**APPENDIX IV**

**STANDARD FORM CONTRACT FOR**

**HAWAI‘I COMMUNITY BASED RENEWABLE ENERGY – PHASE TWO**

THIS STANDARD FORM CONTRACT FOR HAWAI‘I COMMUNITY BASED RENEWABLE ENERGY – PHASE TWO (“Contract”) is entered into as of \_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Effective Date”), by [Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., Hawai‘i Electric Light Company, Inc.], a Hawai‘i corporation (hereafter called "Company") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter called "Subscriber Organization"). Together, the Company and Subscriber Organization are the “Parties” and may singularly each be referred to as a “Party.”

**RECITAL****S**

**WHEREAS**, Company is an operating electric public utility engaged in the generation, transmission, distribution, **[storage,]** regulation, or physical control of electricity (“Company System”) on the Island of [Hawai‘i, Maui, Oahu], 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 the “Commission”); and **[DRAFTING NOTE: This SFC is drafted to include a battery energy storage system ("BESS") as part of the CBRE Facility. References to the BESS and/or storage appear in bold text and brackets and will need to be revised to conform to specifics of each CBRE Project.]**

**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 that meets the Company’s requirements for voltage stability, frequency stability, and reliability standards; and

**WHEREAS**, Subscriber Organization is an “approved Subscriber Organization,” as defined in the Company’s Community-Based Renewable Energy (“CBRE”) Program Phase 2 Tariff (“CBRE Tariff”), and desires to construct and operate a renewable energy generation system (“RE System”) that is classified as an eligible resource under Hawai‘i's Renewable Portfolio Standards Statute (codified as Hawai‘i Revised Statutes (HRS) 269-91 through 269-95) and qualifies for the CBRE Program **[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**, this Contract applies to RE Systems providing less than 250 kW and is entered into in accordance with the terms and conditions contained herein, the CBRE Tariff, the Interconnection Agreement (attached as Appendix III to the CBRE Tariff ) and Company Rule 14, Paragraph H (Interconnection of Distributed Generating Facilities Operating in Parallel With The Company’s Electric System) (“Rule 14H”); and

**WHEREAS**, concurrent with this Contract the Parties have executed the Interconnection Agreement which allows Subscriber Organization to interconnect and operate the CBRE Facility in parallel with the Company System so long as all applicable requirements and conditions of this Contract, the Interconnection Agreement, the CBRE Tariff and Rule 14H have been satisfied; and

**WHEREAS**, the RE System to be developed by the Subscriber Organization will be an established or planned electrical energy generation system with a nameplate capacity of \_\_\_\_\_\_ kilowatts of alternating current (AC) and

**[WHEREAS**, the BESS to be installed by the Subscriber Organization will be an electrical energy battery storage system with a nameplate capacity in kilowatt-hours [kWh] of\_\_\_\_\_\_; and] **[DRAFTING NOTE: REMOVE THIS RECITAL IF PROJECT DOES NOT INCLUDE BESS**]

**WHEREAS**, the RE System **[and BESS]** (hereinafter the “CBRE Facility”) will be constructed and operated on property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Island of \_\_\_\_\_\_\_\_\_\_, State of Hawai‘i (“CBRE Project”) and more fully described in Exhibit A (Description of Generating Facility) [**and Exhibit A-1 (Additional Information for Generating Facilities that include an Energy Storage System) to the Interconnection Agreement]**; and

**WHEREAS**, Subscriber Organization desires to sell to Company, and Company agrees to purchase, subject to the terms and conditions set forth herein, the renewable energy produced by the CBRE Facility and exported to Company at the Point of Interconnection; and

**WHEREAS**, Subscriber Organization agrees that it and its subscribers shall be compensated by Company for renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection in accordance with the terms and conditions set forth in this Contract.

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

**AGREEMENT**

**1.** **DEFINITIONS**. When the capitalized terms set forth in the Schedule of Defined Terms in Attachment A are used in this Contract, such terms shall have the meanings set forth in such Schedule.

**2.** **SALE AND PAYMENT FOR RENEWABLE ENERGY.**

**A. Sale of Renewable Energy Produced by CBRE Facility**

1. Effective upon the Commercial Operations Date, Subscriber Organization agrees to sell to Company, and Company agrees to purchase from Subscriber Organization, all of the renewable energy produced by the CBRE Facility and delivered to the Point of Interconnection, subject to and in accordance with the terms and conditions of this Contract.

2. Company may require Subscriber Organization to temporarily curtail, interrupt or reduce deliveries of renewable energy produced by the CBRE Facility as a result of circumstances described in and in accordance with Attachment B (Curtailment Block) to this Contract. A Curtailment Event will reduce the amount of renewable electrical energy the CBRE Facility is permitted to deliver to the Company.

3. Subscriber Organization shall not sell the renewable energy produced, stored or associated with the CBRE Facility, to any person or entity other than the Company during the Term of this Contract.

4. The Company will buy (through Bill Credits to the Subscribers) all Subscribed Energy generated by the CBRE Project and delivered to the Company during a particular Production Month at the current applicable “Credit Rate,” as determined by the Phase 2 CBRE Tariff (hereinafter “Bill Credit Rate”).[[1]](#footnote-2) Each Subscriber to the CBRE Program will receive a Bill Credit at the Bill Credit Rate for electricity generated attributable to the Subscriber's Subscription as detailed below.

5. The Company will buy (through payment to the Subscriber Organization) all Unsubscribed Energy generated by the CBRE Project and delivered to the Company during a particular Production Month at the Bill Credit Rate, subject to adjustment as detailed in Section 2(D) of this Contract.

**B. Updating Monthly Subscription Information During Production Month; Invoicing Following Close of Production Month.**

1. No later than the last Day of each Production Month, the Subscriber Organization shall provide to the Company any and all changes to the Monthly Subscription Information to be used for such Production Month by entering new or updating previously-entered data through the CBRE Online Portal. Such data to be entered or changed by the Subscriber Organization pursuant to this paragraph shall include additions, deletions or changes to the listing of Subscribers holding Subscriptions in the CBRE Facility, including any changes occurring by said last Day of such Production Month to the Subscriber's account number and service address attributable to each Subscription and the Subscriber Allocation for each Subscriber's Subscription.

2. For each Production Month, the purchase or transfer of all or any portion of a Subscriber’s Allocation occurring on or before the 20th Day of such Production Month of which the Company is notified, as provided for in the preceding paragraph, shall have retroactive effect as of the first Day of such Production Month; the purchase or transfer of all or any portion of a Subscriber’s Allocation occurring on or after the 21st Day of such Production Month, but prior to the first Day of the following Production Month, shall have effect as of the first Day of such following Production Month. Unsubscribed Energy of the CBRE Facility shall be recalculated as of the last Day of each Production Month to account for the effectiveness of such purchases and transfers as aforesaid.

3. By the fifth (5th) Business Day following each Production Month, Company shall provide the following information to Subscriber Organization for its use in computing the amount to be paid for the renewable energy purchased by Company during such Production Month:

a. Production Meter data pertaining to renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection during such Production Month; and

b. If applicable, amounts reasonably incurred by Company, and reimbursable by Subscriber Orgaization to Company under Section 7(D) of this Contract, during such Production Month for the maintenance, operation, and testing of the Production Meter and related infrastructure, and any other amounts due to Company under said Section 7(D).

4. By the tenth (10th ) Business Day following each Production Month, Subscriber Organization shall submit to Company its monthly invoice for such Production Month detailing:

a. A computation, based on the updated Monthly Subscriber Information for such Production Month as provided pursuant to Sections 2(B)1 and 2(B)2 of this Contract, of the Bill Credits to which each Subscriber is entitled based on such Subscriber's Subscriber Allocation for such Production Month, to be applied to each Subscriber’s retail electric bill; and

b. The dollar amount owing to Subscriber Organization for Unsubscribed Energy.

c. The dollar amount owing Company for the $25.00 (monthly) Production Meter Administration Fee and any other applicable Subscriber Organization Fees as set forth in Section 7(D) of this Contract. Amounts owed to Company shall appear on the monthly invoice as a credit against the amount owed to Subscriber Organization for Unsubscribed Energy.

