

## COMMERCIAL DEMAND RESPONSE PROGRAM CUSTOMER CONTRACT

This Commercial Demand Response Program ("Commercial DR Program") Customer Contract ("Contract") is between \_\_\_\_\_ ("Customer"), located at \_\_\_\_\_ ("Participating Facility") for Account Number \_\_\_\_\_ under Schedule \_\_\_\_\_ and Hawaiian Electric Company, Inc. and Maui Electric Company, Limited (collectively the "Companies", individually "Company") (collectively, the "Parties"), and shall establish the terms and conditions for Customer's participation in the Commercial DR Program. Customer is bound by this Contract and the applicable Program Rules, as amended from time to time, a copy of which is attached hereto as Attachment A and by this reference incorporated herein. For purposes of this Contract, capitalized terms used but not defined herein shall have the same meaning as set forth in Attachment B (Definitions).

Customer understands that the Commercial DR Program is a voluntary program whereby Customer will receive a financial incentive in the form of a credit on its bill for DR Events for which Customer reduces its energy usage in accordance with the Program Rules. Customer's credit shall be determined in accordance with Section 9 of the Program Rules.

The Parties agree as follows:

1. SERVICE: Customer elects to take service under Schedule \_\_\_\_\_, and with the following program options:
  - 1.1 Island
    - O'ahu
    - Maui
  - 1.2 DR Event Frequency:
    - 0-40 DR Events annually
    - 0-80 DR Events annually
  - 1.3 Event Duration Limit:
    - 1 hour
  - 1.4 Daily Event Limit:
    - 1
    - 4
  - 1.5 Generator Type:
    - Non – Emergency Generator
    - Curtailment Only
  - 1.6 Nominated Load: \_\_\_\_\_ kilowatts (kW). This amount may be amended, as needed, in accordance with Sections 4.1 or 4.2 of the Program Rules. Customers will be notified in writing within fourteen (14) days of any such amendment.

- 1.7 Except as modified herein, the provisions of Schedule \_\_\_\_\_ shall continue to govern service for the above referenced account. In the event of any conflict between Schedule \_\_\_\_\_ and this Contract, the terms of this Contract shall govern.
- 1.8 Service under this Contract cannot be combined with service provided under the Company's Rider I.
- 1.9 Customer, in no event, shall be allowed to export energy into Company's power system (i.e., no backfeed capability).
2. **EQUIPMENT:** Company shall provide and install all required Load Management Equipment in accordance with Section 8 of the Program Rules.
  - 2.1 Customer agrees to provide a secure location at the Participating Facility for the Load Management Equipment in accordance with and as described in Section 8 of the Program Rules. Customer agrees to permit installation of all required equipment, and to allow inspection, testing, maintenance, and repair of the same as required.
  - 2.2 Customer shall not move, remove, interfere with, tamper with, disable or damage the Load Management Equipment.
  - 2.3 Customer agrees to own and maintain an OpenADR certified Gateway.
  - 2.4 Customer agrees to provide and maintain required communications and power service for the Load Management Equipment in accordance with Section 8 of the Program Rules.
3. **COMMENCEMENT OF SERVICE:** Service under this Contract and applicable incentive payments hereunder shall not commence until the first day of the full billing period following the installation of all required Load Management Equipment and completion of the Commissioning Load Test.
4. **AVAILABILITY OF PROGRAM:** The Commercial DR Program is available until modified or terminated by the Hawai'i Public Utilities Commission ("Commission"). Company shall not be obligated to provide incentive payments to Customer during any period where the Commercial DR Program is terminated by the Commission. During such periods, no DR Events will be initiated by Company. If Commission approves modified incentives, the Company will change incentives accordingly.
5. **SERVICE INTERRUPTIONS:** Company may commence a DR Event at any time during Program Hours in accordance with the Program Rules.
  - 5.1 Customer acknowledges and agrees that Company cannot guarantee that service interruptions may not occur during any period as a result of situations or circumstances beyond the control of Company through the exercise of reasonable diligence and care, such as those caused by accident, storm, tidal wave, lightning, wind, earthquake, fire, strikes, riots, terrorism, war, or other similar causes.

