide Models) 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; or
  - (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)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per Day for each Day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code

of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(f) under the Agreement.

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

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

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

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

(ii) Source Code Security.

(A) Establishment of Source Code Security. If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) then, no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit (the "Source Code LC") with no documentation requirement in the amount of Two Hundred Fifty Thousand

Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank doing business in the United States and subject to United States state or federal regulation, 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) of this Attachment B (Facility Owned by Seller), until and unless Seller provides a substitute form of letter of credit meeting the requirements of this Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller).
- (D) Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 6(b)(ii)(C) (Extend Letter of Credit) of this Attachment B (Facility Owned by Seller), Company shall, in order to avoid comingling the Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller) with a reputable escrow agent acceptable to Company ("Proceeds Escrow Agent") subject to an escrow agreement acceptable to Company ("Proceeds Escrow Agreement"). Without limitation to the generality of the foregoing, a federally insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this Section 6 (Modeling) of this Attachment B (Facility Owned by Seller). To that end, the Proceeds Escrow Agreement governing such escrow account shall give Company the sole authority to draw from the account. Seller shall not be a party to such Proceeds Escrow Agreement and shall have no rights to the

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

- (E) Seller's Obligation. If the letter of credit is not sufficient to cover Company's associated consultant fees, costs and expenses to develop and recreate the Required Models, Seller shall pay to Company the difference within ten (10) Days of Company's written notice to Seller.
- (F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.
- (G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been placed into a Proceeds Escrow, the Proceeds Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

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

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

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this Section 6(b) (Escrow Establishment) of Attachment B (Facility Owned by Seller) and the Source Code Escrow Agreement and Proceeds Escrow Agreement are "supplementary agreements" as contemplated in 11 U.S.C. § 365(n)(1)(B). In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code or the funds in the Proceeds Escrow, pursuant to 11 U.S.C. § 365(n)(1)(B), under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under 11 U.S.C. § 365(n)(1)(A).

## 7. Testing Requirements.

- (a) Testing Requirements. Once a Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility control or the Partial Installation control, as applicable, inverter control settings and/or ancillary device controls, without prior written agreement from the 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 Unavailability status until the new relevant tests of the Control System Acceptance Test have been successfully passed.
- (b) Periodic Testing. Seller shall coordinate periodic testing of the Facility with Company to ensure that the Facility is meeting the technical and operational requirements specified under this Agreement.

8. [RESERVED]

9. Technology Specific Requirements.

(a) [RESERVED]

(b) [RESERVED]

(c) Inverter Systems.

- (i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter unless alternate designs are approved by the Company. The design shall comply with the requirements of IEEE Std 2800-2022 (or latest version), except as described in Section 3 (Technical and Operational Requirements) 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 519-2014 (or latest version).
- (d) Battery Energy Storage System. The operating parameters of the Battery Energy Storage System ("BESS") shall be as follows:
  - (i) For Contract Years that are non-leap years, the BESS shall be discharged no more than BESS Contract Capacity x 365, MWh in each Contract Year. For Contract Years that are leap years, the BESS shall be discharged no more than BESS Contract Capacity x 366, MWh in each Contract Year.
  - (ii) The BESS will not be required to discharge more energy than available relative to the available state of charge.
  - (iii) The BESS energy capacity shall be sized above the BESS Contract Capacity to provide sufficient energy to self-energize the Facility in accordance with Section 3(r) (Self-Energization) of this Attachment B (Facility Owned by Seller). The BESS shall maintain sufficient energy to self-energize the Facility at all times except when discharged for such purpose. Upon discharging to self-energize the Facility, the BESS must restore the self-energization energy as soon as possible.
  - (iv) The Facility shall be designed, furnished, and installed to meet all the requirements of this Agreement including specifications referenced in Section 3 (Battery Energy Storage System Design) of Exhibit B-3 (BESS Fire Safety Requirements).

EXHIBIT B-1  
MODELING REQUIREMENTS

To be completed based on the Project's characteristics. The Required Models are listed in the RFP Appendix B, Attachment 4 - Model and Interconnection Requirements (IRS) Scope of the RFP. Modeling requirements are set forth in the RFP Appendix B, Attachment 3 Hawaiian Electric Facility Technical Model Requirements and Review Process of the RFP.

**[EXHIBIT B-2 WILL BE PREPARED TO REFLECT  
THE RESULTS OF IRS]**

EXHIBIT B-2  
ENERGY STORAGE CAPABILITY CURVE(S)

EXHIBIT B-3  
BESS FIRE SAFETY REQUIREMENTS

Except as modified herein, the Project, including the energy storage technology, power conversion system, and site energy controller shall be designed, manufactured, and tested in compliance with the latest versions (including any issued revisions) of the applicable standards of American National Standards Institute (ANSI), Institute of Electrical Engineers (IEEE), National Electrical Code (NEC), National Electrical Manufacturers Association (NEMA), Occupational Safety and Health Administration (OSHA), American Society for Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), National Fire Protection Association (NFPA), Factory Mutual Insurance Company (FM) and Owner safety practices. Finally, state and local building, fire, and zoning requirements shall also be met.

All design drawings, specifications, studies, and other engineering documents associated with the Facility shall be sealed by a Professional Engineer (who shall, for all purposes under the Agreement, be licensed to practice in the State of Hawaii and licensed in his or her relevant subject matter, as required by the state). Where drawings, specifications, studies, and other engineering documents are developed as required to manufacture a listed/certified product, a Professional Engineer seal is not required. Prior to the COD, the design drawings, specifications, studies, and other engineering documents shall be revised as necessary to reflect the as-built condition of the Facility and sealed by a Professional Engineer, and Seller shall provide Buyer with a Professional Engineer's certification letter stating that the Facility has been completed in all material respects in accordance with the requirements of this Exhibit B-3 (BESS Fire Safety Requirements). Buyer may allow exceptions to the above documentation requirements for parts of the Facility that are listed/certified products in accordance with Good Engineering and Operating Practice.

1. Safety.

The Project must be compliant with all applicable provisions of IEEE 1547, Underwriters Laboratory (UL) 1642, UL 1741 Supplement A, UL 1973, FMDS 0533 and NFPA. The Project must be able to protect itself from internal failures and utility grid disturbances. As such, the Project must be self-protecting for alternating current (AC) or direct current (DC) component system

failures. In addition, the Project must be able to protect itself from various types of external faults and other abnormal operating conditions on the grid.

The Project must be designed in compliance with applicable federal, state, and local safety standards and regulations with regard to construction and potential exposure to chemicals and with regard to container or enclosure resistance to hazards such as ruptures and exposure to fire.

All Project systems and equipment must be grounded in accordance with the NEC and adhere to the guidelines in IEEE 80 and IEEE 142.

All electrical equipment shall be designed to the 'High Seismic Qualification Level' in accordance with IEEE 693 Standard.

For all Project equipment, Seller shall provide information on all known or reasonably foreseeable safety issues related to the equipment, including appropriate responses on how to handle the Project in case of an emergency, such as fires or module ruptures.

The Project must be designed such as to minimize risk of injury to the workforce and public during installation, maintenance, and operation.

Visual and audible fire alarms shall be included as necessary per all applicable fire and safety codes.

A physical Emergency Stop (E-Stop) button is required to be installed at all entrances and exits of the buildings or containers. The E-Stop button shall have the ability to open contactors/breakers to the inverter and batteries isolating the DC and AC potential.

A baseline emergency action plan should be provided as part of the documentation for the system.

Contractor will provide training for the safe operation of the unit.

## 2. Fire Protection.

The Seller shall provide fire protection system for the complete BESS system including modification of existing site fire protection system to meet all applicable codes including the

latest approved revision of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems", the latest approved revision of FMDS 0533 "Lithium-Ion Battery Energy Storage Systems" and the latest approved revision of the applicable County code covering Fire Protection.

Seller shall comply with NFPA and FMDS coordination, design, installation, commissioning, testing, training and startup requirements. This shall include all other requirements as outlined in this Exhibit. Fire Protection system design shall include, but not be limited to, the following:

Emergency vehicle access and fire hydrants per applicable local and national codes,

Appropriate enclosure/spacing per FMDS 0533 and local and national codes,

Hazard Mitigation Analysis (HMA) to defend and gain alignment for the system design with all key stakeholders before the design is finalized (e.g. risk mitigation for runaway prevention)

Emergency response center or kiosk with screens shall be installed outside of danger zone. Emergency response center must include backup generator or second power source (e.g. UPS) to keep the key safety equipment operational during an event,

Shelter design in accordance with NFPA requirements for location, separation, materials of construction, ventilation, smoke or flammable conditions detection, fire suppression, communications/alarms, training, commissioning, permitting, and documentation.

The fire alarm control panel shall provide supervised addressable relays for HVAC shutdown. The HVAC Engineer shall design and specify startup and testing services to support the interface with the Fire Protection System and ensure that the HVAC is de-energized as designed. Alarms shall clearly annunciate location of detected condition within building or by individual container.

Startup and testing of the Fire Protection System will be provided by the fire protection contractor in accordance with NFPA requirements.

If defined by the Hazard Mitigation Analysis (HMA), an exhaust system should be provided to detect and mitigate flammable gases.

### 3. Battery Energy Storage System Design.

The Contractor shall design, furnish and install a BESS that meets all of the requirements of the Agreement, including this Specification.

#### Cells and Modules (if applicable)

The energy storage shall consist of cells of proven technology designed for the type of service described herein. For the purposes of this Specification, proven technology shall be defined as cells that have been in successful commercial service in similar type applications for a period of time sufficient to establish a service life and maintenance history. Only cells that are commercially available or for which suitable (not necessarily identical) replacement cells (or modules or strings) can be supplied on short notice throughout the Project life will be allowed. Cells shall be listed to UL 1642 and manufacturer must provide UL certificate prior to shipment to Project Site.

The cells may be supplied as separate, individual units or as group of cells combined into modules. Modules shall be listed to UL 1973, and UL 9540A and manufacturer must provide UL certificate prior to shipment to Site.

Cell construction and accessories (as applicable) shall be sealed to prevent electrolyte seepage. Post seals shall not transmit stresses between the cover or container and the posts. Cell terminals and interconnects shall have adequate current carrying capacity and shall be designed to withstand short circuit forces and current generated by the energy storage. Safety features shall be designed into each cell in accordance with UL 1642, UL 1973, and UL 9540A.

DC Contactors will disconnect the string from the circuit during high temperature conditions but will reconnect once the cell temperatures reach an acceptable range and other conditions are met allowing reconnection. Labeling of the cell (or modules) shall include manufacturer's name, cell type, nameplate rating and date of manufacture, in fully legible characters or QR code. Contractor shall provide a list showing all the modules by their unique identification number along with their corresponding physical location within the project site. The unique

identification numbers shall correspond to their identification within the Project so to provide easy location of all cells or modules.

The energy storage subsystem as a whole and as individual cells shall be designed to withstand seismic events as described herein. The batteries may consist of one or more parallel strings of cells.

DC wiring shall be sized per NEC Article 310 or based on UL standards and be appropriately braced for available fault currents. Protection shall include a DC breaker, fuse or other current-limiting device on the energy storage bus. This protection shall be coordinated with the PCS capabilities and energy storage string protection and shall take into account transients and the L/R ratio at the relevant areas of the DC system. The Project shall operate no higher than 1,500 Volts DC.

The Contractor shall provide information on the impact that weak or failed cells have on the life and performance of the entire string. The Contractor shall specify critical parameters, such as temperature variation limits between cells of a string. The Contractor shall provide a means of monitoring critical parameters to ensure the limits are being met.

Cells, wiring, switchgear and all DC electrical components shall be insulated for 2,000 Volts DC. The Contractor shall have overall responsibility for the safety of the electrical design and installation of the Project. The Project shall include a monitoring/alarm system and/or prescribed maintenance procedures to detect abnormal cell conditions and other conditions that may impair the ability of the Project to meet performance criteria.

The energy storage monitoring system shall be capable of balancing the voltages across cells automatically and independently without any input from the operator or the SEC. Cell monitoring system shall be specified so as to alert the proper personnel in a timely manner that an abnormal cell condition exists or may exist. Abnormal cell conditions shall include over- and under-cell voltage. Temperature is not expected to be monitored at the individual cell level.

The monitoring/alarm system will record data on the number and general location of failed modules, to expedite maintenance and cell replacement. This data shall be stored in non-volatile memory. Such monitoring/alarm system shall be integrated into the overall control system.

The Project shall include racks or shall consist of stackable modules of batteries. Aisle spaces shall be set to permit access for equipment needed for easy removal and replacement of failed modules. The lengths and widths of aisles shall conform to all applicable codes and facilitate access by maintenance personnel. As applicable, the racks shall provide sufficient clearance between tiers to facilitate required modules maintenance, including modules testing and inspection, and replacement.

Rack-mounted modules shall have all connections located on the front of the enclosure or module. Modules shall not be required to be removed from the racks during regular maintenance. All racks and metallic conductive members of stackable modules shall be solidly grounded. Racks shall be seismically designed based on the requirements of this Exhibit B-3 (BESS Fire Safety Requirements) and shall include means to restrain cell movement during seismic events. All design shall be in accordance with seismic design requirements of this Exhibit B-3 (BESS Fire Safety Requirements).

ATTACHMENT C  
[RESERVED]

ATTACHMENT D  
CONSULTANTS LIST

(To be completed as per Section 25.4 of the Agreement)

ATTACHMENT E  
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

(To be attached as per Section 1(a) of Attachment B)

ATTACHMENT F  
RELAY LIST AND TRIP SCHEME

(To be attached as per Section 1(a) of Attachment B)

ATTACHMENT G  
COMPANY-OWNED INTERCONNECTION FACILITIES

**[ATTACHMENT G SHALL BE REVISED TO REFLECT  
THE RESULTS OF IRS]**

1. Description of Company-Owned Interconnection Facilities.
  - (a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at [REDACTED] volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").
  - (b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC) are required, Seller shall provide such sources, at no expense to Company.
  - (c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreement, 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; and
  - (vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.
- (e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves an energy storage purchase agreement for another non-Company owned battery energy storage system/facility ("Second NUB Contract") making Energy Storage Services available to Company using the same line to which Facility is to be connected or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUB Contract, and the PUC, in approving this Agreement, determines that Seller should pay for all

or part of the cost of such upgrade and/or replacement.

(f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, as such date may be extended as provided in 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), Matrix G-2 (Telecom Responsibilities) and Matrix G-3 (T&D Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]**

2. Construction and Support Services By Seller.

(a) Construction and Support Services by Seller.

(i) Seller (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense:

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

B. **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER].**  
**[NOTE: SUBPARTS "A" AND "B" BETWEEN THEM**

**SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE]**

- (ii) Seller shall provide the necessary support for the Company's [REDACTED] kV overhead line extension work, which may include, but not limited to:
- A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
  - B. Staking of Company proposed poles and anchors by surveyor.
  - C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
  - D. Graded level pads to provide vehicle working areas around all Company poles and anchors.
  - E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
  - F. Grubbing and clearing of vegetation within Company's easement area or as required.
- (iii) Resilience Requirements.
- A. All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, be in accordance with the appropriate risk category determined by, and satisfy the wind load and seismic load requirements of, the International Building Code and any more stringent requirements imposed under applicable Laws.
  - B. Seller shall consult with jurisdictional fire agencies and other State and/or County agencies with regulatory oversight over

wildfire mitigation requirements during the Project's design phase and incorporate all required and recommended wildfire mitigation measures. To the extent any regulatory approval of such wildfire mitigation measures is necessary, Seller shall obtain such approval(s) and such shall be included within the scope of Governmental Approvals as defined in this Agreement.

- (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%, 90%, 100% and final issue for construction. 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 latest 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 twenty (20) Business Days following receipt of the complete Plans at each stage (30%, 60%, 90%, 100% and final issue for construction) 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 twenty (20) Business 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 and on-going system work; (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) in the Company's sole discretion based on its assessment of Company's resources and overall schedule of projects at the time, the Project may lose its place in the queue and may be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that may 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 2(f)(ii) of this Attachment G (Company-Owned Interconnection Facilities) within the time period specified therein for the task in question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Seller fails to satisfy any of the Seller's Conditions Precedent set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test and the Control System Acceptance Test are not satisfactorily completed within the time allotted to complete such testing.