**C. Payment Procedures.**

1. Payment for Unsubscribed Energy. By the twentieth (20th) Business Day of the calendar month during which the invoice in question was received as provided in Section 2(B)4 of this Contract (but no later than the last Business Day of such calendar month if there are less than twenty Business Days in such month), Company shall pay Subscriber Organization the amount owing for the Unsubscribed Energy for the Production Month covered by such invoice as shown on such invoice, or provide to Subscriber Organization an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount.

2. Late Payments. Notwithstanding all or any portion of such invoice in dispute, any payment for the Unsubscribed Energy not made to Subscriber Organization by the payment deadline established in the preceding paragraph shall accrue simple interest at the Prime Rate for the period from that payment deadline until the outstanding interest and invoiced Unsubscribed Energy amount (or amount due to Subscriber Organization if determined to be less than the invoiced Unsubscribed Energy amount) are paid in full. Partial payments for Unsubscribed Energy shall be applied first to outstanding interest and then to outstanding invoice amount for the Unsubscribed Energy.

3. Payment for Subscribed Energy. The sole means of payment for each Subscriber’s Subscriber Allocation during the Production Month covered by the invoice, shall be by a Bill Credit on such Subscriber's retail electric bill for all undisputed amounts. Because not all of Company's customers have the same billing cycle, the timing of the appearance of the Bill Credit will vary with the Subscriber's billing cycle, but Company shall cause the Bill Credit to appear on each Subscriber's retail electric bill no later than two (2) billing cycles for such Subscriber following the date Company makes payment to Subscriber Organization for Unsubscribed Energy on the corresponding invoice. The Production Month upon which the Bill Credit is based shall not necessarily match the billing period for the retail electric service bill in which the Bill Credit is applied.

4. For purposes of applying the Bill Credit to each Subscriber's retail electric bill, the Company shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered by the Subscriber Organization via the CBRE Online Portal as set forth in Sections 2(B)1 and 2(B)2 of this Contract.

5. Error In Allocation**.** If there is a breach, error or changed circumstances resulting in some production from the CBRE Facility being assigned in excess of a Subscriber's allowable Subscriber Allocation under the CBRE Tariff, then the Company may treat this excess as Unsubscribed Energy and not provide a Bill Credit to any Subscriber for any such excess production. Payment to the Subscriber Organization for such Unsubscribed Energy shall only occur if no corresponding Bill Credit is made to a Subscriber, or if already allocated, if such allocation is corrected and withdrawn from such Subscriber, the intent of the parties herein is to ensure that no production from the CBRE Facility is double-counted to any Subscriber and/or Subscriber Organization.

**D. Adjusting Bill Credit Rate for Unsubscribed Energy.**

1. The amount the Company shall pay for the Unsubscribed Energy produced and exported by the CBRE Facility during a particular Production Month shall be determined as follows:

a. For the first six (6) Production Months from and including the Commercial Operations Date, Company shall pay Subscriber Organization for Unsubscribed Energy at the Bill Credit Rate.

b. Beginning with the seventh Production Month following the Commercial Operations Date, the price to be paid to Subscriber Organization for Unsubscribed Energy shall be recalculated as follows:

1. If the Unsubscribed Energy as of the last Day of such Production Month, as recalculated to account for purchases and transfers as set forth in Section 2(B)2 of this Contract, does not exceed 15% of the total of the renewable energy accepted by Company during such Production Month in accordance with this Contract, Company shall pay Subscriber Organization the Bill Credit Rate for the Unsubscribed Energy accepted by Company during such Production Month.
2. However, if the Unsubscribed Energy as of the last Day of such Production Month, as recalculated to account for purchases and transfers as set forth in Section 2(B)2 of this Contract, exceeds 15% of the total of the renewable energy accepted by Company during such Production Month in accordance with this Contract, the price Company shall pay Subscriber Organization for the Unsubscribed Energy accepted by Company during such Production Month shall be discounted by the percentage of Unsubscribed Energy. For example, if the Unsubscribed Energy is 40%, the Bill Credit Rate shall be discounted by 40% for Unsubscribed Energy accepted by the Company during such Production Month.

2. The CBRE Facility shall be required to have a minimum of four (4) individual Subscribers at all times. For a period of six (6) Production Months following the Commercial Operations Date, the Subscriber Organization shall incur no payment reduction for Unsubscribed Energy if the CBRE Factility should fall below this minimum number of Subscribers. Effective after six (6) Production Months, the following shall be placed into effect for the remainder of the term of the CBRE Facility:

* + 1. If the CBRE Facility does not have the minimum 4 individual Subscribers for any Production Month, the unmet percentage of Subscribers to the minimum number of four (4) required Subscribers shall reduce the Subscriber Organization’s Bill Credit Rate used for compensation for Unsubscribed Energy delivered shall be reduced by such percentage. For example, if the CBRE Facility has only 3 Subscribers for any given month, the unmet number of Subscribers is 1 and the percentage to the 4 minimum Subscribers required will be 25% and the Subscriber Organization’s Credit Rate for the next month will be reduced by 25%.
    2. If the Subscriber Organization’s Unsubscribed Energy for the CBRE Facility is also greater than 15% in such month, the Bill Credit Rate for compensation for Unsubscribed Energy delivered in the next month shall be reduced by the sum of the percentage determined from sub-part D.2.a. above plus the percentage of Unsubscribed Energy for that month.
    3. If the Subscriber Organization does not have a minimum of four (4) individual Subscribers but does not have any Unsubscribed Energy, the CBRE Facility shall be subject to equivalent liquidated damages as specified below. Continued failure to achieve the minimum 4 Subscribers for over one year could result in termination and removal from the CBRE Program in accordance with the CBRE Tariff.
       1. Method to Determine Payment Reduction for Failure to Maintain Minimum Number of Subscribers. The percentage determined in sub-part D.2.a. above shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part D.2.a. percentage \* the applicable Bill Credit Rate) to equal a dollar amount liquidated damages for the Subscriber Organization’s failure to maintain the requisite number of Subscribers for any given month.

3. Residential Customer Requirement. 40% of the Contract Capacity of the CBRE Facitlity shall be reserved for individual subscriptions for residential Subscribers (as defined in the CBRE Tariff). For a period of six (6) Production Months following the Commercial Operations Date, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum percentage of residential Subscribers. Effective after six (6) Production Months, the following shall be placed into effect for the remainder of the term of the CBRE Facility

a. If the CBRE Facility does not have the minimum 40% residential Subscribers for any month, the difference in percentage between the CBRE Facility’s actual residential Subcriber percentage and the 40% minimum shall reduce the Subscriber Organization’s Bill Credit Rate for compensation for Unsubscribed Energy delivered by a factor equal to one-fourth (0.25) of such percentage difference. For example, if the CBRE Facility’s residential Subscriber percentage is 30%, the difference, 10%, from the 40% minimum requirement, shall be multipilied by 0.25 (10% \* 0.25 = 2.5%). The 2.5% result shall reduce the Bill Credit Rate for Unsubscribed Energy for that month by such percentage.

b. If the Subscriber Organization’s Unsubscribed Energy for the CBRE Facility is also greater than 15% in such month, the compensation for Unsubscribed Energy delivered in that month shall be reduced by the sum of the percentage payment reduction for the unmet residential Subscriber percentage plus the percentage of Unsubscribed Energy for that month.

c. If the Subscriber Organization does not have the required minimum percentage of residential Subscribers but does not have any Unsubscribed Energy, the CBRE Facility shall be subject to an equivalent penalty as specified below. Continued failure to achieve this minimum percentage of residential Subscribers for more than one year could result in termination and removal from the CBRE Program in accordance with the CBRE Tariff.

* + - 1. Method to Determine Payment Reduction for Failure to Maintain Minimum Residential Subscribers. The percentage determined in sub-part D.3.a. above shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part D.3.a. percentage \* the applicable Bill Credit Rate) to equal a dollar amount liquidated damages for the Subscriber Organization’s failure to maintain the requisite percentage of residential Subscribers for any given month.