- 5.2 Customer acknowledges and agrees that service interruptions that are not within Company's control shall not be considered in determining the duration or frequency of DR Events specified under the Program Rules.
- 5.3 Customer agrees that Company shall not be liable for any actual or consequential damages, costs or claims caused by, resulting from or related to any DR Event, curtailment or interruption of electric power service under this Contract.
6. **TERM:** This Contract shall terminate after one year starting after the first Commissioning Load Test (the "Initial Term"), unless terminated earlier in accordance with the provisions set forth below; provided, however, that this Contract will be automatically renewed at the end of the Initial Term, on the same terms and conditions for consecutive renewal period(s) of one (1) year ("Renewal Period"), if the Commercial DR Program is extended and unless either Party gives written notice of its intent to terminate this Contract at least thirty (30) days prior to the end of the Initial Term or Renewal Period, or as otherwise agreed to by the Parties.
7. **TERMINATION BY CUSTOMER:** Customer may terminate this Contract upon thirty (30) days' written notice of Customer's desire to effect an early termination; provided, however, that Customer agrees that Company shall have the right to remove or require the return of any metering and Company-Owned Load Management Equipment installed for purposes of the Commercial DR Program and further to charge Customer an early termination charge equal to any Company-incurred costs of Load Management Equipment installations ("Early Termination Charge") proportional to the period of time Customer is not on the program within the Initial Term. Termination of the Contract will become effective with the first regular billing cycle following the thirty (30)-day notice period. If Customer's facility at this service location closes and utility service is discontinued, the above Early Termination Charge will not apply.
8. **TERMINATION BY COMPANY:** Customer's noncompliance with or violation of any of the terms and/or conditions of this Contract, applicable Laws, and/or the Program Rules, including but not limited to, changes by Customer to its Participating Facility, modifications to its Commercial DR load curtailment operations or control schema, or actions by Customer that may adversely affect Company's system or service to any of Company's other customers, may result in termination of service under this Contract and suspension of Customer from the Commercial DR Program.
- 8.1 Service under this Contract may be terminated by Company upon thirty (30) days' written notice to Customer. If service is terminated due to Customer's noncompliance as set forth in Section 7 above, Company shall have the right to remove or require the return of any metering and Company-Owned Load Management Equipment installed for purposes of the Commercial DR Program and to charge Customer the Early Termination Charge set forth in Section 7.
- 8.2 Notwithstanding the above, if Company terminates service under this Contract for reasons other than Customer's noncompliance, the Early Termination Charge set forth in Section 7 shall not apply and Company shall pay Customer an amount equal to the lesser of: (a) the present value, at Company's most recently approved cost of capital, of the incentive payments, calculated in accordance with Section 9 of the Program Rules which would otherwise accrue throughout the remainder of the Term of the Contract, assuming DR Event frequencies and durations and customer compliance equal to that demonstrated during program participation; or (b) the demonstrated level of investment made by

Customer solely in order to participate in the Commercial DR Program, less any incentive payments already made to Customer.

9. **INDEMNITY:** Customer shall defend at its own cost and indemnify and hold harmless Company, its contractors, and their respective directors, officers, employees, subcontractors, agents, assigns and successors in interest from and against any and all liability (including liability based upon negligence and liability without fault), damages, costs, losses, claims, demands, actions, causes of action, attorneys' fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property, including the property and/or personnel of Company, to the extent caused by Customer or anyone acting under its direction or control arising out of this Agreement; provided Customer's aforesaid indemnity and hold harmless obligation shall not be applicable to the extent of any liability based upon the sole negligence, gross negligence or willful misconduct of Company.
10. **AMENDMENTS:** This Contract and/or the Program Rules may be amended by Company upon thirty (30) days' written notice to Customer. If Customer does not agree with any material change or amendment made to the Contract and/or Program Rules, within thirty (30) days of Customer's notification of such change or amendment, Customer may terminate the Contract upon thirty (30) days' written notice to Company and without being subject to the Early Termination Charges set forth in Section 7.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents to be effective on the date of Company's signature below.

**MAUI ELECTRIC COMPANY, INC.  
HAWAIIAN ELECTRIC COMPANY, INC.**

**CUSTOMER**

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

For: \_\_\_\_\_