- (ii) The conduct of the Acceptance Test is subject to the satisfaction of the following conditions

precedent within the time period specified below for the task in question or, if no time period is specified, by the Test Ready Deadline that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones):

- 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) Technical and Operational Requirements.
- 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 seven (7) Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
- 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 thirty (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, in the Company's sole discretion based on its assessment of the nature of Seller's lack of readiness and Company's resources and overall schedule of projects at the time, Company may assign Seller a new Test Ready Deadline and a new Acceptance Testing Milestone Date, which may be behind the other projects then in the queue, coinciding with

the estimated time it would take Seller to become test-ready and Company's ability to commence the Acceptance Test. If prior to the new Test Ready Deadline established by Company, Seller becomes ready for the performance of the Acceptance Test, i.e., Seller provides Company with its fourteen (14) Day advance written notice of the commencement of the Acceptance Test (the "Seller Accelerated Test Ready Deadline"), and Company confirms, in its site walk-through of the Facility (which site walk-through the Company may waive in its sole discretion), that Seller is ready for the Acceptance Test, but Company is unable to perform the Acceptance Test within [ ] Days<sup>2</sup> (the "Seller Accelerated Acceptance Testing Milestone Date") and Company's inability to commence the Acceptance Test is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities), then, for up to the period of time from the Seller Accelerated Acceptance Testing Milestone Date to the date that Company commences performance of the Acceptance Test, Seller shall be entitled to a waiver of Daily Delay Damages that would otherwise be accruing if Seller ultimately fails to meet the Guaranteed Commercial Operations Date due to its failure to meet the original Test Ready Deadline specified in Attachment K-1 (Seller's Conditions Precedent and Company Milestones). For clarity, and to explain the limited waiver of Daily Delay Damages provided for in the preceding sentence, if Seller misses its Test Ready Deadline by 45 Days and subsequently misses its Guaranteed Commercial Operations Date for that reason by 60 Days and the period of time between the Seller Accelerated Acceptance Testing Milestone Date and the commencement date of the Acceptance Test is 15 Days (and such delay is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G (Company-Owned Interconnection Facilities), then Seller shall be entitled to a waiver of 15 Days of Daily Delay

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<sup>2</sup> This would be the number of Days between the Test Ready Deadline and the Acceptance Testing Milestone Date stated in the Company Milestones of Attachment K-1.

Damages otherwise accruing for Seller's failure to meet the Guaranteed Commercial Operations Date. If the above time periods remain the same but Seller only misses the Guaranteed Commercial Operations Date by 30 Days, Seller shall not be entitled to any Daily Delay Damages waiver as the 30-Day failure to meet the Guaranteed Commercial Operations Date would be attributable to the initial 45 Days that Seller missed the Test Ready Deadline. Finally, if the above time periods remain the same but Seller misses its Guaranteed Commercial Operations Date by 50 Days, Seller shall be entitled to only a 5 Day waiver of Daily Delay Damages. In the meantime, Seller shall remediate the deficiencies identified by Company, and the process described in this Section 2(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 a restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

- (iv) Company will be present when the Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (aa) does not make any

inspection or test, (bb) does not discover defective workmanship, materials or equipment, or (cc) 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 Engineering and Design Work and the work to conduct the Acceptance Test and Control System Acceptance Test being collectively called the "Company Interconnection Work"). The Total Actual Interconnection Costs (the actual cost of the Company Interconnection Work) are the "Total Interconnection Costs".

- (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 by Seller in accordance with the following schedule:

- (i) Initial Payment. Seller, in connection with early engineering offered by Company [or other reason], has paid \$\_\_\_,000.00 to Company;
- (ii) Company-Owned Interconnection Facilities Prepayment. Within thirty (30) Days after the Effective Date, the total estimated costs related to the Engineering and Design Work are 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 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) Scope Changes to Company Interconnection Work. Company may require additional estimated interconnection cost payments (an "Additional Interconnection Cost Payment") that may be required as a result of revisions to the Company-Owned Interconnection Facilities, other Company Interconnection Work necessary but not covered by the Total Estimated Interconnection Costs and/or revisions to the Project schedule necessitating additional Company Interconnection Work not contemplated when the Total Estimated Interconnection Costs were determined. Company shall prepare commercially reasonable documentation justifying the necessity of the Additional Interconnection Cost Payment, which cannot be unreasonably denied by Seller. Seller shall pay the requested Additional Interconnection Cost Payment within 30 Days of receipt of Company's documentation. If Seller does not make such payment when due, Company shall have the right to draw on the Standby Letter of Credit provided under Section 6(a) (Standby Letter of Credit of this Attachment G (Company-Owned

Interconnection Facilities) or, in Company's sole discretion, Company may stop the Company Interconnection Work when funds from the Total Estimated Interconnection Costs are exhausted and shall not be obligated to re-commence Company Interconnection Work until the Additional Interconnection Cost Payment, however made, is received by Company. The amount of the Additional Interconnection Cost Payment shall be included in the Total Estimated Interconnection Costs for purposes of the true-up required under Section 3(d) (True-Up) of Attachment G (Company-Owned Interconnection Facilities).

- (d) 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. 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 Costs, 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.
- (e) 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.

- (f) 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, subject to reimbursement by Seller of the costs thereof incurred by Company in accordance with Section 4(c) (Monthly Bill) of Attachment G (Company-Owned Interconnection Facilities) immediately below.
- (c) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Seller to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

- (a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.
- (b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

- (a) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses owed to 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 doing business in the United States and subject to United States state or federal regulation, 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 doing business in the United States and subject to United States state or federal regulation, 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 Grant of Easement). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Grant of Easement) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities. Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Seller, Seller shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in accordance with such Governmental Approval) or that such Governmental Approvals have otherwise been closed with the issuing Governmental Authority.

10. Land Rights. Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company) obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to make available Facility's Energy Storage Services to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.
11. Contracts for Company-Owned Interconnection Facilities. For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply:  
(i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to determine and exercise Company's rights under such contracts as a third-party beneficiary.

[MATRIX TO BE INSERTED]

ATTACHMENT H  
FORM OF BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("Transferor") and \_\_\_\_\_ ("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Energy Storage Purchase Agreement between Transferor and Transferee dated \_\_\_\_\_, 20\_\_ ("ESPA") 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 ESPA between **[Transferor and Transferee]** and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

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

**[Signatures for Bill of Sale and Assignment  
Appear on the Following Page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

\_\_\_\_\_,  
a \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

"Transferor"

\_\_\_\_\_,  
a Hawai'i corporation

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

"Transferee"

SCHEDULE H-1  
DESCRIPTION OF TANGIBLE PERSONAL PROPERTY AND FIXTURES

SCHEDULE H-2  
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

ATTACHMENT I  
FORM OF GRANT OF EASEMENT

**[DRAFTING NOTE: THIS FORM OF ATTACHMENT I IS SUITABLE FOR BOTH PV+BESS  
AND WIND+BESS PROJECTS AND FOR ALL ISLANDS]**

[ALL ISLANDS FORM]

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return By:  Mail  Pickup

Hawaiian Electric Company, Inc.  
Survey Division  
P. O. Box 2750  
Honolulu, HI 96840-0001

This document contains \_\_\_\_\_ pages

HECO WO# \_\_\_\_\_ /JP# \_\_\_\_\_

TITLE OF DOCUMENT(S):

R/W \_\_\_\_\_

**GRANT OF EASEMENT**

PARTIES TO DOCUMENT:

GRANTOR(S):

GRANTEE(S): **HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LTD.,** a Hawaii corporation

DESCRIPTION: Those certain premises situated off \_\_\_\_\_

Tax Map Keys:

Address:

## GRANT OF EASEMENT

THIS GRANT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the "Grantor"), and [HAWAIIAN ELECTRIC COMPANY, INC.], [HAWAII ELECTRIC LIGHT COMPANY, INC.], [MAUI ELECTRIC COMPANY, LTD.], a Hawaii corporation, whose principal place of business is 1099 Alakea Street, Suite 2200, Honolulu, Hawaii, and whose post office address is P.O. Box 2750, Honolulu, Hawaii, 96840 (the "Grantee").

### WITNESSETH THAT:

WHEREAS, the Grantor is the owner of those certain premises situated off \_\_\_\_\_ (the "Premises"); and

WHEREAS, as evidenced by that certain \_\_\_\_\_ dated \_\_\_\_\_ and recorded in \_\_\_\_\_ as Document No. \_\_\_\_\_, the Grantor entered into an unrecorded \_\_\_\_\_ with \_\_\_\_\_, for purposes of constructing and operating a \_\_\_\_\_ facility (the "Project") on the Premises; and

WHEREAS, the term of the \_\_\_\_\_ commenced on \_\_\_\_\_ and continues for a period of \_\_\_\_\_ years following the Operation Commencement Date (the "Term") as defined in the \_\_\_\_\_; and

WHEREAS, the Grantee requires that the Grantor grant and convey unto the Grantee easements over, upon, across and through the Premises, to allow the Grantee to receive electric energy generated by the Project and to allow the Project to receive electric service from the Grantee's existing grid, for as long as the \_\_\_\_\_ shall be in effect.

NOW THEREFORE, the Grantor, in consideration of the sum of One Dollar (\$1.00) paid to the Grantor, the receipt of which is acknowledged, and of the covenants herein made by the Grantee, grants and conveys unto the Grantee a perpetual right and easement to construct, reconstruct, operate, maintain, repair and remove poles, guy wires, anchors, overhead and/or underground wire lines and such other appliances and equipment (the "Grantee's Improvements") as may be necessary for the transmission and distribution of electricity and/or communication, including all service lines emanating from the main trunk line, to be used for light and power and/or communications and control circuits, including, without limiting the generality of the foregoing, the right (but not the obligation) to trim, keep trimmed, remove, and control any trees and vegetation in the way of its lines, appliances and equipment and a right of entry upon the Grantor's land and appurtenant interests, if any, for the aforesaid purposes, over, under, upon,

across and through that certain parcel of land situate off \_\_\_\_\_ (the “Easement”).

TO HAVE AND TO HOLD the same unto the Grantee, for as long as the \_\_\_\_\_ shall be in effect, including any extensions thereto, provided however, that upon the termination of the \_\_\_\_\_ and the expiration of a termination period of up to \_\_\_\_\_ days afforded to the Grantee by the Grantor, then all rights granted hereunder shall cease and that upon such termination, Grantee shall have the right to and will, if so requested, remove from the Easement, at its own expense, the Grantee’s Improvements and will restore the ground to as reasonably close to the condition in which it was immediately before the installation of the Grantee’s Improvements.

RESERVING, HOWEVER, unto the Grantor, its respective successors, tenants, transferees, licensees and assigns, the right to use any portions of the granted premises not occupied by the lines, appliances and equipment of the Grantee, including rights of way over, under and across the granted premises, provided, however that such reserved rights shall not be exercised in any manner that will unreasonably interfere with the Grantee’s use of the Easement, the Grantee’s Improvements, or Grantee’s access to and maintenance of the Grantee’s Improvements.

AND the Grantee hereby covenants and agrees that:

**1. Due Care and Diligence.** It will use due care and diligence to keep the lines, appliances and equipment owned by the Grantee in good and safe condition and repair and will exercise its rights hereunder in a manner that will occasion only such interference with the use of the land by the owners and occupants as is reasonably necessary.

**2. Indemnification.** The Grantee, for itself only and not on behalf of the other, will indemnify the Grantor, its tenants and licensees occupying the land affected by this Grant of Easement, from any and all damages to the property of the Grantor and such tenants and licensees caused by such Grantee’s failure to maintain its lines, appliances and equipment as provided in paragraph (1) above, and will indemnify and hold harmless the Grantor, its tenants and licensees against all claims, suits and actions by whomsoever brought on account of injuries to or death of persons or damage to property caused by such Grantee’s failure to observe the covenants contained in paragraph (1) above. The foregoing indemnification obligations of the Grantee shall not apply to the extent that any such damage, injury, or death is attributable to the negligence or willful misconduct of the Grantor, its tenants and/or licensees occupying the land affected by this Grant of Easement.

IT IS UNDERSTOOD AND AGREED by and between the parties hereto that:

**A. Condemnation.** If at any time any portion of land across, through or within which this easement passes shall be condemned or taken by any governmental authority, the Grantee shall have the right to claim and recover from the condemning authority, but not from the Grantor, such compensation for the damages to the Grantee's easement and right of way and the appliances and equipment owned by, installed and used in connection with this Grant of Easement, which shall be payable to the Grantee, to the extent of its interest.

**B. Landscaping.** The Grantor shall install and maintain or cause to be installed and maintained without expense to the Grantee any screening or landscaping of the Grantee's facilities which may now or hereafter be required by law or regulation or governmental agency and will indemnify the Grantee from all loss and liability arising from the breach of this covenant.

**C. Warranty of Title.** The Grantor, for itself, its heirs and assigns, covenants with the Grantee, its successors and assigns, that the Grantor is seised in fee simple of the property in which the easement is granted and has good right to grant the same; that the Grantee shall enjoy the easement without hindrance and free from all encumbrances; and that the Grantor will warrant and defend the Grantee against the lawful claims and demands of all persons claiming the whole or any part of the said land.

**D. Definitions.** All defined terms (words such as Grantor, Grantee, etc.) and pronouns used in the singular shall mean and include the plural and include the masculine, feminine or neuter gender, as the context of this grant shall require. The term "person" shall mean an individual, partnership, association, trust, corporation or other entity as the context may require.

**E. Parties in Interest.** The covenants contained in this Grant of Easement shall inure to the benefit of, and be binding upon, the parties and their heirs, personal representatives, beneficiaries, successors and assigns. Each of the parties which constitute the Grantee covenants, and shall be responsible and obligated, for itself and not for the other Grantee party.

**F. Counterparts.** The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. The parties agree that the person or company recording or arranging for the recordation of this instrument is authorized to complete any blanks contained in this instrument with the applicable number of pages, dates, and recordation information, whether before or after this instrument has been notarized by a notary public, and in no event shall completion of any such blanks be deemed an alteration of this instrument by means of the insertion of new content.

*[Signatures begin on the following page.]*

IN WITNESS WHEREOF the undersigned have executed this instrument as of the day and year first above mentioned.

\_\_\_\_\_

Grantor

STATE OF HAWAII )  
 : ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing \_\_\_\_\_-page instrument entitled GRANT OF EASEMENT, dated \_\_\_\_\_, as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities. This acknowledgement is deemed to include my Notary Certification.

\_\_\_\_\_  
Notary Signature

Type or print name: \_\_\_\_\_  
Notary Public, First Circuit, State of Hawaii

My commission expires: \_\_\_\_\_

[Affix Seal]



EXHIBIT "A"

EXHIBIT "B"

ATTACHMENT J  
COMPANY PAYMENTS FOR DISPATCHABILITY AND AVAILABILITY OF BESS

1. [RESERVED]
2. Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall pay Seller for the availability of the Facility's Energy Storage Services to respond to Company Dispatch in accordance with this Agreement, a monthly Lump Sum Payment as calculated and adjusted as set forth in this Section 2 (Lump Sum Payment) and Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Dispatchability and Availability of BESS). For avoidance of doubt, because the Facility will not be available to respond to Company Dispatch in accordance with this Agreement until the Commercial Operations Date, until the Commercial Operations Date, if the Commercial Operations Date occurs on a Day that is not the first Day of a calendar month, the monthly Lump Sum Payment shall be prorated for the period from the Commercial Operations Date to the end of that month.
  - (a) Investment Grade Pricing. The Lump Sum Payment shall be the Investment Grade Lump Sum Payment if, by the Construction Financing Closing Milestone: (i) Seller enters into a step-in agreement, or other substantially equivalent assurance in the event of default by Company of its contractual payment obligations under this Agreement (hereinafter, regardless of the form such assurance takes, a "Step-In Agreement"), with the State of Hawai'i or an applicable department thereof when a PPA is executed, or as soon as reasonably possible thereafter, in accordance with the IPP Bill, and/or (ii) Company's credit rating reaches Investment Grade Status. Seller shall not be permitted to opt out of the Step-In Agreement in order to circumvent the applicability of the Investment Grade Lump Sum Payment.
  - (b) Non-Investment Grade Pricing.
    - (i) The Lump Sum Payment shall be the Non-Investment Grade Lump Sum Payment if, by the Construction Financing Closing Milestone: (A) the IPP Bill does not pass and become law or if the IPP Bill becomes law but the State does not elect to execute a Step-In Agreement with Seller (despite

Seller's best efforts); and (B) Company's credit rating does not reach Investment Grade Status.

(ii) Notwithstanding the application of Section 2(b)(i) of this Attachment J (Company Payments for Dispatchability and Availability of BESS):

(A) the Lump Sum Payment will be adjusted downward from the Non-Investment Grade Lump Sum Payment to the Investment Grade Lump Sum Payment, if, at any time during the Term: (1) Seller executes a Step-In Agreement with the State under the IPP Bill; or (2) Company's credit rating reaches Investment Grade Status; and

(B) if Seller's actual financing costs are lower than assumed/estimated in developing its Non-Investment Grade Lump Sum Payment at the time of bid submission, as demonstrated by the Financing Cost Comparison (which shall be provided to Company, together with all supporting documentation, within thirty Days of Seller's completion of each of the Construction Financing Closing Milestone and the closing of Seller's long-term financing), Seller will be required to adjust its Non-Investment Grade Lump Sum Payment downward on a pro rata basis to reflect such lower financing costs.