**E. Company’s Obligation to Provide Curtailed Energy Data.** By the fifth (5th) Business Day of each calendar month, Company shall provide Subscriber Organization, with a written report as set forth in Attachment C to this Contract (the “Curtailment Report”) identifying each Curtailment Event during the preceding calendar month. The Curtailment Report will include the start and end time of each Curtailment Event and the reason for curtailment. The Curtailment Report shall not include curtailment instituted by Subscriber Organization or curtailment for scheduled maintenance.

1. **Limitations Period.** All Subscriber Organization claims for adjustments shall be submitted to the Company within three years of the end of the calendar month covered by the invoice on which the adjustment amount in question was invoiced or should have been invoiced. Claims not submitted to the Company by the end of such three-year period shall be deemed to have been waived.

**G. Company's Billing Records**. Subscriber Organization, after giving reasonable advance written notice to Company, shall have the right during Company's normal working hours on Business Days to review all billing, metering and related records necessary to verify the accuracy of the data provided by Company regarding payments and credits for the exported energy produced by the CBRE Facility. Company shall maintain such records for a period of not less than thirty-six (36) months.

**H. Subscriber Organization Responsibility for Billing Inaccuracies.** The correction of any allocation of previously-applied Bill Credits among Subscribers or payments to the Subscriber Organization for Unsubscribed Energy, pertaining to a particular month due to any inaccuracy reflected in such Monthly Subscription Information with regard to a Subscriber's Subscription in the CBRE Facility and the beneficial share of renewable energy exported by the CBRE Facility, or the share of Unsubscribed Energy, shall be the full responsibility of the Subscriber Organization, unless such inaccuracies are caused by the Company.

**3. HOUSE POWER.**

The Company will sell House Power to the CBRE Facility under the rate schedule in force for the class of customer to which the Subscriber Organization belongs. A separate meter to record energy delivered to the CBRE Facility may be installed by the Company. The Subscriber Organization shall be solely responsible for arranging retail electric service exclusively from the Company in accordance with the Company's Electric Rate Book. The Subscriber Organization shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means and waives any regulatory or other legal claim or right to the contrary. Because the Subscriber Organization must make all energy produced by the CBRE Facility available to the Company, the CBRE Facility may not use the energy it generates to be consumed by it. It may not net-out or use energy it generates for House Power. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be separate from this Contract and shall be interpreted independently of the Parties' respective obligations under this Contract. Notwithstanding any other provision in this Contract, nothing with respect to the arrangements for House Power shall alter or modify the Subscriber Organization's or the Company's rights, duties and obligations under this Contract. This Contract shall not be construed to create any rights between the Subscriber Organization and the Company with respect to the arrangements for House Power.

**4. METERING REQUIREMENTS, CHARGES AND TESTING.**

1. Company shall install, operate and maintain for the benefit of the CBRE Facility a revenue metering package suitable for measuring the export of renewable energy (AC) produced by the CBRE Facility in kilowatts and kilowatt-hours on a time-of-day basis and reactive power flow in kilovars and true root mean square kilovar-hours (the "Production Meter”). The metering point for the Production Meter shall be as close as possible to the Point of Interconnection as allowed by Company.

Subscriber Organization, subject to Company review and approval, shall purchase, install, and maintain the infrastructure and other related equipment (“Meter Infrastructure”) including meter housing, socket replacement and rewiring as required to install the Production Meter and any additional service meter(s), including such meters for measuring House Power. Subscriber Organization shall install the Meter Infrastructure in adherence with requirements set forth in the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test the Production Meter prior to installation and at the request and expense of the Subscriber Organization.

Subscriber Organization shall reimburse Company for the costs reasonably incurred for the purchase and installation of the Production Meter. Subscriber Organization shall be responsible for the ongoing costs incurred by Company to operate, maintain (including maintenance replacements) and test the Production Meter during the Term.

1. **Metering Charge per Month: $25.00**. Subscriber Organization shall be charged each month during the Term an administrative metering fee of a $25.00 for the Production Meter. The administrative metering fee is addition to the costs associated with the purchase, installation, maintenance and testing of the Production Meter and Meter Infrastructure.
2. **Meter Testing.** Company shall provide at least twenty-four (24) hours' notice to Subscriber Organization prior to any test it may perform on the Production Meter or metering equipment. Subscriber Organization may request tests in addition to the every fifth-year test and Subscriber Organization shall pay the cost of such tests. Company may perform tests in addition to the fifth-year test and Company shall pay the cost of such tests. If any of the meters or metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section, 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 as provided in Company’s Tariff Rule No.11[Billing Error, Meter Tests and Adjustment for Meter Errors].

# 5. [RESERVED]

# 6. INTERCONNECTION AGREEMENT; REQUIREMENTS. The Subscriber Organization must sign the Company’s Interconnection Agreement and comply with all of the terms and conditions of that Interconnection Agreement except as otherwise specified in this Contract. In the event of any inconsistency or conflict between the terms and provisions of this Contract and the Interconnection Agreement, the terms and provisions of the Interconnection Agreement shall control.

**7.** **CBRE TARIFF REQUIREMENTS.**

**A**. The Subscriber Organization shall comply with and assure that the requirements of the CBRE Framework and CBRE Tariff applicable to the CBRE Facility are met.

**B**. Subscriber Organization shall require all prospective Subscribers to execute a Subscription Agreement as a precondition to enrollment as a Subscriber in the CBRE Facility. The Subscription Agreement must satisfy the requirements of the CBRE Tariff, CBRE Framework, this Contract and any additional guidance from the PUC. Prior to executing the Subscription Agreement, the Subscriber Organization shall make to the Subscriber the disclosures required under the Disclosure Checklist (Appendix II to the CBRE Tariff). A copy of the Disclosure Checklist signed by both the Subscriber Organization and the Subscriber shall be attached to the executed Subscription Agreement. The Subscriber Organization shall also disclose to the Subscriber that a failure to pay such Subscriber's monthly retail electric bill that results in Company issuance of a disconnection notice will result in forfeiture of Bill Credits for the duration of such disconnection. For each Subscriber, there must be a completed and fully executed Subscriber Agency Agreement and Consent Form (Appendix I to the CBRE Tariff). which is delivered to the Company prior to the Commercial Operations Date, or prior to adding each Subscriber.

**C**. **Funds Received From Subscribers Prior to the Commercial Operations Date**. Any payments made to Subscriber Organization by Subscribers prior to the Commercial Operations Date shall be deposited into an escrow account ("Pre-COD Escrow") and may not be withdrawn from the Pre-COD Escrow by the Subscriber Organization until the Commercial Operations Date. The Pre-COD Escrow must conform to the CBRE Tariff, CBRE Framework, applicable Laws and any additional guidance from the PUC.

**D**. **Subscriber Organization Fees.** Subscriber Organization shall pay to Company the following fees:

 $250 Application Fee

 All applicable late fees for failure to meet Commercial Operations Date

 All applicable interconnection costs, fees and expenses, including costs associated with acquisition and installation of the Production Meter

 All applicable costs for the operation, maintenance and testing of the Production Meter

 $5/kW AC Program Administration Fee (annually), from the Commercial Operations Date

 $25.00 (monthly) Production Meter Administration Fee

 Such other fees as the PUC may establish for the CBRE Program

If Company does not set off the amount of these fees against Company payments to Subscriber Organization for Unsubscribed Energy, Company shall invoice Subscriber Organization for payment to Company of the foregoing fees. Subscriber Organization shall make payment to Company within 15 Days of Subscriber Organization's receipt of such invoice.

**E.** **Compliance.** The Subscriber Organization shall be responsible for ensuring that the equipment installed at the CBRE Facility meets all applicable codes, standards, and regulatory requirements at the time of installation and throughout its operation.

Subscriber Organization shall comply with all of the rules stated in the Company's applicable electric tariff rules related to the CBRE Program, as the same may be revised from time to time, and this Contract, as may be amended from time to time, as allowed by an amendment to this Contract approved, or deemed approved, by the PUC. In the event of any conflict between the terms of this Contract and Company's electric tariff rules related to the CBRE Program, the provisions of the tariff shall control.

**F**. **Project Completion**.

1. The Subscriber Organization shall achieve the Commercial Operations Date for the CBRE Facility within eighteen (18) months from the execution date of this Contract, as the same may be extended as provided herein or in the CBRE Tariff (the “Commercial Operations Date Deadline”). The Commercial Operations Date Deadline shall be extended day-for-day for a CBRE Facility that, in the Company's determination, has suffered a Force Majeure event (as set forth Section 21(j) of the Interconnection Agreement) prior to the Commercial Operations Date, or for any delay caused by Company.

2. Notwithstanding the foregoing, a local-government moratorium to issuing a permit may extend the 18-month Project Completion period for no more than an additional 6 months. Failure to seek a permit, delay in seeking a permit, or permit-processing time not subject to a moratorium is not included in this 6-month extension.

3. If Substantial Progress has been achieved, but the Commercial Operations Date has not been achieved by the Commercial Operations Date Deadline, and Subscriber Organization still intends to complete its CBRE Facility, then the Subscriber Organization shall pay a “late fee” to Company of $200/day/MW nameplate capacity of the RE System until the CBRE Facility achieves the Commercial Operations Date. For example, if a RE System has a nameplate capacity of 100 kW, and it achieves the Commercial Operations Date 30 Days late, the “late fee” would be $600. The “late fee” shall be paid to Company before the Commercial Operations Date. However, if Company fails to collect in full such amount by this date, such unpaid amount may be included as part of the actual costs of interconnection under the Interconnection Agreement. All “late fee” payments received by Company will be credited back to offset the costs to the Company ratepayers for the CBRE Program. A prerequisite to showing that Substantial Progress has been achieved in a timely manner is that before the Commercial Operations Date Deadline the Subscriber Organization must submit a signed letter to Company attesting to the fact that Substantial Progress as defined in this Contract has been made, and attach photographs to that letter demonstrating this.

4. If: (1) Substantial Progress has not been achieved by the Commercial Operations Date Deadline, or (2) Subscriber Organization does not wish to complete its CBRE Facility upon the Commercial Operations Date Deadline, or (3) the Commercial Operations Date that is extended due to a permit issuance moratorium is not achieved within six (6) months from the originally required Commercial Operations Date Deadline, then the application for the CBRE Facility and this Contract will be terminated and canceled and the corresponding Interconnection Agreement will be terminated by Company without further notice. No additional concurrence from the CBRE IO shall be necessary for such termination. The Application Fee and any other deposits paid by the Subscriber Organization shall be forfeited.

5. After termination, the Subscriber Organization, if it still intends to proceed with the CBRE Facility, must submit a new application and pay any applicable deposit and/or fees which will be subject to the then current CBRE Tariff, Bill Credit Rate and other applicable CBRE requirements for new projects, including CBRE Program capacity availability.

**G. Financial Compliance.**

1.  If Company reasonably believes the provisions of this Section 7.G apply to the CBRE Facility, Company shall notify Subscriber Organization in writing and Subscriber Organization shall provide or cause to be provided to Company on a timely basis, 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, Hawaiian Electric Industries, Inc. (“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) 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, FASB ASC 842,  and SOX 404 issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities.  In addition, if required by Company in order to meet its compliance obligations, Subscriber Organization shall allow Company or its independent auditor to audit, to the extent reasonably required, Subscriber Organization'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 Subscriber Organization's reasonable internal costs.  Company shall limit access to such Financial Compliance Information to Company and HEI personnel involved with such compliance matters and restrict any Company or HEI personnel involved in Company's monitoring, dispatch or scheduling of the Subscriber Organization and/or the CBRE Facility, the administration of this Contract, or in developing potential CBRE projects, from having access to such Financial Compliance Information (unless approved in writing in advance by Subscriber Organization).

2. Confidentiality. As a condition to obtaining the Financial Compliance Information, Company shall, and shall cause HEI to, maintain the confidentiality of said Financial Compliance Information pursuant to a mutually agreed to confidentiality and non-disclosure agreement to be executed among Company, HEI and Subscriber Organization.

3. 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. Company represents that, as of the Effective Date, it is not required to consolidate Subscriber Organization into its financial statements in accordance with FASB ASC 810. If for any reason, at any time during the Term, Company determines, in its sole but good faith discretion, that it is required to consolidate Subscriber Organization into its financial statements in accordance with FASB ASC 810, then Subscriber Organization shall immediately provide audited financial statements (including footnotes) in accordance with U.S. generally accepted accounting principles (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. Notwithstanding the foregoing requirement that Subscriber Organization provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Contract to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties. (ii) FASB ASC

**H.** **Audits.** The Company reserves the right to inspect the CBRE Facility as necessary to assure the safety and reliability of the system at any time during the Term, and for an additional period of one (1) year thereafter.

**I.** **Capacity Limit**. The CBRE Facility must have a nameplate capacity of less than 250 kilowatts of alternating current (AC) .

**J.** **No Relocation**. The RE System **[and BESS]** shall be located at the CBRE Facility as shown in its application at all times during the Term.

**K. Disclosure of Production Information.** The Subscriber Organization acknowledges and agrees that, in order for the Company to carry out its responsibilities in applying Bill Credits to each Subscriber's retail electric bills, the Company may be required and shall be permitted to provide access or otherwise disclose and release to any Subscriber any and all production data related to the RE System **[and BESS]** in its possession and information regarding the total Bill Credits applied by the Company with respect to the CBRE Facility and any information pertaining to a Subscriber's Subscription. Any additional detailed information requested by a Subscriber shall be provided only upon the Subscriber Organization's consent in writing or email to the Company, or unless the Public Utilities Commission or the CBRE IO requests that the Company provide such information to the Subscriber, or as otherwise required by law.

**L. Disclosure of CBRE Facility Information**. The Subscriber Organization acknowledges and agrees that the Company may publicly disclose the CBRE Facility location, Subscriber Organization, nameplate capacity and production data of the CBRE Facility. Additionally, the Company will periodically provide a bill message to Subscribers clarifying that questions or concerns related to their Subscription should be directed to the Subscriber Organization, including a statement that the Subscriber Organization is solely responsible for resolving any disputes with the Company or the Subscriber about the accuracy of the CBRE Facility data and that the Company is solely responsible for resolving any disputes with the Subscriber about the applicable rate used to determine the amount of the Bill Credit.

**M.** **Certain Tax and Securities Law Issues.** The Company makes no warranty or representation concerning the taxable consequences, if any, to Subscriber Organization or its Subscribers with respect to its Bill Credits to the Subscribers for participation in the CBRE Facility. Additionally, the Company makes no warranty or representation concerning the implication of any federal or state securities laws on how Subscriptions to the CBRE Facility are handled.

**N.** **Full Cooperation with the PUC**. The Parties agree to fully cooperate with any request for information from the PUC or the CBRE IO pertaining in any way to the CBRE Facility and will provide such information upon request in a timely manner. To the extent to which any request calls for producing a specific Subscriber's Confidential Account Information, Subscriber Energy Usage Data or Bill Credits, such information shall be provided and marked as Confidential Information.

**O. New Energy Generating Systems.** The RE System must not be built or previously interconnected at the time of application to the CBRE Program.

**P.** **Fair Disclosure; Disclosure Checklist.** Prior to the time when any person or entity becomes a Subscriber, the Subscriber Organization will fairly disclose the future costs and benefits of the Subscription and all other matters specified in the Disclosure Checklist and provide to the potential Subscriber a copy of this Contract. The Subscriber Organization shall comply with all other requirements of the PUC and applicable Laws with respect to communications with Subscribers.