(c) BAFO Lump Sum Payment Adjustment. To provide inflation protection to the Seller, the Company will allow Seller a one-time pricing adjustment to its BAFO Lump Sum Payment, not to exceed ten percent (10%) of the BAFO Lump Sum Payment, based on the increase, if any, in the GDPIPD index between the submission date of Seller's BAFO and the PUC Approval Order Date. Any change in the GDPIPD index value ("GDPIPD Compare Rate") shall be determined by dividing the  $GDPIPD_{PUC\ Approval}$  by the  $GDPIPD_{BAFO\ Submission}$ . If there is no change in the index value or if the index value decreases (i.e., the GDPIPD Compare Rate is less than or equal to 1.0) during the period between Seller's BAFO submission date and the PUC Approval Order Date,

Seller will not be permitted an adjustment to its BAFO Lump Sum Payment. If the GDPIPD Compare Rate is greater than 1.0, the adjustment to the BAFO Lump Sum Payment shall be calculated by multiplying the BAFO Lump Sum Payment by the GDPIPD Compare Rate (which shall not exceed 1.10). Any GDPIPD Compare Rate exceeding 1.10 shall be adjusted to be 1.10 in order to determine the Lump Sum Payment.

- (d) The "BAFO Lump Sum Payment" is \$ \_\_\_\_\_ for the Investment Grade Lump Sum Payment, and \$ \_\_\_\_\_ for the Non-Investment Grade Lump Sum Payment. If the GDPIPD Compare Rate is greater than 1.0 (i.e., the GDPIPD<sub>PUC Approval</sub> is greater than the GDPIPD<sub>BAFO Submission</sub>), the BAFO Lump Sum Payment may be adjusted to determine the Unit Price as follows:

$$\text{Lump Sum Payment} = \text{BAFO Lump Sum Payment} \times \text{GDPIPD Compare Rate}$$

Where the GDPIPD Compare Rate is capped at 1.10.

EXAMPLE (for illustrative purposes only):

*BAFO Submission Date - July 14, 2023*  
*PUC Approval Order Date - August 15, 2025*  
*GDPIPD<sub>BAFO Submission</sub> - 123.55*  
*GDPIPD<sub>PUC Approval</sub> - 124.766*  
*BAFO Lump Sum Payment - \$10,000,000*

Calculation of Lump Sum Payment:

$$\text{Lump Sum Payment} = \text{BAFO Lump Sum Payment} \times \text{GDPIPD Compare Rate}$$

$$\text{GDPIPD Compare Rate} = \text{GDPIPD}_{\text{PUC Approval}} / \text{GDPIPD}_{\text{BAFO Submission}} = 124.766 / 123.55 = 1.009842$$

$$\text{Lump Sum Payment} = 10,000,000 \times 1.009842 = \$10,098,420$$

*If GDPIPD Compare Rate is greater than 1.10:*

$$\text{Lump Sum Payment} = \$10,000,000 \times 1.10 = \$11,000,000$$

- (e) Investment Tax Credit Adjustment. For purposes of this Section 2(e) (Investment Tax Credit Adjustment) of Attachment J (Company Payments for Dispatchability

and Availability of BESS), the "ITC Adjustment" shall mean the occurrence of a change in law that lowers the base investment tax credit ("ITC") amount for which the Project is eligible under the Inflation Reduction Act from the ITC amount Seller reflected in its RFP Proposal ("Seller's Base ITC"). Upon the occurrence of an ITC Adjustment, Seller may request an increase in the Lump Sum Payment; provided, that any such increase to the Lump Sum Payment shall be offset by any corresponding change in tax law (e.g., new tax credits, increase in available existing tax credits, reduction in corporate income tax rate, etc.) that benefits Seller. To the extent that Seller requests a price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment), Seller shall provide to Company such documentation and evidence necessary to establish, to Company's reasonable satisfaction, that the requisite circumstances are present to trigger a price change, including, without limitation: (i) written evidence of the change(s) to the ITC encompassed by the ITC Adjustment, and a description, with specificity, as to the impact of such change(s) on Seller's pricing, (ii) either (A) written evidence of the other changes in tax law, if any, benefitting Seller, and a description, with specificity, as to the impact of such change(s) on Seller's pricing, or (B) written certification from Seller that all other tax assumptions made in Seller's current price remain unchanged due to a lack of any changes in tax law benefitting Seller, and (iii) any other information reasonably requested by Company for purposes of justifying the price change requested by Seller. Moreover, any price change pursuant to this Section 2(e) (Investment Tax Credit Adjustment) shall be agreed to in writing by the Parties and shall be subject to approval by the PUC. Notwithstanding the foregoing, there shall be no change in price pursuant to this provision, if (1) Seller's RFP Proposal did not include or specify Seller's Base ITC, (2) a change to the ITC law applicable to the Project becomes effective after the Commercial Operations Date, or (3) if the inability to claim the ITC is due to any other reason other than a change in law. The Company reserves the right and opportunity to propose other methods to adequately preserve a Seller's pricing assumptions regarding such applicable federal tax credits.

3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as follows:

- (a) [RESERVED]
- (b) [RESERVED]
- (c) [RESERVED]
- (d) 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 or all 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 receive and/or deliver electric energy). Although the liquidated damages that are payable if the BESS Annual Equivalent Availability Factor fails to satisfy the BESS EAF Performance Metric addresses this issue in certain of the circumstances when the Facility or a portion thereof is unable to respond to Company Dispatch, the BESS Annual Equivalent Availability Factor does not account for events of Force Majeure because Force Majeure hours are deemed to be removed from the Outage Hours for purposes of calculating the BESS Annual Equivalent Availability Factor under Attachment X (BESS Annual Equivalent Availability Factor) to 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 Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be adjusted downward pro rata for each hour or portion thereof during the calendar month in question that the Facility or a portion thereof was not

available to respond to Company Dispatch because of a Force Majeure condition affecting Seller (whether claimed by Seller or not) (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Seller from making the Facility or any portion thereof available for Company Dispatch. The hours the Facility is affected by Force Majeure are converted to equivalent full outage hours by multiplying the actual duration of the event (hours) by (i) the size of the reduction in MWs or number of devices, divided by (ii) the BESS Contract Capacity if the size of the reduction is in MWs or the total number of devices in the affected system if the size of the reduction is a device count. These equivalent hour(s) are then summed. The summation of equivalent full outage hours is then divided by the months total period hours (number of days in the month x 24hrs/day) to determine the pro-rated factor the Lump Sum Payment will be adjusted by.

- (e) Example (for illustrative purposes only): if a Facility has forty inverters and, during the month of June (which has 720 period hours), one BESS module is not available to respond to Company Dispatch for a period of 240 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of June would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = \begin{array}{l} (\text{MLSP} \times 1/40) \\ \times 240/720 \end{array}$$

where:

MLSP = The monthly Lump Sum Payment that would be payable for such month but for the downward adjustment.

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by multiplying a monetary value by a fraction shall be rounded to the nearest cent.

4. Reduced Monthly Lump Sum Amount for Partial Installation.

- (a) To the extent applicable, during the Preliminary Phase, Company shall pay to Seller the Reduced Monthly

Lump Sum Payment in consideration for the availability of the Partial Installation's Energy Storage Services to respond to Company Dispatch in accordance with this Agreement. For purpose of this Agreement, the "Reduced Monthly Lump Sum Amount" shall be calculated as follows:

$$\text{Reduced Monthly Lump Sum Amount} = (\text{Lump Sum Payment} \div 12) \times \text{Partial Installation Capacity (MWh)} \div \text{BESS Contract Capacity (MWh)}$$

- (b) The Reduced Monthly Lump Sum Amount is subject to downward adjustment based on the monthly availability of the Partial Installation Capacity, stated as a percentage and calculated as follows ("Partial Installation Capacity Ratio"):

$$\text{Partial Installation Capacity Ratio} = [(\text{Partial Installation Capacity (MW)} \times \text{MH}) - \text{OH} - \text{DH}] \div (\text{Partial Installation Capacity (MW)} \times \text{MH})$$

Where:

MH = 24 hours x number of Days in applicable month

OH = the number of outage MWh during the applicable month when the entire Partial Installation is offline (other than at Company's request for reasons other than Seller-Attributable Unavailability, as such term is applied to the Partial Installation, not just the entire Facility) and unable to charge or discharge Energy, calculated by multiplying the actual duration of the outage (hours) by the Partial Installation Capacity

DH = the number of derating MWh during the applicable month when the Partial Installation is available, but at less than the Partial Installation Capacity, calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW). This value shall take into account those deratings which exist due to Seller-Attributable Unavailability (as the term is applied to the Partial

Installation, not just the entire Facility),  
Planned Deratings (PD), Maintenance Deratings  
(D4) and Unplanned Derating (Forced Derating).

If the Partial Installation Capacity Ratio is less than 1.0,  
such ratio shall be multiplied by the Reduced Monthly Lump Sum  
Amount to obtain the monthly payment due to Seller.

Example Calculation (for illustrative purposes only):

Lump Sum Payment = \$120,000,000/month

Contract Capacity = 120 MW/480 MWh

Partial Installation Capacity (MW / MWh) = 100 MW /  
400 MWh

Hours in Month = 720 hrs

Total outage hours for the month = 120 MW outage for  
36 total hours

Total derating hours for the month = 40 MW derating  
for 48 total hours

Reduced Monthly Lump Sum Amount = (Lump Sum Payment ÷  
12) × (Partial Installation Capacity (MWh) ÷ 480 MWh)

Reduced Monthly Lump Sum Payment = (\$120,000,000 ÷ 12  
months) × (400 MWh ÷ 480 MWh) = \$8,333,333.33 per  
month

Partial Installation Capacity Ratio = [(Partial  
Installation Capacity (MW) × MH) - OH - DH] ÷ (Partial  
Installation Capacity (MW) × MH)

Partial Installation Capacity Ratio = [(100 MW × 720  
hours) - (120 MW × 48 hours) - (40 MW × 72 hours)] ÷  
(100 MW × 720 hours)

Partial Installation Capacity Ratio = [(72,000 MWh -  
5,760 MWh - 2,880 MWh)] ÷ 72,000 MWh

Partial Installation Capacity Ratio = 0.88

Amount Due to Seller After Downward Adjustment =  
Reduced Monthly Lump Sum Payment × Partial  
Installation Capacity Ratio

Amount Due to Seller After Downward Adjustment =  
\$8,333,333.33 × 0.88

Amount Due to Seller After Downward Adjustment =  
\$7,333,333.33

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 payments due under this Agreement based on the maximization of such credits. Subject to the provisions of Section 2 (Lump Sum Payment), 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 battery energy storage 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 state tax credit based on its investment in battery energy storage technologies incorporated into the Facility. 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 state 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 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 claim, or enable its investors to claim, 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 claim 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 claimed;
- (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 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 the amount equal to the maximum Hawai'i Refundable and/or Non-Refundable Tax Credit available for the Project at such time. 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) the amount set forth in the preceding sentence 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 Refundable and/or Non-Refundable Tax Credit. Such liquidated damages shall be provided to Company in the form of a lump sum payment by Seller or as a credit against any amounts due by Company to Seller under this Agreement, as Company reasonably determines.
- (e) [RESERVED]
- (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) of this Attachment J (Company Payments for 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 5(g) of this Attachment J (Company Payments for Dispatchability and Availability of BESS). Company shall pay the fees and expenses of the Independent Tax Expert and Seller shall promptly reimburse Company for one-half of such fees and expenses.

- (g) Any dispute arising under this Attachment J (Company Payments for 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 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 Dispatchability and Availability of BESS) directly or through one or more Affiliates.

ATTACHMENT K  
GUARANTEED PROJECT MILESTONES

**[For Developer Interconnection Build]**

<b>Guaranteed Project Milestone Date</b>	<b>Description of Each Guaranteed Project Milestone</b>
<b>[SPECIFY DATE CERTAIN]</b>	<u>Construction Financing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by <b>[insert same date certain as in left column]</b> or (ii) the financial capability to construct the Facility (" <u>Construction Financing Closing Milestone</u> ").
<b>[SPECIFY DATE CERTAIN]</b>	<u>Permit Application Filing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: <b>[List All Discretionary Permits]</b>
<b>[SPECIFY DATE CERTAIN]</b>	<u>Guaranteed Commercial Operations Date</u> .

ATTACHMENT K-1  
SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES

**[For Developer Interconnection Build]**

<b>Seller's Conditions Precedent Date</b>	<b>Description of Each of Seller's Conditions Precedent</b>
	Seller shall make payment to Company of the amount required under <u>Section 3(b) (ii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(b) (iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.
	Seller's EPC Contractor shall obtain grading permit.
	Seller shall provide a list of long-lead time materials for the Company-Owned Interconnection Facilities, including but not limited to, control house (if applicable) and metering CTs and PTs.
	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.
	Seller's EPC contractor shall complete Seller's engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).

<p><b>No later than three (3) months prior to the commencement of the Acceptance Test</b></p>	<p>Seller shall provide backup station service power.</p>
<p><b>No later than three (3) months prior to the commencement of the Acceptance Test</b></p>	<p>Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.</p>
<p><b>[specify date] ("COIF Construction Completion Date")</b></p>	<p>Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).</p>
<p><b>[specify date] ("Test Ready Deadline")</b></p>	<p>Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(f)(ii) of Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.</p>
	<p>Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

COMPANY MILESTONES

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

<b>Company Milestone Date</b>	<b>Description of Each Company Milestone</b>
Two months after "COIF Construction Completion Date" and ten (10) Business Days after "Test Ready Deadline"	Company shall, subject to Seller's continued satisfaction of the requirements set forth in <u>Section 2 (f) (ii)</u> and <u>Section 2 (f) (iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
Fourteen (14) Days following successful completion of Acceptance Test, unless any portion of this period falls within the last twenty-one (21) days of December, in which case, on January 15th of the following year.	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

ATTACHMENT L  
REPORTING MILESTONES

**[For Developer Interconnection Build]**

<b>Reporting Milestone Date</b>	<b>Description of Each Reporting Milestone</b>
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction <del>or other</del> <u>agreement and general contractor agreements, which shall each include a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities</u> . Under no circumstances shall redactions conceal information that is necessary for Company to verify <u>Company's <del>its</del> rights or Seller's obligations</u> under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Seller shall provide Company with copies, as applicable of executed Facility operating agreements
[Date]	Building Permit: Seller or Seller's EPC Contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings and step-up transformer facilities.
[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site, tested and mechanically complete.

ATTACHMENT M  
FORM OF LETTER OF CREDIT

Page 1 of 2

**[Bank Letterhead]**

**[Date]**

**Beneficiary:**     **[Hawaiian Electric Company, Inc.]**  
                  **[Maui Electric Company, Limited]**  
                  **[Hawai'i Electric Light Company, Inc.]**

**[Address]**

**[Bank's Name]**

**[Bank's Address]**

Re:   **[Irrevocable Standby Letter of Credit Number]**

Ladies and Gentlemen:

We hereby establish, in your favor, our irrevocable standby Letter of Credit Number \_\_\_\_\_ (this "Letter of Credit") for the account of **[Applicant's Name]** and **[Applicant's Address]** in the initial amount of \$ \_\_\_\_\_ **[dollar value]** and authorize you, **[Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.]** ("Beneficiary"), to draw at sight on **[Bank's Name]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Energy Storage Purchase Agreement dated as of \_\_\_\_\_ between **[Project Entity Name]** and Beneficiary (the "Power Purchase Agreement").

This Letter of Credit is issued with respect to the following obligations: to pay all amounts due to Beneficiary under Section 14.7 of the Power Purchase Agreement \_\_\_\_\_.

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

Partial draws of this Letter of Credit are permitted. This Letter of Credit is not transferable. Drafts on us at sight shall

be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of **[Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.]** and [(ii) the amount of the draft accompanying this certification is due and owing to **[Hawaiian Electric Company, Inc] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.]** under the terms of the Energy Storage Purchase Agreement dated as of \_\_\_\_\_, between \_\_\_\_\_, and **[Hawaiian Electric Company, Inc] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.]** or [(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 Article 14 of the Energy Storage 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, by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank, or by email transmission of documents in PDF format to **[Bank Email Address]** or other such email address as specified from time to time by the bank. If presentation is made by facsimile transmission or email 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 or email, 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

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\* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Energy Storage Purchase Agreement.