**8.** **REQUIREMENTS APPLICABLE TO SUBSCRIBER ORGANIZATION’S RELATIONSHIP WITH ITS SUBSCRIBERS.**

The Subscriber Organization must comply with all of the following:

**A. Subscriber Information**. The Subscriber Organization shall issue Subscriptions in the CBRE Facility only to eligible retail electric service customers of the Company and provide to the Company the name, account number and service address attributable to each Subscription and the Subscriber Allocation for each Subscriber's Subscription. The Subscriber Organization shall take care to preserve the privacy expectations of the Subscribers, such as not publicly providing a Subscriber's Confidential Account Information, Subscriber Energy Usage Data, or Bill Credits. The Subscriber Organization will not disclose or share such information except as permitted by the Subscriber Agency Agreement and Consent Form executed by Subscriber in connection with Subscriber’s acquisition of its Subscription in the CBRE Facility or otherwise unless the Subscriber has provided explicit informed consent or if such disclosure is compelled by Law.

**B. Subscriber Transfer or Exit.**

1. If the CBRE Facility uses a Pay-As-You-Go model for Subscriber interests, a Subscriber may not transfer their interest to another Customer. If a Subscriber wishes to terminate their interest in the CBRE Facility, the Subscriber shall either cancel or terminate their subscription with the Subscriber Organization in accordance with the provisions of the Subscriber Agreement.

2. If the CBRE Facility uses a Pay-Up-Front model for Subscriber interests:

a. If a Subscriber requests to transfer their interest to another Customer, the Subscriber Organization shall confirm that Customer’s eligibility as set forth herein. Any payment for the transfer shall be in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.

i. There shall be no transfer charge/fee if the meter associated with the account remains unchanged.

ii. A transfer shall be for no less than all (100%) of the selling Subscriber’s interest.

iii. Any transfer will not be effective until the Subscriber Organization notifies the Administrator of the transfer. For any notice of transfer on or prior to the twentieth (20th) day of any month, such transfer will be effective as of the first (1st) day of that month. For any notice of transfer after the twentieth (20th) day of a month, the transfer will be effective as of the first (1st) day of the next month.

iv. Eligibility Requirements for Transferees. The transferee(s) of such Subscriber Allocation must satisfy the requirements under the CBRE Tariff to be a Subscriber under the CBRE Program.

v. Limitations on Size of Subscriber Allocation. Following completion of such transfer, the aggregate Subscriber Allocation to be held by such transferee(s) (including both the transferred Subscriber Allocation and any pre-existing Subscriber Allocation) must comply with the size limitations set forth in the CBRE Tariff.

vi. Eligibility Determination. Subscriber Organization shall determine the eligibility and permitted size of any such transfer by inquiry to the Company, manually through Company personnel in Phase 2 and electronically through the CBRE Online Portal once such software tool is available.

b. If Subscriber requests to sell all or any portion of their Subscription back to the Subscriber Organization, Subscriber Organization shall buy back the interest in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.

i. Subscriber Organization shall complete the buy-back of the Subscriber’s interest within thirty (30) days of the Subscriber’s request.

ii. Upon completion of a subscription buy-back, the Subscriber Organization shall notify the Company by the last day of the month the transaction was completed. The Company shall confirm such buy-back in the Subscriber database and cease CBRE bill credits effective as communicated by the Subscriber Organization on the first day of the month of notification if such transaction was completed on or prior to the twentieth (20th) day of the month. Transactions completed after the twentieth (20th) day of the month will be effective as of the first (1st) day of the next month.

3. A Subscriber may change the premises to which the CBRE Facility's renewable energy generation shall be attributed. So long as the premises is on the same island and meets eligibility requirements set forth in the CBRE Tariff, neither the Subscriber Organization nor Company shall charge a transfer fee. For example, when a Subscriber sells the premises to which the Subscription is attributed and inhabits new premises on the same island, this provision is intended to permit a Subscriber to transfer the Subscription to the new premises.

**D.** **Updating Subscriber Information**. The Subscriber Organization shall provide to the Company the Monthly Subscriber Information together with any and all updates to the Monthly Subscription Information as provided in Sections 2.(B)1 and 2.(B)2 of this Contract.

**E. Responsibility for Verification**. The Subscriber Organization shall verify that each Subscriber is eligible to be a Subscriber in the CBRE Facility and that the CBRE Tariff requirements are met.

**9**. **EVENTS OF DEFAULT BY SUBSCRIBER ORGANIZATION**. The occurrence of any of the following shall constitute an “Event of Default” by Subscriber Organization:

**A.** If at any time during the Term, Subscriber Organization delivers or attempts to deliver to the Point of Interconnection for sale under this Contract renewable energy that was not produced by the CBRE Facility and Subscriber Organization fails to cease such delivery or attempt to deliver such renewable energy within ten (10) Days after Company’s written notice of such delivery or attempt.

**B.** If any representation or warranty made to Company by Subscriber Organization herein is false and misleading in any material respect when made.

**C.** If at any time subsequent to the Commercial Operations Date, Subscriber Organization fails to provide renewable energy to Company for a period of three hundred sixty-five (365) or more consecutive Days, unless such failure is caused by the inability of Company to accept such renewable energy.

**D.** Subscriber Organization becomes insolvent, or makes an assignment for the benefit of creditors; or 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 Law; or 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 takes action looking to its dissolution or liquidation, and Subscriber Organization is unable to remedy such actions within one hundred eighty (180) Days of the occurrence of such breach or default.

**E.** Other than the events of default specified in Sections 9.(A), (B) and (C) above, Subscriber Organization, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Contract, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from Company; provided, however, that if it is objectively impossible to cure such breach or default within said thirty (30) Day period, then, for so long as Subscriber Organization is making the same effort to cure such breach or default as would be expected of an experienced independent power producer willing and able to exert commercially reasonable efforts to achieve such cure, Subscriber Organization shall have a cure period equal to three hundred sixty five (365) Days beginning on the date of Company's written notice of such breach or default.

**F.** Subscriber Organization fails to comply with the terms and conditions or fails to assure compliance with the terms and conditions of the (1) Interconnection Agreement or (2) CBRE Tariff, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from Company.

**G.** Company provides written notice to Subscriber Organization to terminate the Interconnection Agreement upon the conditions stated therein.

**10. REMEDIES FOR BREACH.**

**A.** In the event of any Event of Default by the Subscriber Organization, then the Company shall have available to it any other remedy provided for in this Contract and any or all of the following remedies which can be used either singularly or cumulatively.

**B.** For any Event of Default by the Subscriber Organization:

(1) Company shall provide written notice to the Subscriber Organization to remedy the Event of Default within the applicable cure period specified for such Event of Default, if any.

(2) If after the cure period, if any, provided for in the Company’s notice the Subscriber Organization is still not in compliance with this Contract, then the Company shall have the right to request to terminate the Contract via a Notice of Intent to Terminate and Request for IO Concurrence to the IO (the “Notice to IO”).

(3) If the CBRE IO concurs with the Company’s request to terminate the Contract, the Company shall provide written notice to Subscriber Organization and Subscriber Organization shall have five (5) Business Days to provide proof that Company’s and CBRE IO’s determination to terminate the Contract is in error.

(4) If the Subscriber Organization fails to provide such proof or if the Company and the CBRE IO reasonably determine that such proof is insufficient to reverse the Company’s decision to terminate, Company may proceed to terminate the Contract by providing a written notice of termination to Subscriber Organization. A copy of such notice shall be provided to all Subscribers of the CBRE Facility, the CBRE IO and the PUC.

(5) The termination date in the notice of termination shall not be earlier than thirty (30) Days from the date of such notice.

**C.** In the event of an Event of Default by the Subscriber Organization for which the Company sends a written notice pursuant to this Section 10, Company shall also send a copy of the notice as soon as practicable to any financing party for the CBRE Facility whose contact information has been provided to the Company. Any such financing party shall have the right to cure the alleged breach within the cure period provided in Section 9 and Company agrees to accept any such cure as if made by the Subscriber Organization. The Company shall be under no obligation to provide any such financing party with any information contrary to the Data Privacy Commitments set forth in Exhibit 1 to the Subscriber Agency Agreement and Consent Form. The Company shall be under no obligation to provide any such financing party with any information it may have which is confidential to the Subscriber Organization unless the Subscriber Organization has provided written consent to the Company permitting the release to the financing party of such confidential information.

**D.** Subscriber Organization acknowledges that Company is a public utility and is relying upon Subscriber Organization's performance of its obligations under this Contract, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Subscriber Organization 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 this Section 10. Accordingly, the remedies set forth in this Section 10 shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Subscriber Organization's failure to perform any of its obligations under this Contract, irrespective of whether such failure constitutes an Event of Default.

**E.** In the event of any breach of this Contract by Company, the Subscriber Organization shall provide Company with a written notice of the breach. Company shall have up to thirty (30) Days to cure the breach. If the breach is not cured within the thirty (30) Days, the Subscriber Organization may utilize the procedures set forth in Section 12. If the breach results in Bill Credits not being issued to one or more individual Subscribers, in the absence of a cure by Company within the allowed time following the notice, the applicable Subscriber(s) may also seek a remedy for any past due Bill Credits from the PUC pursuant to the CBRE Tariff.

**11. LIMITATION OF LIABILITY**

**A.** Each Party shall at all times indemnify, defend, and save the other Party harmless from any and all damages, losses, claims, including claims and actions relating to injury or death of any person or damage to property, costs and expenses, reasonable attorneys' fees and court costs, arising out of or resulting from the Party's performance of its obligations under this Contract, except to the extent that such damages, losses or claims were caused by the negligence or intentional acts of the other Party.

**B.** Each Party's liability to the other Party for failure to perform its obligations under this Contract shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.

**C.** Notwithstanding any other provision of the Contract or this Section 11. with respect to the Company's duties or performance or lack of performance under this Contract, the Company's liability to the Subscriber Organization shall be limited as set forth in the Company's rate book and terms and conditions for electric service, which shall not be affected by the terms of this Contract. There are no third-party beneficiaries of any Company duty under this Contract other than the Company's duty to Subscribers to issue Bill Credits as set forth in this Contract, and the duty to a financing party under Section 10.C. of this Contract.

**D.** Indemnification of Company Against Third Party Claims. Subscriber Organization 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) the Subscriber Agreement between Subscriber Organization and its Subscribers or (ii) Subscriber Organization’s development, permitting, construction, ownership, operation and/or maintenance of the CBRE Facility.

**12.** **DISPUTE RESOLUTION.**

**A.** Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

**B.** If a dispute arises under this Contract between the Parties which cannot be resolved by the Parties within thirty (30) Days after written notice of the dispute to the other Party, then the Parties shall mediate the dispute with the CBRE IO for resolution, which shall be non-binding upon the Parties.

**C.** If the Parties still cannot resolve the dispute even after mediation with the CBRE IO, either Party may refer the dispute for resolution to the PUC, which shall maintain continuing jurisdiction over this Contract.

**13**. **ENVIRONMENTAL CREDITS**. Included in the purchase and sale of renewable energy are all of the Environmental Credits associated with the renewable energy. Company will not reimburse Subscriber Organization for any taxes or fees imposed on Subscriber Organization including, but not limited to, State of Hawai‘i general excise tax. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the renewable 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." Subscriber Organization 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.

**14. REPRESENTATIONS AND WARRANTIES.**

**A.** Company and Subscriber Organization represent and warrant, respectively, that:

(1) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Contract.

(2) The execution, delivery and performance of this Contract 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 Contract, other than governmental agencies whose approval is necessary for construction of the CBRE Facility and interconnection facilities, is required for such execution, delivery and performance by either Party.

**B.** Subscriber Organization represents, warrants and covenants that:

(1) Subscriber Organization has obtained all Land Rights necessary for the construction, ownership, operation and maintenance of the CBRE Facility during the Term, and Subscriber Organization shall maintain such Land Rights in effect throughout the Term.

(2) As of the commencement of construction, Subscriber Organization shall have obtained all permits or approvals from any applicable governmental agency necessary for the construction, ownership, operation and maintenance of the CBRE Facility and all interconnection facilities.

(3) Subscriber Organization warrants that the CBRE Facility complies with all applicable federal and state Laws, including but not limited to (a) all applicable securities Laws and shall continue to be in compliance for the duration of the Term; (b) complies with all applicable Laws concerning the dissemination of personally identifiable information, and shall continue to be in compliance for the longer of (i) the Term and (ii) for as long as Subscriber Organization continues to hold or otherwise have access to any personally identifiable information of Subscribers or customers of Company; (c) complies with all applicable Laws concerning consumer protection, and shall continue to be in compliance for the duration of the Term; (d) complies with all applicable Laws and regulations concerning renewable energy grid interconnections, and shall continue to be in compliance for the duration of the Term.

**15. MISCELLANEOUS**. The "Miscellaneous" provisions set forth in Section 21 of the Interconnection Agreement between the Parties addressing the following issues are incorporated into this Contract and are fully applicable to this Contract as if set forth in full herein. Where the Interconnection Agreement in the "Miscellaneous" section uses the term "Agreement," this shall mean this Contract for purposes of the Contract.

 Governing Law and Regulatory Authority.

 Amendment; Modification or Waiver.

 Notices.

 Assignment.

 Binding Effect

 Relationship of Parties

 Force Majeure

 Non-Warranty

 Confidential Information

 Execution of Agreement; Multiple Counterparts

**16.** **TERM and TERMINATION.** The Term shall be the same as for the Interconnection Agreement applicable to the CBRE Facility, and each shall begin when signed by the Parties and end twenty (20) years after the Commercial Operations Date unless otherwise provided for in this Contract. In the event of termination, or early termination of this Contract, applicable provisions shall continue in effect after termination to the extent necessary to enforce and complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Contract. The Parties acknowledge that this Contract and the Interconnection Agreement are interdependent agreements and one cannot continue if the other is terminated. Provisions in this Contract permit Company to terminate this Contract and provisions in the Interconnection Agreement permit Company and/or Subscriber Organization to terminate the Interconnection Agreement. Accordingly, if either agreement is terminated pursuant to its terms, the other agreement will likewise be terminated, subject to the provisions, terms and conditions of such agreement, including, by way of example, the first sentence of this section.

**17. SIGNATURES**

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives. This Contract is effective as of the Effective Date set forth above.

|  |  |  |
| --- | --- | --- |
| [Subscriber Organization] |  | [Hawaiian Electric Company, Inc.  Hawai‘i Electric Light Company, Inc.  Maui Electric Company, Limited], a Hawai‘i corporation |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ATTACHMENT A**

**Schedule of Defined Terms**

"Base Load Unit" means a generating unit that is normally on-line twenty-four (24) hours a Day. This includes any unit that is scheduled to be on-line continuously for a given Day because a unit which is normally a Base Load Unit is on maintenance or otherwise temporarily out of service.

“BESS” means the battery energy storage system that is a portion of the CBRE Facility used to facilitate the storing of renewable energy and the charging of renewable energy from RE System, and the discharging of renewable energy to, the Company System, as described in Attachment A to the Interconnection Agreement. **[DRAFTING NOTE: REMOVE IF PROJECT DOES NOT INCLUDE BESS]**

"Bill Credit" shall mean the dollar amount credited by the Company to each Subscriber on the Subscriber's retail electric service bill, which represents the Subscriber’s beneficial share of renewable energy produced by the CBRE Facility and exported to the Company, and offsetting Subscriber’s current renewable energy usage on such service bill.

"Bill Credit Rate" shall mean the then current applicable “Credit Rate” as determined by the CBRE Tariff. The CBRE Tariff prescribes a specific Credit Rate in the event that CBRE Small Project Phase 2 Capacity (as defined in the CBRE Tariff) is not filled for any island and a competitive credit rate procurement (“CCRP”) mechanism to set the Credit Rate if there are more applications for CBRE Small Project Phase 2 Capacity than is available for any island.

"Business Day" means any Day that is not a Saturday, a Sunday, or a federal or Hawai‘i state holiday.

“CBRE Facility” shall mean the facility that produces the renewable energy that is the subject of this Contract and includes all equipment, improvements, infrastructure and other tangible assets necessary to connect to the Production Meter and all contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the RE System **[and BESS]** for the Term.

“CBRE Framework” means the Phase 1 CBRE Framework, as amended and supplemented by the Phase 2 CBRE Framework.