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:

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and to

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And a copy to Applicant at:

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We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Note - insert State of bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

**[Bank's Name] :**

By: \_\_\_\_\_  
**[Authorized Signature]**

ATTACHMENT N  
ACCEPTANCE TEST GENERAL CRITERIA

**[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]**

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test shall include, but not be limited to, the following:

1. Interconnection.

- (a) Based on manufacturer's specification, test the local operation of the Facility's \_\_\_\_ kV breakers, [**For Maui and Hawaii Island: generator breaker(s) and inter-tie breaker(s), and other breaker(s), as relevant**] which connect the Facility to Company System - must open and close locally using the local controls remotely from Company's Emergency Management System (EMS) and SCADA. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (b) 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.
- (c) All \_\_\_\_ kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).

- (d) Interconnection Facilities inspections - The Interconnection Facilities 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 Interconnection Facilities may be tested to make sure there is adequate grounding of equipment.
- (e) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed to by Company and Seller to reflect installed systems and communication paths that tie the Facility to Company's communications system.
- (f) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's \_\_\_ kV breakers, if any, open as they are designed to open. (Back up relay testing).
- (g) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of Company meters.

2. Communication.

- (a) Confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Confirm that the Facility operators can sufficiently reach Company System Operator.

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.

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]**

**[ALL ISLANDS]**

(i) The Control System Acceptance Test ("CSAT") shall be conducted following installation of any Partial Installation, if applicable, and the Facility in its entirety. The CSAT shall be conducted in accordance with criteria set forth herein. The CSAT shall be performed in accordance with Good Engineering and Operating Practices and demonstrate to Company's satisfaction that the Facility (or Partial Installation, as applicable) and the interconnection portion of the Facility (or Partial Installation, as applicable), including Company-Owned Interconnection Facilities, comply with the provisions of Article 8 (Company Dispatch) and Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned By Seller). The CSAT is to be successfully completed prior to the Commercial Operations Date.

- (a) Seller will provide an estimate of the earliest date for the Control System Acceptance Test at least ninety (90) Days before the date. No Control System Acceptance Test will be scheduled during the final twenty-one (21) Days of a calendar year, and no new Control System Acceptance Test can commence until an in-progress Control System Acceptance Test is completed (or earlier terminated by mutual agreement).
- (b) CSAT 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. The Control System and Telemetry and Control List is necessary for the effective operation of the Company System and will be tested during the CSAT.
- (c) When the Facility is ready for the CSAT, 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.

- (d) The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule.
- (e) The CSAT procedures for the Facility will be mutually agreed upon between Seller and Company prior to conducting the test.
- (f) 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 (Technical and Operational) 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.
  - ii. Loss-of-Communications responses
  - iii. Retention of data for controller power cycles
  - iv. Droop characteristic and change of frequency control / response modes (if applicable).
  - v. Real power delivery under remote Company Dispatch, Active Power Dispatch.
  - vi. Accurate provision of limits for Minimum and Maximum Dispatch.
  - vii. Ramp Rates.
  - viii. Voltage regulation.
  - ix. Grid forming and blackstart (if applicable).
  - x. BESS Capacity Test and demonstration of the round trip efficiency of the BESS, each as described in Attachment W (Capacity Tests).
- (g) Testing of primary and redundant communications between Company System Operator and Facility Operator.
- (h) 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

Facility equipment and controls. 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 and PSCAD 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 or Partial Installation, as applicable. The as-left parameters obtained from real and reactive local response tuning will be determined for use in the Company planning model.
- (i) Examples of the type of tests conducted to meet the aforementioned objectives may include, but are not limited to the following:
1. Functional Tests:
    - a) SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility or Partial Installation, as applicable, are working properly end-to-end.
    - b) Dispatch Test to verify, as applicable, if the Facility's and Partial Installation's active power limit and setpoint 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 and appropriate limiting of, as applicable, the Facility's or Partial Installation's real power output.

- c) Control Test for Voltage Regulation to verify the Facility or Partial Installation, as applicable, can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of Sections 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of Attachment B (Facility Owned by Seller) to this Agreement.
- d) Frequency Response Test to verify the Facility or Partial Installation, as applicable, 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 or Partial Installation, as applicable, 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).
- e) Loss-of Communication Test to verify the Facility or Partial Installation will properly respond to the various singular and combined disconnection and reconnection of the communication systems relied upon to properly protect and control the Facility. Test is generally conducted by simulating a communications failure and observing the proper response of the Facility or Partial Installation, if applicable. **[If DTT required for the Project.]**
- f) Round trip efficiency test, as described in Attachment W (BESS Tests) to verify that the round trip efficiency of the BESS is not less

than the percentage stated as the RTE Performance Metric.

- g) BESS Capacity Test, as described in Attachment W (BESS Tests) to verify the BESS Capacity Ratio.
- h) Self-Energization Test to verify the Facility will properly self-energize and synchronize to the Company System.
- i) Blackstart Test (as applicable).
- j) Demonstration of the Facility functions either by direct control of the Facility or manipulation of other system conditions to prove functionality.

2. Monitoring Test:

- a) The monitoring test requires the Facility to operate as it would in normal operations and in accordance with the provisions of this Agreement.
- b) To ensure useful and valid test data is collected, the monitoring test shall end 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. 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 the Control System Acceptance Test(s) was passed.
- 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 Control System Acceptance Test. The Parties understand and agree that a successful completion of the test does not constitute a waiver of any of the technical and operational requirements 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 Section 3 (Technical and Operational Requirements) of Attachment B (Facility Owned by Seller).

ATTACHMENT P  
SALE OF FACILITY BY SELLER

1. Company's Right of First Negotiation Prior to End of the Term.
  - (a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "Exempt Sale" (as defined below):
    - (i) Seller shall first offer to sell such interest to Company by providing Company with written notice of the same (the "Offer Notice"), which notice shall identify the proposed purchase price for such interest (including a description of any consideration other than cash that will be accepted) (the "Offer Price") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at the Offer Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). Seller shall provide to Company as part of the Offer Notice, information in its possession regarding the Facility to allow Company to conduct due diligence on the potential purchase, including, but not limited to information on the operational status of the Facility and its components, and the amount of debt or other material Seller obligations remaining with respect to the Facility (the Offer Notice and due diligence information on the Facility are collectively referred to as, the "Offer Materials"). Within five (5) Days of Company's receipt of the Offer Materials, if Company believes the due diligence information is incomplete, Company shall specify in writing the additional information Company requires to conduct its due diligence. The date on which Company receives the Offer Materials from Seller is referred to hereinafter as the "Offer Date."
    - (ii) If Company desires to purchase such interest,

Company shall indicate so by delivering to Seller a binding, written offer to purchase such interest at the Offer Price and on the terms and conditions specified in the Offer Notice within thirty (30) Days of the Offer Date (an "Acceptance Notice"). In the event Company timely delivers an Acceptance Notice, Seller shall sell and transfer to Company the interest substantially on the terms and conditions contained in the Offer Notice consistent with this Attachment P (Sale of Facility by Seller) and in accordance with definitive documentation to be entered into between Seller and Company. The Parties shall have sixty (60) Days from the Company's Acceptance Notice, or such other extended timeframe as agreed to by the Parties in writing, to negotiate in good faith, the terms and conditions of a purchase and sale agreement. The period beginning with the Offer Date and ending with such sixty (60) Day period (as may be extended as aforesaid) is referred to as the "Right of First Negotiation Period".

- (iii) Seller shall not solicit any offers for the sale of such interest to any other party during the Right of First Negotiation Period unless, during that period, Company provides Seller with written notice that Company no longer desires to purchase such interest, whereupon negotiations shall terminate.
- (iv) In the event that (A) Company fails to timely deliver an Acceptance Notice, (B) Company delivers a notice to Seller that it no longer desires to purchase the interest, or (C) the Parties are not able to execute a purchase and sale agreement within the 60-Day period set forth in Section 1(a)(ii) of this Attachment P (Sale of Facility by Seller), Seller may for a period of two hundred seventy (270) Days following the event specified in subsection (A), (B) or (C) above, commence solicitation of offers and negotiations from and with other parties for the sale of such interest. If the interest is not transferred to a purchaser or purchasers for any reason within the two hundred seventy (270) Day period, the interest may only be transferred by

again complying with the procedures set forth in this Section 1(a) (Right of First Negotiation) of Attachment P (Sale of Facility by Seller); provided, however, if Seller and the prospective purchaser have entered into definitive agreement(s) for the sale of the interest that was reasonably expected to close within such two hundred seventy (270) Day period and such agreement(s) remain in full force and effect between Seller and such prospective purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) Day period shall be extended as to such agreement(s) and such prospective purchaser for up to one hundred eighty (180) additional Days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

(v) After expiration of the Right of First Negotiation Period, Company will not be precluded from providing offers or proposals to Seller along with other prospective purchasers in accordance with any offer or bid procedures established by Seller in its discretion.

(b) Change in Ownership Interests and Control of Seller. Commencing as of the Commercial Operations Date, the Right of First Negotiation shall also be triggered by a transfer or sale of an ownership interest in Seller (whether in a single transaction or a series of related or unrelated transactions) following which the Parent Entity or an entity controlled by the 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 the Parent Entity retains the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of Seller, whether through ownership, by

contract, or otherwise, shall not be deemed a Change in Control.

- (c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, "Exempt Sales" means: (i) a change in ownership of the Facility or equity interests in Seller resulting from the direct or indirect transfer or assignment by or of Seller in connection with financing or refinancing of the Facility ("Financing Purposes"), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Seller's right, title, or interest in the Facility or equity interests in Seller undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Seller to facilitate a tax credit financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, (iii) a sale that does not result in a Change in Control, and (iv) a sale or transfer of any interest in Seller or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Seller.
- (d) Seller's Right to Transfer. The provisions of this Section 1(d) (Seller's Right to Transfer) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving

documentation from Seller establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; (ii) has experience in the ownership of BESS facilities; and (iii) has at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of BESS facilities; provided, however, that Company shall be deemed to have consented to the assignment if, within ten (10) Business Days of receiving from Seller the documentation establishing that the assignee meets all the foregoing criteria, Company does not either (y) deliver the required consent to Seller, or (z) notify Seller which of the foregoing criteria is not established by such documentation. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

- (e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) shall apply if (i) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the

proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller).) Seller shall notify Company in writing of an offer that triggers this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and otherwise consistent with this Attachment P (Sale of Facility by Seller). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.

- (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice

of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.

- (b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Seller, the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller) and a price equal to the Offer Price as presented by Seller in accordance with the procedures identified in Section 1(a)(i) through (v) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.
- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).

(d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

(a) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 24.5 (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising BESS 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 AAA 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. In no event shall the Appraised Fair Market Value of the Facility or the fair market value of the Facility (in the event appraisers are not

required) be determined to be less than the Facility Debt. In the event such value is less than the Facility Debt, the Company agrees and understands that the liens on the Facility associated with such Facility Debt will remain until the Company has paid such debt in full.

4. Purchase and Sale Agreement. The purchase and sale agreement ("PSA") concluded by the Parties pursuant to this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:
- (a) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
  - (b) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;
  - (c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
  - (d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;
  - (e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims,

encumbrances and rights of others, except any Permitted Lien;

- (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;
- (g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;
- (h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;
- (i) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;
- (j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Seller in conformity with all Laws;
- (k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in

Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller);

- (l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease; and
- (m) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Seller), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

- (a) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained.

Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.

- (b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.
- (c) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment

P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.

- (d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to Section 24.5 (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the twelve (12) month period. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-Appealable Order from the PUC shall constitute and be referred to as "PUC Approval" for purposes of this Attachment P (Sale of Facility by Seller).
- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Seller),

either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

- (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Seller), either (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

6. Make Whole Amount. For purposes of Section 24.5 (Consolidation), the "Make Whole Amount" shall be equal to the sum of the following: (a) Seller's book value (including depreciation on a fifteen (15) year straight line basis) of all actual verifiable costs of studies, designs, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Seller), including cancellation charges and other costs of unwinding construction and demobilization if the determination is made prior to the Commercial 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  
[RESERVED]

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 Hawai'i 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 sudden and accidental 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
  - (iii) 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, named 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, named 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. Project Liability Errors and Omissions. Seller shall obtain adequate protection against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the design and/or construction of the Facility.
8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.
9. Pollution Liability Insurance. This insurance shall provide coverage for losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Facility, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. The coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates. Such policy shall have minimum limits of \$5,000,000 each occurrence; and \$5,000,000 annual aggregate.

ATTACHMENT 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 Energy Storage Purchase Agreement by and between [\_\_\_\_\_] ("Seller"), and [Hawaiian Electric Company, Inc.] [Maui Electric Company, Limited] [Hawai'i Electric Light Company, Inc.], a Hawai'i corporation, dated \_\_\_\_\_, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or

could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, "EPC Contractor" means the contractor responsible for engineering, procurement and construction of the Facility, including Seller if acting as contractor, and including all subcontractors.

Please provide a copy of the current version of the overall Facility schedule in MS Project in a format acceptable to Company. Include all major activities and milestones for Governmental Approvals for development, design and engineering, procurement, construction, interconnection and testing.

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Project and Facility (provide details in subsequent sections of this report):

<b>Project Name:</b>			<b>Guaranteed Commercial Operations Date</b>
<b>Size:</b>		<b>Technology:</b>	<b>RFP: Stage 3</b>
<b>PPA Status</b>	PPA Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX	
	Overhead Line Approval	Approved - D&O No. XXXXX issued on XXXXX XX, XXXX	
<b>System Impact Study</b>			
<b>Facility Study</b>			
<b>Engineering/ Design</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>
	Seller	Energy Storage facility	
	Seller	Step up Substation	

	Seller	COIF <sup>3</sup>		
	Company	COIF – Transmission line		
	Company	COIF – Telecom		
	Company	Remote Work		
	Company	Inter-dependent system		
	General Comments	•		
<b>Permits</b>	<b>Agency / Jurisdiction</b>	<b>Approval / Permit</b>	<b>Date of Approval</b>	<b>Status Summary</b>
	LUC	Amendment/Restatement of State Land Use Boundary Amendment		
	County	Conditional Use Permit		
	County	Waiver Permit		
	County	Grading/NPDES Permit (Battery)		
	County	Grading/NPDES Permit (Substation)		
	County	Building Permit (Battery)		
	County	Building Permit (Substation)		
	County	Building Permit (Switchyard)		
	General Comments			
<b>Land Rights</b>	<b>Type</b>	<b>Status</b>		<b>(Estimated) Receipt Date</b>
	COIF/SOIF: Right of Entry			
	COIF/SOIF: Easement			
	General Comments			
<b>Procurement</b>	<b>Responsible Party</b>	<b>Type of equipment</b>	<b>Order date</b>	<b>(Estimated) Arrival date</b>
	Seller	Inverters		
	Seller	Energy Storage		
	Seller	GSU transformer		
	Seller	Circuit Breakers		
	Seller	Instrument transformers		
	Seller	Control Building		
	Company	Revenue meter		
	Company	T&D Poles, Conductors		
	General Comments			
<b>Construction</b>	<b>Responsible Party</b>	<b>Facility</b>	<b>Status</b>	
	Seller	Energy Storage facility		
	Seller	SOIF		
	Seller	COIF		
	Company	COIF – Transmission line		
	Company	COIF - Telecom		
	Company	Remote Work		
	Company	Inter-dependent system		
	General Comments			

<sup>3</sup> Capitalized terms used but not defined in this update have the meaning given to them in the PPA.

<i>Testing</i>	Acceptance Test	
	CSAT	

APPENDIX A  
GUARANTEED PROJECT MILESTONES AND SELLER'S CONDITIONS PRECEDENT

Please list all Guaranteed Project Milestones and Seller's Conditions Precedent specified in Attachment K and K-1 and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Date Completed	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
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 <b>[insert same date certain as in right column]</b> or (ii) the financial capability to construct the Facility ("Construction Financing Closing Milestone")			
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: <b>[List All Discretionary Permits]</b>			
Guaranteed Commercial Operations Date.			

Seller's Conditions Precedent	Date Specified in the Agreement	Date Completed	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
Seller shall make payment to Company of the amount required under <u>Section 3(b)(ii)</u> (Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)			

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: <b>[List All Discretionary Permits]</b>			
Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).			
Seller shall make payment to Company of the amount required under <u>Section 3(b)(iii)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities)			
Seller shall provide evidence of the full execution of the engineering, procurement and construction contract.			
Seller's EPC Contractor shall obtain grading permit.			
Seller shall provide a list of long-lead time materials for the Company-Owned Interconnection Facilities, including but not limited to, control house (if applicable) and metering CTs and PTs.			
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.			
Seller's EPC Contractor shall complete Seller's engineering work (Issued for Construction Set) related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).			
Seller shall provide backup station service power.	No later than three (3) months prior to		

	the commencement of the Acceptance Test		
Seller or Seller's EPC Contractor shall have Hawaiian Telcom Backup (or equivalent) installed for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at the Company's control center. Seller shall have installed primary and backup SCADA communications infrastructure to enable SCADA communications between the Company-Owned Interconnection Facilities and Seller's Facility.	No later than three (3) months prior to the commencement of the Acceptance Test		
Seller's EPC Contractor shall complete Seller's work related to the Company-Owned Interconnection Facilities as described in <u>Attachment G</u> (Company-Owned Interconnection Facilities).			
Seller's EPC Contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2(f)(ii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.			
Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.			