"CBRE IO" means the Independent Observer contracted with the Company but answering to the PUC to carry out the responsibilities assigned to the Independent Observer under the Phase 2 CBRE Framework.

"CBRE Online Portal" is the interactive, internet website-based interface maintained by or on behalf of the Company through which the Subscriber Organization may establish qualifications, provide information and complete documents necessary for acceptance in the CBRE Program, and may enter or change the Monthly Subscription Information reflecting updated information for each Subscriber, including any changes to any Subscriber's name, account number, address, and Subscriber Allocation. For Phase One of the CBRE Program, the CBRE Online Portal will be a manually administered application form-based process managed by Company until the CBRE Online Portal is online and ready for commercial operation. The CBRE Online Portal should be completed in time for the commencement of Phase Two of the CBRE Program.

“CBRE Tariff” means the Hawai‘i Community-Based Renewable Energy tariff approved by the PUC as Tariff Rule 29, on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, based on the PUC’s Phase 2 CBRE Framework.

"Commercial Operations": The CBRE Facility shall be considered to have achieved Commercial Operations on the first Day of the calendar month following the date on which all of the following conditions have been satisfied: (a) Subscriber Organization has completed construction of the CBRE Facility in accordance with the requirements set forth in the Interconnection Agreement; (b) Company testing of the RE System **[and BESS]** has taken place and the Company has determined the RE System **[and BESS]** to be fully operational, and (c) Subscriber Organization has provided Company with written notice that (i) it has enrolled at least four (4) individual Subscribers in the Subscriber Organization's CBRE Program and (ii) Subscriber Organization is ready to declare the Commercial Operations Date.

"Commercial Operations Date" shall mean the date on which the CBRE Facility first achieves Commercial Operations.

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

"Company System Operator": Authorized representative of Company responsible for Company dispatch and curtailment of renewable energy generation interconnected to the Company System.

"Curtailed Energy": An estimate of possible CBRE Facility production during periods that output is restricted due to a Curtailment Event.

"Curtailment Event" means the temporary curtailment, interruption or reduction of deliveries of electric energy from the Facility initiated by Company as a result of circumstances described in Sections 1.A and 1.C of Attachment B (Curtailment Block) of this Contract. A Curtailment Event shall commence at the time the Facility receives the curtailment signal from the Company System Operator and shall end at the time the Facility receives the curtailment control signal from the Company System Operator to end the curtailment.

"Curtailment Report" means the monthly report of Curtailed Energy in the form of Attachment C to this Contract.

“Day” means a calendar day.

"Disclosure Checklist" means the Disclosure Checklist required to be completed by Subscriber Organization with all Subscribers, the form of which is included in the CBRE Tariff.

"Environmental Credits" means any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any city, state or federal governmental agency or court, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Subscriber Organization based in whole or in part on the fact that the RE System 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.

"Excess Energy Conditions" means 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.

"Forced Outage" means an unplanned unit shutdown caused by factors such as automatic or programmed protective trips and operator-initiated trips due to equipment malfunction.

“Good Engineering and Operating Practices” shall have the meaning and meet all requirements set forth in Section 19 of the Interconnection Agreement.

"House Power" shall mean the electricity needed to assist in the operation of the CBRE Facility including system performance monitoring and associated communications, except for energy directly required for the local control and safe operation of the RE System **[and BESS].** It also means other electricity used by the CBRE Facility, such as for perimeter lighting, a visitor's center or any other structures or facilities at the CBRE Facility site.

"Interconnection Agreement" shall mean the Interconnection Agreement required to be executed by the Subscriber Organization concurrently with this Contract.

"Land Rights": All easements, rights of way, licenses, leases, surface use agreements and other interests or rights in real estate.

"Laws": All federal, state and local laws, rules, regulations, orders, ordinances, permit conditions and other governmental actions.

"Monthly Subscription Information" shall mean the information stored within the CBRE Online Portal, as timely entered or changed by the Subscriber Organization via the CBRE Online Portal, setting forth the name, account number and service address each Subscriber holding Subscriptions in the CBRE Facility, and the Subscriber Allocation applicable to each such Subscriber's Subscription, reflecting each Subscriber's allocable portion of renewable energy produced by the CBRE Facility during a particular Production Month.

“Pay-As-You-Go” refers to any lease or subscription interest in a CBRE project or its energy output in which a Subscriber does not make any up-front payment (except for fixed administrative or other costs not based on the level of Subscriber’s interest) to the Subscriber Organization for Subscriber’s interest and instead makes periodic, e.g., monthly, payments to the Subscriber Organization for Subscriber’s interest, with such payment to be commensurate with the extent of the Subscriber’s interest in the CBRE project. The payment for the Subscriber’s interest in the Pay-As-You-Go model does not include other payments that may be necessary from a Subscriber to the Subscriber Organization, such as operations and maintenance, insurance and other cost items that may be specified in the Subscriber Agreement between Subscriber and Subscriber Organization for a particular CBRE project

“Pay-Up-Front” refers to any asset-type interest in a CBRE project or its energy output where the Subscriber is required to make an up-front payment to the Subscriber Organization for Subscriber’s interest and thereafter is not required to make further periodic payments to the Subscriber Organization for Subscriber’s interest in the CBRE project. The payment for the Subscriber’s interest in the Pay-Up-Front model does not include other payments that may be necessary from a Subscriber to the Subscriber Organization, such as operations and maintenance, insurance and other cost items that may be specified in the Subscriber Agreement between Subscriber and Subscriber Organization for a particular CBRE project.

“Phase 1 CBRE Framework” means that certain “Community-Based Renewable Energy – A Program Framework” issued by the PUC and attached as Attachment A to that certain Decision and Order No. 35137, filed December 22, 2017, in Docket No. 2015-0389, portions of which are applicable to Phase 2 of the CBRE Program as specified in the CBRE Tariff.

“Phase 2 CBRE Framework” means that certain Order No. 37070, filed April 9, 2020, in Docket No,2015-0389. The Phase 2 CBRE Framework provides the basis and framework for Phase 2 of the CBRE Program and is implemented by the CBRE Tariff.

“Point of Interconnection” shall be the point of interconnection as shown on the Single Line Diagram attached as Exhibit A to the Interconnection Agreement.

"Prime Rate" shall mean the current "U.S. 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. The Prime Rate shall change without notice with each change in the U.S. Prime Rate reported by The Wall Street Journal, as of the date such change is reported.

"Production Meter" shall mean the meter which will record the renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection and which will be reported on the Subscriber Organization’s monthly invoice to the Company.

"Production Month" shall mean the calendar month during which electrical energy is produced by the CBRE Facility and exported to the Company at the Production Meter.

"RE System" shall mean the electrical energy generating portion of the CBRE Facility to be located at the CBRE Facility, together with all materials, equipment systems, structures, features and improvements.

"Subscribed Energy" means renewable energy produced by CBRE Facility that is attributable to the Subscribers' Subscriptions and exported to the Company at the Point of Interconnection on or after the Commercial Operations Date.

"Subscriber" means a retail customer of the Company who owns one or more Subscriptions of a CBRE Facility interconnected with the Company.

“Subscriber Agency Agreement and Consent Form” means the agreement between Subscriber Organization and Subscriber, the form of which is included in the CBRE Tariff.

"Subscriber Allocation" shall mean, for each Subscriber, such Subscriber’s percentage interest in the total nameplate capacity of the RE System, reflecting each Subscriber's allocable portion of renewable energy exported by the CBRE Facility in a particular Production Month.

"Subscriber's Confidential Account Information" consists of the Subscriber's name, account number, service address, telephone number, email address, web site URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, and Subscriber specific Bill Credit(s).

"Subscriber Organization" is identified above and shall mean the organization whose purpose is to operate or otherwise manage the CBRE Facility for its Subscribers.

"Subscriber's Energy Usage Data" refers to data collected from the utility Subscriber meters that reflects the quantity, quality, or timing of electric usage or renewable energy production attributable to the Subscriber for the service address and account number identified for participation in the CBRE Facility.

"Subscription" or “Subscription Agreement” means the contract between a Subscriber and the Subscriber Organization.