APPENDIX B  
REPORTING MILESTONES

Please list all Reporting Milestones specified in Attachment L and state the current status of each.

Reporting Milestone Date	Milestone Specified in the Agreement	Date Completed	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction <del>agreement and or other</del> general contractor agreements, <u>which shall each include a provision requiring the applicable contractors and their subcontractors to enter into a project labor agreement with the Covered Entities.</u> Under no circumstances shall redactions conceal information that is necessary for Company to verify <del>Company's its</del> rights <u>or Seller's obligations</u> under the Agreement.		
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.		
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements		
[Date]	Building Permit: Seller or Seller's EPC Contractor shall obtain building permit		
[Date]	Construction Start Date (defined as the start of civil work on Site).		
[Date]	Seller shall have laid the foundation for all Facility buildings, and step-up transformer facilities.		

[Date]	The BESS and all inverters for the Facility shall have been installed at the Site.		
[Date]	The step-up transformer shall have been installed at the Site, tested and mechanically complete.		



APPENDIX D

**LAND RIGHTS SCHEDULE FOR COIF**

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 COIF (e.g., purchase, lease).

Activity	Expected Completion Date	Actual Completion Date
ROE to HECO		
HECO executes Lease for COIF		

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APPENDIX E

**MAJOR EQUIPMENT TO BE PROCURED**

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Descriptiono	Manufacturer	Quantity Ordered	Quantity Made	Quantity On site	Quantity Installed	Quantity Tested	Expected Installation Date	Actual Installation Date
Inverters								
BESS								







APPENDIX I  
**CERTIFICATION**

I, **[Representative]**, on behalf of and as an authorized representative of **[Company]**, do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By:	
Name:	
Title:	
Date:	

ATTACHMENT T  
QUARTERLY REPORTING AND DISPUTE  
RESOLUTION BY INDEPENDENT AF EVALUATOR

1. Quarterly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each BESS Measurement Period thereafter during the Term, Seller shall provide to Company a Quarterly Report in Excel, or such other format as Company may require, which Quarterly Report shall include (i) the data for the BESS Measurement Period in question populated into the form of "BESS Measurement Period Report" below, and (ii) Seller's calculations of the Performance Metrics and any liquidated damages assessments for such BESS Measurement Period as set forth below. Seller shall deliver such Quarterly Report to Company by the tenth (10<sup>th</sup>) Business Day following the close of the BESS Measurement Period in question. Seller shall deliver the Quarterly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Quarterly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Quarterly Report.

BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period. This can either be from the most recent BESS Capacity Test performed during the period or taken from operating data reflecting the net output of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the applicable information to demonstrate satisfaction of the BESS Round Trip Efficiency Performance Metric during the reporting period. This can either be from the most recent BESS RTE Test performed during the period or taken from operational data reflecting the charging/discharging of the BESS.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	Charging Energy (MWh) (B)	BESS RTE Ratio 100% x (A ÷ B)

Enter the information for each Force Majeure event affecting the BESS during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Calendar hours in the reporting period: \_\_\_\_\_

Total equivalent hours for the reporting period (from above): \_\_\_\_\_

Omit any periods where Force Majeure was the sole cause of the Outage or Deration in the reporting areas below per Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Enter the information for each BESS Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: \_\_\_\_\_

Total Outage hours for the reporting period (from above): \_\_\_\_\_

Available Hours (AH) in the reporting period: \_\_\_\_\_

AH from the last three (3) reporting periods: \_\_\_\_\_

AH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Seller Attributable Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B- A)	Size of reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Total Equivalent Seller Attributable Derated hours (ESADH) for the reporting period: \_\_\_\_\_

ESADH from the last three (3) reporting periods: \_\_\_\_\_

ESADH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B- A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D) / E

...					

Total equivalent planned derated hours (EPDH) for the reporting period: \_\_\_\_\_

EPDH from the last three (3) reporting periods: \_\_\_\_\_

EPDH for the last four (4) reporting periods: \_\_\_\_\_

Enter the information for each BESS Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, BESS Contract Capacity (MW), and equivalent hours should be rounded to 1 decimal place. When using MWs for item (D) below, BESS Contract Capacity (MW) is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B - A)	Size of Reduction (MW) (D)	BESS Contract Capacity (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: \_\_\_\_\_

EUDH for the last three (3) reporting periods: \_\_\_\_\_

EUDH for the last four (4) reporting periods: \_\_\_\_\_

Period Hours (PH) is : \_\_\_\_\_ (8760 hours if no 29th day in February in that last twelve months otherwise 8784 hours).

Enter the Available Hours, ESADH, EPDH and EUDH for the last four (4) reporting periods as calculated above.

AH (A)	ESADH (B)	EDDH (C)	EUDH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C - D) / PH

Enter the information for each Unplanned (Forced Outage) during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period  
(from above): \_\_\_\_\_

FOH from the last three (3) reporting periods: \_\_\_\_\_

FOH for the last four (4) reporting periods: \_\_\_\_\_

Enter the FOH, ESADH, and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	ESADH (C)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B + C) / 8760$

2. Quarterly Report Disagreements.

- (a) Notice of Disagreement With Quarterly Report. Within ten (10) Business Days following the close of the BESS Measurement Period in question, Seller shall provide to Company the Quarterly Report for such BESS Measurement Period, as provided in Section 1 (Quarterly Report) of this Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator). Within ten (10) Business Days after Company's receipt of a Quarterly Report, Company shall provide written notice to Seller of any Quarterly Report Disagreement, including with respect to the data for the BESS Measurement Period covered by such Quarterly Report and Seller's calculation of, as applicable, any of the BESS Capacity Ratio, the RTE Ratio, the BESS Annual Equivalent Availability Factor or the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period in question ("Notice of

Quarterly Report Disagreement"). Together with any such Notice of Quarterly Report Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Quarterly Report Disagreement within said 10-Business Day period, the Quarterly Report provided by Seller shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

- (b) Submission of Quarterly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Quarterly Report Disagreement, the Parties shall review the contents of the Quarterly Report(s) together with such Notice of Quarterly Report Disagreement and attempt to resolve such Quarterly Report Disagreement. If the Parties are able to agree on a resolution of any Quarterly Report Disagreement, the resulting corrected Quarterly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Quarterly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Quarterly Report Disagreement affects future Quarterly Reports, such future Quarterly Reports shall be prepared, and the BESS Capacity Ratio, the RTE Ratio, the BESS Annual Equivalent Factor and the BESS Annual Equivalent Forced Outage Factor in such future Quarterly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Quarterly Report Disagreement within ten (10) Business Days after Company's issuance of such Notice of Quarterly Report Disagreement, either Party may, within five (5) Business Days after the end of such 10-Business Day period, submit the unresolved Quarterly Report Disagreement to an Independent AF Evaluator for resolution. If, within five (5) Business Days following the expiration of said 10-Business Day period, neither Party has submitted such Quarterly Report Disagreement to an Independent AF Evaluator, the data and calculations set forth in the Notice of Quarterly Report Disagreement in question shall be deemed to be accepted by Seller and shall no longer be subject to dispute by Company or Seller.

3. [RESERVED]

4. Independent AF Evaluator Process.

- (a) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved Quarterly Report 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 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 Quarterly Report Disagreements, all Quarterly Report Disagreements concerning the same Performance Metric arising out of any one or more of the four (4) Quarterly 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(b) (Submission of Quarterly Report Disagreement to Independent AF Evaluator) of this Attachment T (Quarterly Reporting and Dispute Resolution by 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 Attachment D (Consultants List) 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 Consultants List at any time. In no event shall there be less than three (3) names on the 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 (Quarterly 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 (Quarterly 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) [RESERVED]

(ii) [RESERVED]

(iii) for a Quarterly Report 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 for the BESS Measurement Period in question;

(iv) for a Quarterly Report 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, ESADH, EPDH, EUDH and PH under Attachment X (BESS Annual Equivalent Availability Factor) for the BESS Measurement Period in question if any such values were in dispute and (bb) the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in

question if such BESS Annual Equivalent Availability Factor was in dispute; and

- (v) for a Quarterly Report 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 BESS Measurement Period in question if any such values were in dispute and (bb) the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period in question if such BESS Annual Equivalent Forced Outage Factor was in dispute.
  
- (e) Sequence for Resolving Interrelated Disagreements. If at the time a Quarterly Report Disagreement is submitted to an Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved Quarterly Report Disagreements concerning the same Performance Metric and the same BESS Measurement Period that are pending before a different Independent AF Evaluator, and the resolution of such other Quarterly Report Disagreement(s) is necessary to the resolution of the Quarterly Report 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 Quarterly Report Disagreement shall be tolled until such pending Quarterly Report Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance data and calculations for 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 (Quarterly Reporting and Dispute Resolution by Independent AF Evaluator) and/or the appropriateness of the methodology used by Independent AF Evaluator in resolving such Quarterly Report Disagreements. Without limitation to the generality of the preceding sentence, the decision of the Independent AF Evaluator as to each Quarterly Report 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 Metrics. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metrics under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metrics 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 Quarterly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U  
[RESERVED]

ATTACHMENT V  
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED  
IN PRIOR CALENDAR YEAR

(See Article 5)

DATE WORK ORDER SUBMITTED: 06/28/96  
WO#: 11451  
EQUIPMENT #: 1CCF-TNK-1  
EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1  
PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR  
UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR  
OPERATION.

COMPLETION DATE: 06/28/96  
WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96  
WO#: 11136  
EQUIPMENT #: 1WSA-BV-12  
EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION  
PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING  
LEAKING ON SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH  
STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO  
1374. JH

COMPLETION DATE: 06/28/96  
WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

ATTACHMENT W  
BESS TESTS

Prior to achieving Commercial Operations and in each BESS Measurement Period, unless waived by Company, Seller shall demonstrate that the Facility satisfies the (1) BESS Capacity Performance Metric, and (2) RTE Performance Metric, each as defined and further described below.

BESS Capacity Performance Metric

The BESS Capacity Performance Metric reflects the net energy output of the Facility as delivered to the Point of Interconnection, which considers electrical losses including, but not limited to, Station Service and BESS Aux Loads. The BESS Capacity Performance Metric can be demonstrated with data recorded over any period of time, within the applicable BESS Measurement Period, that meets the requirements of a BESS Capacity Performance Demonstration, described below.

The "BESS Capacity Performance Metric" shall be deemed to be satisfied where the BESS Capacity Ratio is not less than **100%** for an applicable BESS Measurement Period. The "BESS Capacity Ratio" shall be the number, expressed as a percentage, equal to the total energy stored and subsequently delivered to the Point of Interconnection during a time period which meets the requirements of a BESS Capacity Performance Demonstration, divided by the BESS Available Capacity (MWh). The "BESS Available Capacity" shall be defined as the total energy storage capacity in MWh of BESS components online and available to charge or discharge energy. The best or highest BESS Capacity Ratio achieved at the highest BESS Available Capacity in the applicable BESS Measurement Period shall be used to determine satisfaction of the BESS Capacity Performance Metric, or assessment of liquidated damages, for that BESS Measurement Period, in accordance with Section 2.8 (BESS Capacity; Liquidated Damages; Termination Rights).

*BESS Capacity Performance Demonstration*

A "BESS Capacity Performance Demonstration" shall be defined as a continuous time period, not longer than twelve (12) hours in duration, wholly contained within the applicable BESS Measurement Period, during which the BESS dispatch meets the following additional requirements:

- BESS Available Capacity (1) must be the same at the beginning and end of the demonstration time period and (2) must not increase above the BESS Available Capacity at the beginning of the demonstration time period. For this requirement, BESS Available Capacity shall not be considered to be reduced for portions of the BESS that are no longer "available" solely due to being fully discharged.
- At the beginning of the demonstration time period, the available portions of the BESS shall be fully charged, as demonstrated by no longer accepting additional energy.
- The Company, or Seller under direction of the Company, may vary the output of the BESS; provided, however, the BESS shall be dispatched in such a way that the active power reference setpoint is at or above 1 MW during the demonstration time period (i.e., only discharging).
- The demonstration time period shall end when the level of charge available to be discharged from the BESS to the Point of Interconnection is no longer capable of maintaining the 1 MW output being commanded by the active power reference setpoint.

BESS Available Capacity must not be manipulated or reduced solely for the purpose of increasing the BESS Capacity Ratio.

#### RTE Performance Metric

The RTE Performance Metric reflecting the efficiency of the charging/discharging of the Facility can be with data recorded over any period of time, within the applicable BESS Measurement Period, that meets the requirements of a BESS RTE Performance Demonstration, described below.

For the purposes of evaluating satisfaction of the RTE Performance Metric, the "RTE Ratio" shall be the number, expressed as a percentage, equal to the total Discharge Energy delivered to the Point of Interconnection, divided by the Charging Energy measured at at the BESS AC input. The formula for the RTE Ratio is as follows:

$$\text{RTE Ratio} = 100\% \times (\text{MWh Discharge Energy}) / (\text{MWh Charging Energy})$$

The RTE Performance Metric will be deemed to have been "passed" or "satisfied" to the extent the RTE Ratio is not less than the RTE Performance Metric set forth in Section 2.11(a) (RTE and Liquidated Damages). The best or highest RTE Ratio achieved at the highest BESS Available Capacity in the applicable BESS

Measurement Period shall be used to determine satisfaction of the RTE Performance Metric and assessment of liquidated damages for that BESS Measurement Period.

*BESS RTE Performance Demonstration*

Demonstration of the RTE Performance Metric requires measurement of Charging Energy (MWh charge) at the BESS AC input, followed by measurement of the Discharge Energy (MWh discharge) delivered to the Point of Interconnection from the BESS. The exact point of measurement for Charging Energy shall be as set forth on the Facility's single-line diagram attached hereto as Attachment E (Single-Line Drawing and Interface Block Diagram). In order to be used for demonstration of the RTE Performance Metric, Charging Energy and Discharge Energy must be calculated using data recorded during a single time period which meets the requirements of a BESS RTE Performance Demonstration.

A BESS RTE Performance Demonstration shall be defined as a continuous time period, not longer than twenty-four (24) hours, wholly contained within the applicable BESS Measurement Period, comprised of a Charging Period followed by a Discharging Period, during which the BESS dispatch meets the following additional requirements:

- BESS Available Capacity must be the same at the beginning and end of the charging period. During the charging period, the BESS Available Capacity must not decrease below the BESS Available Capacity at the beginning of the charging period.
- BESS Available Capacity must be the same at the beginning and end of the discharging period. During the discharging period, the BESS Available Capacity must not increase above the BESS Available Capacity at the beginning of the discharging period. For this requirement, BESS Available Capacity shall not be considered to be reduced for portions of the BESS that are no longer "available" solely due to being fully discharged during the discharging period.
- At the beginning of the demonstration time period, the available portions of the BESS shall be charged no more than 10%. The energy stored in the available portions of the BESS at the beginning of the charging period, expressed in MWh, shall be defined as the "Initial Energy" (MWh).
- During the charging period, the Company, or Seller under direction of the Company, may vary the active power setpoint; provided, however, the Facility shall be dispatched in such a

way that the active power measured at the BESS AC input is only flowing in the charging direction.

- The charging period shall end when the available portions of the BESS are at least 90% charged. The total amount of energy delivered to the BESS, measured in MWh at the BESS AC input, between the beginning and end of the charging period shall be defined as the "Charging Energy" (MWh).
- The start of the discharge period may be delayed after the end of the charging period, as long as the discharge period has concluded within the 24-hour continuous time period. During the discharge period, the Company, or Seller under direction of the Company, may vary the output of the BESS; provided, however, the BESS shall be dispatched in such a way that the active power setpoint is at or above 1 MW for the entire discharge period (i.e., only discharging).
- The discharge period shall last no longer than 12 hours.
- The "Discharge Energy" shall be calculated as the energy delivered to the POI from the BESS, between the beginning of the discharge period and the time at which the charge remaining in the available portions of the BESS, expressed in MWh, is closest to the Initial Energy.

BESS Available Capacity must not be manipulated or reduced solely for the purpose of increasing the RTE Ratio.

#### BESS Test Procedures

During each BESS Measurement Period, Seller shall be responsible for selecting data from a valid time period (or time periods) meeting the requirements of a BESS Capacity Performance Demonstration and a BESS RTE Performance Demonstration (each, a "BESS Performance Demonstration" and collectively, the "BESS Performance Demonstrations"), and for providing such data that was used to assess the satisfaction of the BESS Capacity Performance Metric and the BESS RTE Performance Metric to Company for comparison and verification purposes ("Valid Data"). The Valid Data used to calculate such Performance Metrics are expected to be of normal SCADA quality and sample rate, and historical Company EMS data may be used to verify calculations.

In the event the dispatch of the BESS produces Valid Data with respect to either, or both, of the BESS Performance Demonstrations by end of the second month of the applicable BESS Measurement Period, Seller shall notify Company in writing of

the existence of Valid Data for such BESS Performance Demonstration(s), in which case, no BESS Capacity Test and/or RTE Test (each a "BESS Test" and collectively, the "BESS Tests"), as applicable, will be required of Company. In the event the dispatch of the BESS has not produced Valid Data with respect to either, or both, of the BESS Performance Demonstrations by end of the second month of the applicable BESS Measurement Period, Seller shall notify Company in writing of the lack of Valid Data and request a BESS Test for the applicable Performance Metric(s) lacking Valid Data. Notwithstanding the foregoing, Seller shall not be entitled to a BESS Test when Valid Data exists for such Performance Metric(s).

A BESS Test occurs when Company intentionally attempts to dispatch the BESS in a manner which meets the requirements of one or both BESS Performance Demonstrations for the purposes of collecting Valid Data to determine the BESS Capacity Ratio and/or RTE Ratio, as applicable. When either BESS Test is requested by Seller, Company shall schedule and make reasonable efforts to perform the requested BESS Test before the end of the BESS Measurement Period and shall notify Seller in writing of the time period meeting the associated BESS Performance Demonstration requirements once the BESS Test has been performed. When both BESS Tests are validly requested, for convenience, Company shall attempt to adjust dispatch such that charging and subsequent discharging time periods will meet requirements for both BESS Performance Demonstrations to be calculated. If the Company is unable to perform the requested BESS Test(s) or the dispatch of the BESS does not otherwise meet the requirements of the necessary BESS Performance Demonstration(s) by the end of the BESS Measurement Period, the associated BESS Performance Metric shall be deemed to have "passed" for that BESS Measurement Period. However, if after the end of the second month of the applicable BESS Measurement Period, Seller fails to timely notify Company in writing of the lack of Valid Data for either, or both, of the associated BESS Performance Demonstration(s), and Valid Data is not obtained by the end of the BESS Measurement Period, data from the next BESS Measurement Period will be used to determine the BESS's satisfaction of the applicable Performance Metric(s), or assessment of liquidated damages, for both BESS Measurement Periods.

If, during a BESS Measurement Period, one demonstration time period exists which satisfies the requirements for either, or both, BESS Performance Demonstrations (i.e., a single instance of Valid Data), the satisfaction of the associated Performance

Metric(s), or assessment of liquidated damages, shall be evaluated with the data recorded during such single demonstration time period. If multiple time periods exist which satisfy the requirements for either, or both, BESS Performance Demonstrations, the satisfaction of the associated Performance Metric(s), or assessment of liquidated damages, will be based on the best or highest Performance Metric(s) achieved at the highest BESS Available Capacity calculated using the multiple instances of Valid Data collected during the BESS Measurement Period.

ATTACHMENT X  
BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR

For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Availability Factor shall be calculated using the equation, data set and interim assumptions as provided in this Attachment X (BESS Annual Equivalent Availability Factor).

"BESS Annual Equivalent Availability Factor" shall be calculated as follows:

$$\begin{array}{l} \text{BESS Annual} \\ \text{Equivalent} \\ \text{Availability} \\ \text{Factor} \end{array} = 100\% \times \frac{AH-EDH}{PH}$$

Where, for the 12 calendar months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question:

Period Hours (PH) is the total number of hours in the 12 calendar months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question, counting twenty-four (24) hours per Day. If, for example, the 12 calendar months in question include exactly 365 Days, PH = 8,760.

Available Hours (AH) is the number of hours that the Facility is not on Outage. AH = PH - OH, as defined in this Attachment X.

A "BESS Outage" measured in Outage Hours (OH), exists whenever the entire BESS is offline and unable to charge or discharge electric energy and not due to Force Majeure or OMC. These outage hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

BESS Outside Management Control (bOMC): are events (other than Seller-Attributable Unavailability events) that occur beyond the Facility boundaries or are caused by abnormal weather exceeding ambient conditions required for operation. bOMC events can be Planned, Maintenance, Forced Outage, or Derating Events. bOMC events can be due to Company System constraints, such as

transmission or substation maintenance or switching. bOMC events do not include Seller-Attributable Unavailability events.

A "BESS Derating" exists when the Facility is available but at less than BESS Contract Capacity (MW/MWh), including deratings due to Seller-Attributable Unavailability or those by Company pursuant to Section 8.3 (Company Rights of Dispatch). For the avoidance of doubt, (1) if there is a BESS Outage occurring, there cannot also be a BESS Derating, (2) BESS outages and deratings required for testing the Performance Metrics as defined and required by this Agreement shall not be deemed BESS Outages or BESS Deratings for purposes of calculating the BESS Annual Equivalent Availability Factor, and (3) BESS outages and deratings that do not reduce the availability of the BESS below the BESS Contract Capacity shall not be deemed BESS Outages or BESS Deratings for purposes of calculating the BESS Annual Equivalent Availability Factor.

Equivalent Derated Hours (EDH) is the sum of ESADH, EPDH, and EUDH. For the avoidance of doubt, if there is a BESS Derating, it can only exist exclusively in one of the deration categories. The equivalent outage hour(s) (ESADH, EPDH, and EUDH) are calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW/MWh) and dividing by the BESS Contract Capacity (MW/MWh). An EDH is to be calculated using MW and MWh for each time period, and the larger calculated EDH is to be used in the calculation of the BESS EAF pursuant to this Attachment X. These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods. Deratings due to Force Majeure or OMC are excluded from the Equivalent Derated Hours, which is the sum of ESADH, EPDH and EUDH.

Equivalent Seller-Attributable Derated Hours (ESADH): A Seller-Attributable Derating occurs when a derating exists due to Seller-Attributable Unavailability or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). Each individual derating is transformed into equivalent full outage hour(s).

EPDH is the equivalent planned derated hours, including Planned Deratings (PD) and Maintenance Deratings (D4). A Planned Derating is when the Facility experiences a derating scheduled well in advance and for a predetermined duration. A Maintenance Derating is a derating 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 Derating (PD).

EUDH is the equivalent unplanned derated hours. An Unplanned Derating (Forced Derating) occurs when the Facility experiences a derating that requires a reduction in availability before the end of the nearest following weekend.

The following examples are provided as illustrative examples only:

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*Example A:* The Facility was continuously available, with no BESS Outages or BESS Deratings during the 12 months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question. In this case AH = 8760 hours, EDH = 0 hours as ESADH, EPDH, and EUDH each = 0 hours

$$\text{BESS EAF} = 100\% \times \frac{8,760-0}{8,760} = 100\%$$

*Example B:* During the 12 months used to calculate the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question: (a) The Facility was online and charging from or discharging electric energy to the Company System for 8,534 hours and was available but not charging electric energy due to lack of stored energy from the Company System (i.e., not Seller-Attributable Unavailability) for 226 hours; (b) The Facility experienced a Planned Derating of 7.2 MWs relative to the BESS Contract Capacity for 100 hours for maintenance that was scheduled a month in advance; (c) The Facility also experienced an Unplanned Derating of 6.2 MW relative to the BESS Contract Capacity Facility inverters for 100 hours as the derating could not be deferred to beyond the nearest following weekend. (d) The Facility did not experience any outage or derating due to Seller-Attributable Unavailability during this period.

The BESS Contract Capacity (MW) is 10 MW.

$$\text{PH} = 8,760 \text{ hours in 12 calendar months}$$

$$\text{AH} = \text{PH} - \text{OH} = 8,760 - 0 = 8,760 \text{ hours}$$

$$\text{ESADH} = 0$$

$$\text{EPDH} = 100 \text{ hours} \times 7.2 \text{ MW}/10 \text{ MW} = 72 \text{ hours}$$

(Planned Maintenance)

$$\text{EUDH} = 100 \text{ hours} \times 6.2 \text{ MW} / 10 \text{ MW} = 62 \text{ hours} \\ (\text{Unplanned Deration (Forced Derating)})$$

$$\text{EDH} = \text{ESADH} + \text{EPDH} + \text{EUDH} = 0 + 72 \text{ hours} + 62 \\ \text{hours} = 134 \text{ hours}$$

$$\text{BESS EAF} = 100\% \times \frac{8,760-134}{8,760} = 98.5\%$$

Requisite Data Set. Using the equation set forth on page X-1, the BESS Annual Equivalent Availability Factor shall be calculated as of the close of each BESS Measurement Period based on the data set compiled from the twelve (12) then-most-recent calendar months subsequent to the Commercial Operations Date. A consequence of requiring a 12-month data set subsequent to the Commercial Operations Date is that, during the initial Contract Year such data set will not be available. During that period, the BESS Annual Equivalent Availability Factor shall be calculated as provided in the paragraph immediately below captioned "Interim Assumptions."

Interim Assumptions. Until such time as there are twelve (12) calendar months subsequent to the Commercial Operations Date, the calculation of the BESS Annual Equivalent Availability Factor using the equation set forth at page X-1 shall be made on the basis of the data available as of the close of each BESS Measurement Period as supplemented and limited by the following assumptions and limitations:

- (a) Assumed Availability During Initial Contract Year. For the first three BESS Measurement Periods of the initial Contract Year (i.e., through the ninth (9<sup>th</sup>) full calendar month of the initial Contract Year), the calculation of the BESS Annual Equivalent Availability Factor as of the end of each of these three BESS Measurement Periods shall assume that the Facility is one hundred percent (100%) available during the calendar months remaining between the close of such BESS Measurement Period and the end of the initial Contract Year; and
- (b) Disregarding Data For Period Prior to First Calendar Month of Initial Contract Year. If the Commercial Operation Date occurs on a day that is not the first day of a calendar month, the period between the Commercial Operations Date and the first day of the first calendar month following the Commercial

Operations Date is not included in the first BESS Measurement Period and the data from this excluded period shall not be used in the calculation of the BESS Annual Equivalent Availability Factor.

ATTACHMENT Y  
BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

$$EFOF = 100\% \times \frac{(FOH + EUDH + ESADH)}{8760}$$

Where:

Equivalent Unplanned (Forced) Derated Hours (EUDH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Equivalent Seller Attributable Derated Hours (ESADH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Forced Outage Hours (FOH) = Sum of all hours the Facility experienced an Unplanned (Forced) Outage during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

Unplanned (Forced) Outage: An outage that requires removal of the entire Facility from service before the end of the nearest following weekend that is not planned, including those caused by Seller-Attributable Unavailability or those imposed by Company pursuant to Section 8.3 (Company Rights of Dispatch).

EXAMPLE CALCULATION (for illustrative purposes only):

Assume a 50 MW Facility that for the BESS Measurement Period in question was completely out of service for 50 hours. For the BESS Measurement Period in question, it also had the following deratings:

Duration of Derating	MW Size Reduction
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding BESS Measurement Periods, the Facility had a total of 150 Forced Outage Hours and a total of 100 Equivalent Forced Derated Hours.

FOH = 50 hours + 150 hours = 200 hours

EUDH = ((100x25)/50)+((20x20)/50)+((50x5)/50))+100 = 163 hours

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$

**DRAFT**

**REQUEST FOR PROPOSALS**

**FOR**

**RENEWABLE DISPATCHABLE GENERATION**

**AND**

**ENERGY STORAGE**

June 6, 2025

*Appendix N – Community Engagement*



**Hawaiian  
Electric**

## COMMUNITY ENAGAGEMENT

Gaining community support is an important part of a Project’s viability and success. An effective Community Engagement Plan will call for early meaningful communications with stakeholders and will reflect a deep understanding and respect for the community’s desire for information. The public meeting and comment solicitation process described herein is intended to support that premise and the Hawai‘i Public Utilities Commission’s (“PUC”) desire to increase bid transparency within the RFP process. When developers neglect to demonstrate transparency and a willingness to engage in early and frequent communication with Hawai‘i’s communities, costly and timely challenges to their projects have resulted. In some instances, projects have failed. Incorporating transparency during the procurement process may seem unconventional, but it has become an essential community expectation. Developers must share information and work with communities to address concerns through careful listening, thoughtful responsiveness, and a commitment to respect the environmental and cultural values of Hawai‘i. Comprehensive and proactive community engagement is imperative in order to compose a Community Benefits Program that is relevant and meaningful to the Project’s host community.

Proposers are also encouraged to review resources such as the Hawai‘i State Energy Office’s community engagement strategy, called Energize Kākou<sup>1</sup>, which includes a guide for best practices for community engagement and the participatory budgeting framework set forth by the Ulupono Initiative<sup>2</sup>. Further, the Company invited members of the community to provide feedback on areas of the island that the community is or is not amenable to use for renewable energy projects and to provide other feedback that would be helpful in siting renewable energy projects. Such community feedback may be instructive for Proposers in this RFP. Proposers are encouraged to carefully review such information when selecting sites and developing their Community Engagement Plans. This information is available at [www.hawaiipowered.com/rez](http://www.hawaiipowered.com/rez).

### **SECTION 1: PROPOSAL REQUIREMENTS**

The information provided in response to the requirements set forth below will be used in the evaluation of the Community Engagement Threshold Requirement as specified in Section 4.3 of this RFP and the Community Engagement and Community Benefits Program non-price criteria specified in Section 4.4.2.1 of the RFP. Proposers are reminded that Section 3.4.2 includes a requirement that Proposals provide all referenced material if it is to be considered during the Proposal evaluation.

1. **Community Engagement Plan:** Provide a detailed Community Engagement Plan to work with and inform neighboring communities and stakeholders and to provide them timely information during all phases of development of the Project. All proposals must submit a

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<sup>1</sup> Energize Kākou website is available at <https://energy.hawaii.gov/get-engaged/energize-kakou/>. The Playbook of community engagement best practices is available at [https://energy.hawaii.gov/wp-content/uploads/2022/10/Energize-Kakou-Playbook\\_FINAL.pdf](https://energy.hawaii.gov/wp-content/uploads/2022/10/Energize-Kakou-Playbook_FINAL.pdf).

<sup>2</sup> Ulupono Initiative’s Participatory Budget Project report, “Let Communities Decide: Using Participatory Budgeting for Renewable Energy Community Benefits Packages”, is available at <https://www.ulupono.com/media/4c1phrv0/pb-for-community-benefits-packages-jan-2023.pdf>.

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Community Engagement Plan as a standalone document. The Community Engagement Plan should be developed for public consumption and will be required to be made public via the Project's website for all Proposals selected to the Final Award Group. The Community Engagement Plan shall address at a minimum, but not be limited to, the following items:

- a. **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.
- b. **Community scoping.** Identify stakeholders (individuals, community leaders, organizations) that may be affected by the proposed project, community issues and concerns, and community sentiment.
  - i. How will they be affected?
  - ii. What mitigation strategies will the Proposer implement?
- c. **Project benefits.** An explanation of the need for the Project. This will help the community to understand how the Project might benefit their community.
- d. **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.
- e. **Development process and project schedule.** A Project schedule that identifies key Project milestones will facilitate the community's understanding of the development process. This schedule should be consistent with the Gantt chart required in Sections 4.3 and 4.4.2, for the Project Development and Schedule Threshold Requirement and non-price criterion.
- f. **Communications Plan.** A communications plan, including a detailed community engagement schedule that will keep the affected communities, stakeholders, and the general public informed about the Project's engagement efforts during early Project development period through construction and operations, including monthly Project status updates. Proposers are required to, at minimum:
  - i. Describe frequency of communication with identified stakeholders
  - ii. Provide a timeline of events
  - iii. Provide source of information
  - iv. Identify communication outlets
  - v. Describe opportunities, if any, for affected communities and general public to provide the developer with feedback and comments on the proposed Project
  - vi. Describe how community feedback and comments, as well as responses to community questions and concerns, will be documented and shared with the community.
  - vii. Provide the Project schedule
  - viii. Provide the name of the individual responsible for the Project's Community Engagement Plan
- g. **Construction-related updates.** Plan for reporting construction schedules and activities which include resulting impacts (e.g., traffic, noise, and dust) and proper mitigation plans beginning at least one month prior to the start of scheduled work
- ~~h. **Local labor and prevailing wage commitment (if any)**~~
- ~~h. **Preference will be given to a Proposer's commitment that eighty percent (80%) of non-supervisory construction and operations workers' hours associated with project**~~

~~construction or repowering of a project will be paid at prevailing wage equivalent indicated under HRS Chapter 104 during all periods of construction; and the preference to hire qualified construction and operations/maintenance workers from the County the project is located in and the State of Hawai‘i, in that order, before hiring non-resident laborers.~~ **RESERVED<sup>3</sup>**

i. **Engagement experience**

i. Preference will be given to Proposers who have already identified established contacts to work with the local community and started documented community engagement, have used community input to incorporate changes to the final design of the Project and mitigate community concerns, 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 Company’s community engagement expectation whereby all developers will be required to engage in community engagement with a 1) pre-selection meeting and 2) prior to signing a IGP Contract with the Company. This process is outlined in Section 1.1.k and Section 5 of this Appendix.

j. **Community support or opposition:** Provide any documentation of local community support or opposition including any letters from local organizations, newspaper articles, or communications from local officials.

k. **Community engagement efforts:** Provide a description of community engagement efforts already taken or currently underway, including the names of organizations and stakeholders contacted about the proposed Project and indicate if engagement was successful. This includes, but is not limited to, a required post-proposal community meeting and submission of feedback to the Company.

i. **Pre-selection meeting:** Within thirty (30) days after the Proposal Due Date, each Proposer shall hold a public meeting in the community where the proposed Project is to be located, to obtain community feedback on the proposed Project. Media advisories, as specified in Section 4 below, must be issued a minimum of fourteen (14) days prior to this public meeting. The public meeting shall provide to the community it is situated in, other stakeholders, and the general public with:

1. A reasonable opportunity to learn about the proposed Project;
2. An opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project;
3. Information regarding the Proposer’s cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report; and
4. Information concerning the process and/or intent for the public’s input and engagement, including advising attendees that they will have fourteen (14) days from the date of said public meeting to submit

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<sup>3</sup> See RFP Section 3.11.8

written comments to the Company and/or the Proposer for inclusion for evaluation of the Proposer's Proposal and for inclusion in the Company's submission to the PUC of its application for a satisfactory PUC Approval Order, if the Project is selected to the Final Award Group. Each Proposer shall collect and compile the community feedback and then provide the Company copies of all comments received in their original, unedited form in accordance with Section 3.15 of the RFP along with copies of all comments with personal information redacted and ready for filing, within 21 days after the public meeting. This Pre-selection Community Feedback will be considered part of the Proposal.

1. **Community co-creation:** As discussed in Section 4.4.3.2 of the RFP, the Company is piloting a community co-creation criterion. Preference will be given to Proposers that choose to commit to piloting the concept of community co-creation, with additional points awarded to a Proposal's total price/non-price score. As part of this pilot, and through the scoping process, Proposers would identify influential leaders and organizations in host communities willing to help shape proposed projects and a community benefits program. This would help developers better understand the challenges, opportunities, assets, and demographics of the host community. Community members will have an opportunity to have a seat at the table earlier in the planning process. This information from the community can be used by Proposers to improve operations, inform strategy, and match community challenges and opportunities with local and organizational assets and advocacy efforts.

Proposals that commit to community co-creation shall address at a minimum, but not be limited to, the following items in the Community Engagement Plan to describe the co-creation plan:

- i. Identify influential community leaders and organizations (non-profits and community organizations) in the host community.
  1. Provide explanation of scoping and engagement efforts undertaken to reach such leaders and organizations and to notify the community of these efforts.
- ii. Provide explanation and documentation of co-creation parties willingness and efforts undertaken to help co-create and shape the:
  1. Proposed project
    - a. Engagement and feedback gathered to date
      - i. Plans for future efforts
    - b. Plan to incorporate feedback (how the Proposer plans to improve the overall project, operations, inform strategy, and match community challenges and opportunities with local and organizational assets and advocacy efforts)
  2. Community Benefits Program
    - a. Public engagement and feedback gathered to date

- i. Plans for future efforts
      - b. Plan to incorporate feedback (how the Proposer plans to improve the overall project, operations, inform strategy, and match community challenges and opportunities with local and organizational assets and advocacy efforts)
    - iii. Provide explanation of proven community engagement frameworks or strategies implemented in the development of the co-creation plan, if any.
- 2. **Community Benefits Program and documentation:** Proposers must develop a documented community benefits program highlighting the distribution of funds for the Company's review. Proposals should include a standalone plan providing details on the amount of funds that the Proposer will commit on an annual basis for community benefits, along with other non-monetary community benefits.
  - a. 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).
  - b. The Community Benefits Program will be made public on each Proposer's website and must demonstrate how funds will directly address needs in the host community to benefit community members.
  - c. The Community Benefits Program must include documentation of each Proposer's community consultation and input collection process to define host community needs, along with actions and programs aimed at addressing those needs.
  - d. Preference will be given to Proposers that commit to setting aside a larger monetary amount or commit to providing other benefits including, but not limited to, creating local jobs, payment of prevailing wages, or improving community infrastructure.
  - e. At a minimum, Proposers should commit to setting aside at least \$3,000 per MW per year of the IGP Contract term for community benefits.
  - f. These funds shall be donated to address specific needs identified by the host community, or to a 501(c)(3) not-for-profit community-based organization(s) to directly address host community-identified needs.
    - i. Provide details regarding the intended beneficiaries of the funds, including recipients, and the area(s) in which the funds will be directed.
    - ii. The Proposer may choose to identify and select an eligible non-profit organization to serve as the administrator responsible for ensuring the project's community benefit is appropriately disbursed for the duration of the IGP Contract term. Should a Proposer need an example of the use of a community benefit funding host, the Company will provide such example(s) upon request.
    - iii. If Proposers opt to work with a 501(c)(3) non-profit organization(s) to host and distribute community benefit funding, the names of the organization(s) must be provided with the following documentation ninety (90) calendar days after execution of the applicable IGP Contract.

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1. Letter from non-profit organization, signed by organization’s executive and board chair agreeing to serve as community benefit fund administrator for the duration of the IGP Contract term;
  2. Relevant experience of non-profit organization; and
  3. Years of existence of non-profit organization.
- g. The Community Benefits Program should include any other community benefits, in addition to community funding, that will provide direct benefit to the Project’s host community.

**SECTION 2: SELECTION OF PRIORITY LIST**

1. Within thirty (30) days of notifying Proposers of their selection to the Priority List (which is after the Initial Evaluation where Proposals are scored), the Company will provide feedback to such Proposers on the following portions of their Proposal(s):
  - a. Community Engagement Plan;
  - b. Community Benefits Program Plan; and
  - c. Cultural Resource Impacts.
2. Proposers shall respond to any Company requests for clarification and resolve potential issues identified by the Company related to the above. Proposers are not permitted to update their Proposals before selection to the Final Award Group based on any feedback provided by the Company on the Proposal’s Community Engagement Plan, Community Benefits Program, and/or Cultural Resource Impacts. Pricing components, as explained in Section 3.12.4 of the RFP, will not be allowed to change, except as allowed at the Best and Final Offer stage noted in Section 4.6.
3. The methods or means of addressing/resolving the potential issues identified by the Company shall be reflected in updated plan(s) submitted to the Company within three (3) business days of notification of selection to the Final Award Group. Unless the Company otherwise determines, such methods or means of addressing or resolving the potential issues identified by the Company shall be incorporated as additional obligations of the Seller in the negotiated IGP Contract for the Project.

**SECTION 3: WEBSITE AND POST-AWARD COMMUNITY MEETINGS**

1. All Proposers selected to the Final Award Group must display the below table of information on the Project website to provide communities with Project information that is of interest to them in a standard format. All information in this table must be included in all community presentations in addition to the Proposer’s project website.

**PROJECT SUMMARY**

*	Proposer Name (Company name)	
*	Parent Company/Owner/Sponsor/Business Affiliation/etc.	

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*	Project Name	
*	Project Capacity (MW) (must match Proposal information)	
*	Proposed Facility Location, Street Address if available, or what City/Area on the island it is near	
*	TMK(s) of Facility Location (must match Proposal information)	
*	Point of Interconnection's Circuit (must match Proposal information)	
*	Project Description (in 200 words or less)	<i>(A description that includes information about the project that will enable the community to understand the impact that the Project might have on the community.)</i>
*	Project site map	<i>(provide a map similar to what was provided in Section 2.5.2 of Appendix B)</i>
*	Site layout plan	<i>(provide a layout similar to what was provided in Section 2.5.3 of Appendix B)</i>
*	Interconnection route	<i>(provide a map of the route similar to what was provided in Section 2.5.4 of Appendix B)</i>
<b>Environmental Compliance and Permitting Plan</b>		
*	Overall land use and environmental permits and approvals strategy	<i>(provide information in level of detail as provided in Section 2.6.1 of Appendix B)</i>
*	Gantt format schedule which identifies the sequencing of permit applications and approval activities and critical path. Schedule must be in MM/DD/YY format)	<i>(provide information in level of detail as provided in Section 2.6.1 of Appendix B)</i>
*	City Zoning and Land Use Classification	<i>(provide information in level of detail as provided in Section 2.6.1 of Appendix B)</i>
*	Discretionary and non-discretionary Land use, environmental and construction permits and approvals	<i>(provide information in level of detail as provided in Section 2.6.1 of Appendix B)</i>
*	Listing of Permits and approvals	<i>(provide information in level of detail as provided in Section 2.6.1 of Appendix B)</i>
*	Preliminary environmental assessment of the Site (including any pre-existing environmental conditions)	<i>(provide information in level of detail as provided in Section 2.6.2 of Appendix B)</i>

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<b>Cultural Resource Impacts</b>	
*	<p>Proposer’s updated Community Engagement Plan must include a plan that (1) identifies any cultural, historic or natural resources that will be impacted by the Project (2) describes the potential impacts on these resources and (3) identifies measures to mitigate such impacts.</p> <p><i>(provide information in level of detail as provided in Section 2.7 of Appendix B)</i></p>
<b>Community Engagement</b>	
*	<p>Detailed Community Engagement Plan</p> <p><i>(provide key information from Community Engagement Plan as specified in Section 1 of Appendix N or provide a link to updated comprehensive Community Engagement Plan)</i></p>
*	<p>Local community support or opposition</p> <p><i>(provide latest comprehensive information)</i></p>
*	<p>Community engagement efforts</p> <p><i>(provide latest comprehensive information)</i></p>
*	<p>Community Benefits Program</p> <p><i>(provide latest comprehensive information)</i></p>

2. The Community Engagement Plan and Community Benefits Program information should be as current and explanatory as possible.
  - a. The Community Engagement Plan and Community Benefits Program information must be made available on Proposer’s website.
  - b. The Company will require monthly project status updates from Proposers to verify the implementation of the plans and will ensure Proposers provide accessible opportunities for community members and stakeholders to provide public comment as required by the RFP.
3. Proposers selected to the Final Award Group must develop a public Project website, which shall include all the information on the Project Summary table for their Project.
4. Proposers must develop Project presentations that include all the information on the Community Engagement Plan table (sample template provided).
5. To offer multiple ways and opportunities for the public and community to participate in meetings, all Proposers are required to plan for both in-person and virtual community meetings. As the scheduled community meeting date(s) approach, in the interest of public health and safety, the conditions at the time will determine if in-person meetings or virtual meetings will be required.
  - a. Virtual community meetings can either be community televised, or online, but must incorporate technology that allows for live engagement and interaction between the Proposer and community participants. The meetings should also be recorded and posted to the Proposer’s website in a timely manner after each meeting so the public may view the meeting(s).
6. Proposers must communicate important information about the Project with stakeholders in advance of community meetings.

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7. Proposers must perform media outreach (earned media) and advertising (paid media) to raise community awareness of any public meeting. Media advisories (sample attached) must be issued to the following media and organizations a minimum of thirty (30) days prior to a public meeting, with the exception of the pre-selection meeting, discussed in Section 1.1.k above, which requires a minimum of fourteen- (14) days notice. Media advisories do not need to be reviewed and approved by Hawaiian Electric, but must be shared with Hawaiian Electric for awareness.
  - For Oahu Projects
    - Star Advertiser
    - Civil Beat
    - Hawai‘i News Now
    - KHON2 News
    - KITV4 News
    - Neighborhood Boards
  - For Maui Projects
    - Maui News
    - Maui Now
    - Civil Beat
    - Hawai‘i News Now
    - KHON2 News
    - KITV4 News
  - For Hawai‘i Island Projects
    - Hawai‘i Tribune Herald
    - West Hawai‘i Today
    - Civil Beat
    - Hawai‘i News Now
    - KHON2 News
    - KITV4 News
8. Advertisements must be placed in area community publications.
  - a. Guidance from the Company can be provided upon request.
  - b. Information in the ads must be consistent with the media advisory.
9. Public comments in support and in opposition to the proposed Project must be compiled and filed verbatim with the PUC.
10. Proposers must work with and inform neighboring communities and stakeholders to provide community members timely information during ALL phases of Project development, which must include, but not be limited to the negotiation of the applicable IGP Contract, the permitting process periods, and throughout construction of the Project.
11. Should any unforeseen events (e.g. natural disasters, public health emergencies, etc.) interfere with a Proposer’s ability to perform the listed actions, the Proposer should inform the Company immediately of such effects for the Company’s consideration and guidance, and possible proposal of alternate actions.

**SECTION 4: MEDIA ADVISORY TEMPLATE**

**CONTACT:** NAME, 808.XXX.XXXX **FOR IMMEDIATE RELEASE**  
Email address Date

**Media Advisory: Title**

Project description to be drafted by developer. Description must include the location of proposed project and supporting background information.

**Date:** TBD

**Time:** TBD

**Location:** TBD

**Purpose:** To share information about a TYPE (e. g. CBRE solar, etc.) renewable energy project proposed to be developed in COMMUNITY near AREA REFERENCE and to solicit public comments to be filed with the Public Utilities Commission.

**Contact:** For more information, call 808.XXX.XXXX or visit (website/social media)  
###

**SECTION 5: POST-AWARD REQUIREMENTS**

The public meeting and comment solicitation process described in this Appendix N, Sections 3.15 and 5.3 of the RFP, and Section 29.21 of the IGP Contracts do not represent the only community outreach and engagement activities that can or should be conducted by a Proposer. A Proposer shall be responsible for community outreach and engagement for the Project in accordance with the requirements ultimately agreed to in the IGP Contract. The Company will also require monthly Project status updates from Proposers to verify the implementation of the Community Engagement Plan and will ensure Proposers provide accessible opportunities for community members and stakeholders to provide public comment as required by the RFP.

1. **Public announcement.** The Company will publicly announce the Final Award Group no more than six (6) business days after the notification is given to Proposers selected to the Final Award Group. Selected Proposers shall not disclose their selection to the public before the Company publicly announces the Final Award Group.
2. **Project website launch.** Each Proposer will launch a Project website that will go-live by that sixth (6<sup>th</sup>) business day after notification of Final Award Group selection and which the Company will then post on the Company’s website. Information on what should be included on the Project website is identified in Sections 1, 2, and 3 of this Appendix N. A selected Proposer shall provide its staged website, including the Community Engagement Plan and Community Benefits Program plan, for Company review and feedback within three (3)

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Community Engagement

business days of notification of selection to the Final Award Group. Proposers must also provide the Company with the URL of the final Project website within three (3) business days of notification of selection to the Final Award Group.

3. **Updated plans.** Within three (3) business days of notification of selection to the Final Award Group, Proposers must provide the Company with an updated comprehensive Community Engagement Plan and Community Benefit Program according to the expectations of Section 1 of this Appendix N, to work with and inform neighboring communities and stakeholders and to provide timely information during all phases of Project development. The updated plans shall also incorporate the recommendations of the Company to address potential issues identified in the Company's reviews outlined in Section 4.5.2 of the RFP.
4. **Community Meetings.** Prior to the execution of the IGP Contract, Proposers shall also host a public meeting in the community where the proposed Project is to be located. The public meeting shall provide to the community it is situated in, other stakeholders and the general public with:
  - a. a reasonable opportunity to learn about the proposed Project;
  - b. an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project;
  - c. an update regarding the Proposer's cultural impact plan, including any findings made and mitigations identified to-date as part of the Archaeological Literature Review and Field Inspection Report; and
  - d. 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 Proposer for inclusion in the Company's IGP Contract Application and for inclusion on the Proposer's website. The Proposer shall collect all public comments, and then provide the Company copies of all comments received in their original, unedited form. If an IGP Contract 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 IGP Contract Application for this Project. Proposers shall notify the public at least 30 days in advance of the meeting. The Company shall be informed of the meeting. The Company has provided Proposers with detailed instructions regarding the community meeting requirement after the selection of the Final Award Group (Section 3 of Appendix N). (For example, notice will be published in county and 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 IGP Contract relating to Community Engagement.
5. **Second Comment Period.** Following the submission of the IGP Contract Application, 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 shall contain an attachment including those comments.

**REQUEST FOR PROPOSALS**  
**FOR**  
**ENERGY STORAGE**  
**ALL ISLANDS**

June 6, 2025

*Appendix Q – Model Project Labor Agreement*



**Hawaiian  
Electric**

## MULTI-CRAFT MODEL PROJECT LABOR AGREEMENT

### ARTICLE I

#### PURPOSE

This Multi-Craft Project Labor Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and among [Project Contractor], its successors or assigns (“Project Contractor”), the Bricklayers & Allied Craftworkers, Local Union 1, the Operating Engineers, Local Union 3, District Council 50 (Local Union 1791, Local Union 1889, Local Union 1926, and Local Union 1944), the Elevator Constructors, Local Union 126, the Heat & Frost Insulators & Allied Workers, Local Union 132, the United Union of Roofers, Waterproofers & Allied Workers, Local Union 221, the International Association of Sheetmetal, Air, Rail & Transportation Workers, Local Union 293, the Laborers International Union of North America, Local Union 368, the Iron Workers, Local Union 625, the International Brotherhood of Boilermakers, Local Union 627, the Operative Plasterers and Cement Masons, Local Union 630, the Plumbers and Fitters, Local Union 675, the Hawaii Teamsters & Allied Workers, Local Union 996, the International Brotherhood of Electrical Workers, Local Union 1186, and the International Brotherhood of Electrical Workers, Local Union 1260 (collectively, the "Union or Unions") with respect to the construction of the [name of Project] (“Project”). The Unions are signatories to this Agreement, acting on behalf of their respective Unions, through their duly authorized officers, executed this Agreement. The Project Contractor and the Unions are referred to collectively as the “Parties” and separately without distinction as a “Party”.

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to [name of Project Contractor] alone is intended, the term “Project Contractor” is used.

The Parties to this Agreement acknowledge that the construction of the [Project] is important to the development of \_\_\_\_\_ [description of Project and the specific needs it will serve]. The Parties recognize the need for the safe and timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability and to avoid workplace tension when union and non-union employees work side-by-side.

The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craftworkers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

## ARTICLE II SCOPE OF AGREEMENT

Section 1. This Project Agreement shall apply to and include the recognized and accepted construction work that is included in the Master Agreements of each Union signatory to this Agreement under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: (list all aspects of the construction work involved.) It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the Letter of Assent in the form of Attachment 1 prior to commencing work. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTD Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of the International Union of Elevator Constructors; and all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians; with the exception of Articles V, VI, and VII of this Project Agreement, which shall apply to such work. It is understood that this is a self-contained, stand-alone Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area, or national agreement.

Section 2. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 3. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 4. The Owner (as defined in Section 6 below) and/or the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to

become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 5. Items specifically excluded from the scope of this Agreement include but are not limited to (a) work that is not covered or included in the Master Agreement(s) of any union party to this Agreement performed by the Project Contractor's own employees, (b) work that performed by bona fide Company employees, including work that is incidental, supplemental, or ancillary to the primary work performed by Company employees, and work covered by agreements between IBEW 1260 and IBEW 1186, and (c) work that is not historically or customarily performed by the Unions.

Section 6. The provisions of this Project Agreement shall not apply to **Insert name of Owner** ("Owner"), and nothing contained herein shall be construed to prohibit or restrict the Owner or its employees from performing work not covered by this Project Agreement on the Project site. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

### ARTICLE III UNION RECOGNITION

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant, or any other factor prohibited by state or federal law.

Section 3. All employees shall, as a condition of continued employment, pay Union dues, assessments and administrative fees, or an equivalent amount regardless of whether an employee is a member of a union. The Contractor(s) agree to deduct such dues, assessments and administrative fees, or equivalent amount, as designated by the appropriate Union, provided the employee has executed a written assignment. The Contractor(s) will remit to the Union once a month, the dues and fees deducted on or before the fifteenth (15th) day of each month

following the month in which the deduction was made. The Contractor(s) further agrees that the rights of all employees shall be adhered to.

Section 4. To the extent this Agreement addresses a subject, it represents the Parties' complete agreement on that subject. To the extent this Agreement does not address a subject, the terms and conditions of the Master Agreement(s) of each respective trade or craft signatory to this Agreement shall apply to that subject.

Section 5. All apprentices performing work according to this Agreement shall be indentured in a state-approved apprentice program for the applicable craft or trade.

#### ARTICLE IV MANAGEMENT'S RIGHTS

Section 1. The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor-saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations or state law, on the number of employees assigned to any crew or to any service.

Section 2. The Contractor(s) agree to notify the Unions of all opportunities for employment on the Project. The Contractor may use their own core employees, defined as general foremen who have worked with the company for at least six months within the last two years, with three employees hired by referral from the Union's hiring hall before each additional core employee, up to a maximum limit of three core employees. Contractor(s) shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdictions, and select employees to be laid off. The Contractor shall be the sole judge of the employee's qualification for the work to be performed and shall have the right to reject any applicant referred by a Union for any reason provided that the Contractor shall not discriminate against such applicant by reason of age, race, color, religion, sex, national origin, or by reason of membership or non-membership in any labor organization or any other reason prohibited by state law.

Section 3. Whenever a Contractor requires employees to perform work that may be covered by this Agreement, the Contractor may request that the Union refer up to five specific employees to work for the Contractor upon the following procedure. The Union shall refer the first specific employee requested by the Contractor to work for the Contractor before the Union refers any other employees under its referral procedure. The Union shall then refer the next four specific employees requested by the Contractor on a one to one basis (i.e., first one

employee under its referral procedure and then another specific employee requested by the Contractor, and so forth).

Section 4. In the event that referral facilities and processes maintained by the Unions are unable to fill the requisition of employees requested by the Contractor within a forty eight (48) hour period from the time such request is received by the Union, the Contractor shall be free to obtain such employees from any source but remain obligated to meet all provisions herein.

ARTICLE V:  
WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement, there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union, its applicable local union or by any employee, and there shall be no lockout by the Contractor. Failure of any Union, local union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Union and its applicable local union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3. Neither the Union nor its applicable Local Union shall be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the local union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its local union. The principal officer or officers of a local union will immediately instruct, order and use the best efforts of his office to cause the employees the local union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

ARTICLE VI:  
DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project safely, economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance- arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty- eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Union Representative and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request Dispute Prevention & Resolution, Inc. to provide them with a list of arbitrators from which the Arbitrator shall be selected. The rules of Dispute Prevention & Resolution, Inc. shall govern the conduct of the arbitration hearing. The decision of the arbitrator shall be final and binding on all parties. The fee and expenses of such arbitration shall be borne equally by the Contractor and the involved local union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render

the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have the authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## ARTICLE VII JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. Should a jurisdictional dispute arise, there shall first be an attempt to resolve the dispute at the Project level by the Contractor and the Unions involved in the dispute. If the dispute is not resolved within seven (7) days, it will be referred for settlement to the International Presidents of the Unions involved. If after a period of fifteen (15) working days it is not resolved by the International Presidents, a complaint may be filed according to the Plan for the Settlement of Jurisdictional Disputes.

Section 3. Notwithstanding Section 2 of this Article V, all unresolved jurisdictional disputes on this Project, between or among building trades unions and employers shall be settled and adjusted according to the present Plan established by North America's Building Trades Unions or any other plan or method of procedure that may be adopted in the future by North America's Building Trades Unions. Decisions rendered shall be final, binding and conclusive on the employers and unions.

Section 4. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 5. Each Contractor will conduct a pre-job conference with all Parties signatory to this Agreement according to Article XIV herein to discuss among other issues, the list of contractors and subcontractors to be used and their respective assigned scope of work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

## ARTICLE VIII SUBCONTRACTING

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

## ARTICLE IX

### WAGES, HOURS, OVERTIME, SCHEDULING, HOLIDAYS, AND BENEFITS

The wages, hours, shifts, schedules, overtime, holidays, benefits, and other terms and conditions of employment shall be governed by the applicable craft's Master Agreement.

## ARTICLE X

### HELMETS TO HARDHATS

Section 1. The employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for Bonafide, provable past experience.

## ARTICLE XI

### SAFETY AND HEALTH

Section 1. It is the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Contractor in accordance with the State of Hawaii, Hawaii Revised Statutes 396-18 and Hawaii Administrative Rules Title 12, Subtitle 8, Part 3. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Project owner.

Section 2. Employees shall be bound by the safety, security and visitor rules established by the Contractor. These rules will be published and posted in conspicuous places throughout the work site. An employee's failure to satisfy the obligations under this Section will subject him/her

to progressive discipline up to and including, possible discharge.

Section 3. The Parties to this Agreement acknowledge the prohibition of the use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms while on Project premises. Additionally, all Parties to this Agreement agree to a "drug free" work place policy, which prohibits those working on this Project from having a level of alcohol which could indicate impairment, and/or any level of controlled substances (i.e., illegal drugs) in their system. No employee shall be permitted to work on the Project under the influence of intoxicants or drugs and shall be removed from the Project if found under the influence of intoxicants or drugs.

Section 4. To that end, the Parties agree that all employees performing work under this Agreement shall be obligated and bound to their employer's drug and alcohol prevention policies and programs, whether those policies and procedures are contained in separate collective bargaining agreement between the Union and Contractor or policies and procedures of a contractor that has no separate collective bargaining agreement with the union.

## ARTICLE XII

### UNION REPRESENTATION

Section 1. Each Union shall have the right to designate a working craft employee as steward for each Contractor employing such craft on the Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of the craft. The steward shall not perform supervisory duties. Under no circumstances shall there be non-working stewards. Stewards shall be permitted a reasonable amount of time during work hours to perform applicable Union duties related to the work being performed by the craft employees of his Contractor and not to the work being performed by the other Contractors or their employees.

Section 2. Authorized representatives of the Union(s) shall have access to the Project, provided that such representatives fully comply with the posted visitor, security, and safety rules and the environmental compliance requirements of the Project, provided they do not unnecessarily interfere with the employees or cause them to neglect their work. The Contractor recognizes the right of the access set forth in this Section and such access will not unreasonably be withheld from an authorized representative of the Union.

## ARTICLE XIII

### JOINT ADMINISTRATIVE COMMITTEE

Section 1. The parties to this Agreement shall establish a four (4) person Joint Administrative Committee ("JAC"). This JAC shall be comprised of a management party made up of two (2) representatives selected by the Project Contractor; and a labor party made up of two (2) representatives from the Unions of which at least one representative shall be a member in good

standing, officer or administrator of the Hawaii Building and Construction Trades Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

Section 2. The JAC shall not be involved in or rule upon any individual grievances. Outside of the context of an individual grievance, the JAC will resolve any interpretations or clarifications of this Agreement that may be required by the Unions and/or the Contractor by majority vote with such resolutions to be binding on all signatories of this Agreement as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this Agreement. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC.

#### ARTICLE XIV

##### PRE-JOB CONFERENCE

The Project Contractor shall conduct a pre-job conference with representatives of the Unions signatory to this Agreement prior to the start of any construction work on the Project, but no later than thirty (30) calendar days after the execution of the Project Contractor's contract with the Owner to perform construction work on the Project, provided that the Project Contractor shall provide to the Unions no later than seven (7) days prior to the scheduled day of the conference, notice of the pre-job conference and a list of all Contractors performing construction work on the Project including the scope of work to be performed by each Contractor. It is agreed that the purpose of the pre-job conference shall include, but not be limited to, discussion of the scope and assignment of work to be performed by Contractors on the Project.

#### ARTICLE XV

##### DURATION

It is agreed that the duration of this Agreement shall be from the commencement of construction, as evidenced by a notice to proceed and will continue for the duration of the Project until final completion and the Project reaches commercial operations, regardless of whether corresponding collective bargaining agreements expire. All wages and benefits and terms and conditions of employment shall continue for the duration of this Project regardless of whether corresponding collective bargaining agreements expire. In the event any collective bargaining agreements expire without timely agreement by the parties, wages will thereafter be increased in accord with the applicable prevailing wages as provided for in Hawaii Revised Statutes Chapter 104.

ARTICLE XVI

MODIFICATIONS TO THIS AGREEMENT

If the Project Contractor, Contractor(s) or the Unions feel that any provisions of this Agreement are not meeting the needs of the Project, they may agree to specific modifications to such provisions as provided herein, provided that all affected parties much agree in writing to those modifications.

Any modification to this Agreement shall be executed in writing and signed by the contractual representative of each Party. Any modification that creates an additional or reduced commitment for either Party must be incorporated by amendment and signed by the contractual representative of all Parties signatory to this Agreement.

ARTICLE XVII

EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same. The Parties shall be entitled to sign and transmit an electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

ARTICLE XVIII

SAVINGS CLAUSE

This document contains the entire agreement of the Parties and neither Party has made any representations to the other which are not contained herein. This Agreement is intended to fully conform to all statutes, regulations, and Executive Orders of the State of Hawaii. Should any provision herein contained be rendered or declared invalid by reason of any existing legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect. The parties shall immediately meet to renegotiate the portion or portions thereof rendered invalid. This Agreement shall be governed by the laws of the State of Hawaii.

*[Signature Page Follows]*

**[INSERT NAME OF PROJECT CONTRACTOR]**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Its:

INTERNATIONAL BROTHERHOOD of ELECTRICAL WORKERS, LOCAL UNION  
1260

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Leroy Chincio, Jr.

Its: Business Manager, Financial Secretary

BRICKLAYERS & ALLIED CRAFTWORKERS, LOCAL UNION 1

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Jeff Ornellas

Its: Business Manager

OPERATING ENGINEERS, LOCAL UNION 3

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Ana Tuiasosopo

Its: District Representative

DISTRICT COUNCIL 50 (LOCAL UNION 1791, LOCAL UNION 1889, LOCAL  
UNION 1926, and LOCAL UNION 1944)

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Ryden Valmoja

Its: Business Manager

ELEVATOR CONSTRUCTORS, LOCAL UNION 126

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Marc Yamane

Its: Business Manager

HEAT & FROST INSULATORS & ALLIED WORKERS, LOCAL UNION 132

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Douglas Fulp  
Its: Business Manager

UNITED UNION of ROOFERS, WATERPROOFERS & ALLIED WORKERS, LOCAL UNION 221

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Vaughn Chong  
Its: Business Manager

INTERNATIONAL ASSOCIATION of SHEET METAL, AIR, RAIL & TRANSPORTATION WORKERS, LOCAL UNION 293

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Art Tolentino  
Its: Business Manager

LABORERS INTERNATIONAL UNION of NORTH AMERICA, LOCAL UNION 368

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Peter Ganaban  
Its: Business Manager

IRON WORKERS, LOCAL UNION 625

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Joseph O'Donnell  
Its: Business Manager

INTERNATIONAL BROTHERHOOD of BOILERMAKERS, LOCAL UNION 627

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Jacob Evenson  
Its: Business Manager

OPERATIVE PLASTERS and CEMENT MASONS, LOCAL UNION 630

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Peter Iriarte  
Its: Business Manager

PLUMBERS and FITTERS, LOCAL UNION 675

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Valentino Ceria  
Its: Business Manager

HAWAII TEAMSTERS & ALLIED WORKERS, LOCAL UNION 996

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Kevin Holu  
Its: President

INTERNATIONAL BROTHERHOOD of ELECTRICAL WORKERS, LOCAL UNION  
1186

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Damien Kim  
Its: Business Manager, Financial Secretary

Attachment 1  
LETTER OF ASSENT  
Multi-Craft Project Labor Agreement

Re: [Project Name]  
[Project Reference No.]  
[Project Description]

Dear Sir/Madam;

This is to certify that the undersigned is a licensed Contractor Company in good standing in the state of Hawaii, is contracted to perform construction work on the above referenced project, has examined a copy of the Multi-Craft Project Labor Agreement ("PLA") dated [Month, Day, Year], between [Project Contractor] and the signatory Unions, and is duly authorized to sign on behalf of and binding the Company to the terms and conditions of the PLA as a condition of performing such construction work. The undersigned Contractor hereby agrees to comply with all the terms and conditions of the PLA as such PLA may, from time to time, be amended or interpreted according to its terms.

It is understood that the signing of this Letter of Assent shall be as binding on the undersigned Contractor as though the undersigned Contractor had signed the above-referenced PLA. The Contractor agrees that it and all its subcontractors of whatever tier, shall execute a Letter of Assent and agree to be bound by the PLA for all construction work performed on the Project, or work recognized and included in the Master Agreements of the Unions signatory to the PLA.

This Letter of Assent shall become effective and binding upon the undersigned Contractor immediately upon execution and shall remain in full force and effect until the completion of the Project.

[Contractor Company Name]  
[Contractor Company Address]  
[Email/ Phone Contact]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_