“Substantial Progress” means that on or before the last Day of the 18-month period (including day-for-day extensions) to achieve the Commercial Operations Date, the Subscriber Organization has achieved all of the following: (1) Installed one-hundred percent (100%) of the RE System foundation (including pier, helical screw, ballasts, or similar) to enable mounting of the nameplate capacity as collectively set forth in Interconnection Agreement for the CBRE Facility site; (2) Built, or otherwise has in place, a permanent drivable (road) surface on the parcel or parcels of land associated with the CBRE Facility so that Company on a 24 hour a day, seven days a week, basis can access its equipment, including but not limited to lines, poles, transformers, billing meters, underground facilities and other facilities, but excluding production meters. The drivable road surface needs to be reasonably sufficient to support operation and maintenance vehicles; and (3) Built, or otherwise has in place, a permanent fence surrounding the entirety of the CBRE Facility location**.**

"Term" means the term of this Contract which shall be the same as the Interconnection Agreement applicable to the CBRE Facility, and shall begin when this Contract is signed by the Parties and end twenty (20) years after the Commercial Operations Date unless otherwise provided for in this Contract.

"Unsubscribed Energy" means the renewable energy produced by the CBRE Facility and exported to the Company at Point of Interconnection that is not associated with any Subscriber Subscription and therefore not allocated to a Subscriber.

**ATTACHMENT B**

**CURTAILMENT BLOCK**

1. Curtailment.

1. General. Company may require the Subscriber Organization to temporarily curtail, interrupt or reduce deliveries of electric energy when necessary in order for Company to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or any part of the Company System including, but not limited to, accommodating the installation and/or acceptance test of non-utility owned facilities to Company System; or if Company determines that such curtailment, interruption or reduction is necessary because of a system emergency, Forced Outage, operating conditions on the Company System; or the inability to accept deliveries of electric energy due to Excess Energy Conditions; or if either the CBRE Facility does not operate in compliance with Good Engineering and Operating Practices or acceptance of electric energy from the Subscriber Organization by Company would require Company to operate the Company System outside of Good Engineering and Operating Practices, which in this case shall include, but not be limited to, excessive system frequency fluctuations or excessive voltage deviations, and any situation that the Company System Operator determines, at his or her sole discretion using Good Engineering and Operating Practices, could place in jeopardy the reliability of the Company System. In the event that Company initiates a Curtailment Event pursuant to this Section 1.A (General), Company shall not be obligated to accept or pay for any electric energy from the Subscriber Organization except for such electric energy that Company notifies the Subscriber Organization that it is able to take during the duration of a Curtailment Event.
2. Reasonable Steps. Company shall take all reasonable steps (such as reducing the output of Base Load Units, including its own Base Load Units, during light loading conditions, taking into consideration factors such as the need to maintain the reliability and stability of the Company System under changing system conditions, forecasted variability of weather conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for firm capacity Base Load Units or scheduled electric energy, and the normal minimum loading levels of such units) to minimize the number and duration of curtailments, interruptions or reductions, subject to and in accordance with Section 2 (Curtailment Methodology) and Section 3 (Curtailment Responsibilities) below.
3. Personnel and System Safety. Notwithstanding any other provisions of this Contract, if at any time Company reasonably determines that the CBRE Facility may endanger Company's personnel, and/or the continued operation of the CBRE 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 curtail or disconnect the CBRE Facility from the Company System, as determined in the sole discretion of the Company System Operator. The CBRE Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain curtailed or disconnected, as the case may be, until such time as Company is satisfied that the condition(s) referred to above have been corrected, and Company shall not be obligated to accept or pay for any electric energy from the Subscriber Organization except for such electric energy as is accepted by Company from the Subscriber Organization during such period. If Company curtails or disconnects the CBRE Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify the Subscriber Organization by telephone, and thereafter confirm in writing, the reasons for the curtailment or disconnection.

2. Curtailment Methodology.

A. Pursuant to Sections 1.A (General) and 1.C (Personnel and System Safety) of this Attachment B (Curtailment Block), Company may at times have limited ability to integrate energy produced by the Subscriber Organization into the Company System for engineering and/or operating reasons and may be required to curtail energy deliveries by the Subscriber Organization. When a curtailment control signal is received by the CBRE Facility the corresponding action (e.g., decrease in the CBRE Facility's output) shall be initiated without delay. As conditions warrant, Company System Operator shall end or reduce the curtailment when Company reasonably determines that the reason for the curtailment is no longer in existence.

B. When Company determines that curtailment of energy becomes necessary for reasons other than those directly attributable to the CBRE Facility, curtailments shall be made to the extent possible in reverse chronological order of the chronological seniority dates determined by Company for the power purchase agreements, with deliveries under the power purchase agreements with the most recent chronological seniority date being the first curtailed, and deliveries under the power purchase agreement with the earliest chronological seniority date being the last curtailed. Small generation projects (such as photovoltaic net energy metering projects, feed‑in tariff projects, etc.) that are allowed to be installed without curtailment controls will not be curtailed before the CBRE Facility. When Company determines that curtailment of energy becomes necessary for engineering and/or operating reasons that are directly attributable to the CBRE Facility, reverse chronological curtailment order may not apply.

C. The chronological seniority date of the CBRE Facility shall be determined as follows:

(1) Curtailment Block: Eligibility and Inclusion Criteria. The CBRE Facility shall be included in a group of renewable as‑available energy projects that Company will, to the extent possible, treat as a single "block" (designated for convenience of reference as "Curtailment Block") for purposes of implementing curtailment in reverse chronological order. All of the renewable energy projects that achieve Commercial Operations and that satisfy the criteria for "small projects" for Phase 2 of the CBRE Program under Order No. 37070 filed on April 9, 2020 in Docket No. 2015-0389 ("Block Eligible Projects") shall be included in the Curtailment Block.

(2) Lead Project and Determination of Curtailment Block Chronological Seniority Date. The Lead Project shall be the first of the aforementioned Block Eligible Projects that achieves "commercial operations" under the its Standard Form Contract. The chronological seniority date for the Curtailment Block shall be the "commercial operations date" under the Standard Form Contract for the Lead Project. If the CBRE Facility is the Lead Project, the terms "commercial operations" and "commercial operations date" when used in this Section 2.C(2) (Lead Project and Determination of Curtailment Block Chronological Seniority Date) shall mean respectively, Commercial Operations and the Commercial Operations Date as defined in this Contract.

D. When curtailments are being implemented in reverse chronological order, the Company may implement curtailment of Block Eligible Projects in increments (i.e., some Block Eligible Projects may be curtailed while others are not) in order to manage the impact on the Company System. In such case, the size of such increment, and which Block Eligible Projects to include in such increment, shall be determined by the Company System Operator. Company System Operator shall, to the extent possible, rotate the Block Eligible Projects sequentially after each Curtailment Event with the objective of treating equitably each Block Eligible Project in terms of curtailment.

E. If the CBRE Facility is unable to receive the curtailment signal from the Company System Operator, provision must be made for Subscriber Organization to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such raising and lowering of curtailment limits as directed by the Company System Operator.

F. If the direct transfer trip is unavailable, due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Subscriber Organization to trip the main circuit breaker.

3. Curtailment Responsibilities. In the event that Company initiates a Curtailment Event pursuant to this Contract, Company shall not be obligated to accept any electric energy from Subscriber Organization except for such electric energy that Company notifies Subscriber Organization that it is able to take during the duration of a Curtailment Event. Company shall not be liable to Subscriber Organization for any curtailments unless such curtailment was in violation of this Contract. Subscriber Organization shall not override Company's curtailment.

**ATTACHMENT C**

**MONTHLY CURTAILMENT REPORT**

NAME OF CBRE FACILITY / SUBSCRIBER ORGANIZATION: [Facility Name / SO]

REPORT PERIOD: [MM/DD/YEAR] to [MM/DD/YEAR]

|  |  |  |  |
| --- | --- | --- | --- |
| Event Date | Start Time | End Time | Reason for Curtailment |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

1. Such Bill Credit Rate shall be either the Credit Rate specified in the Phase 2 CBRE Framework or as determined by Company in accordance with the “competitive credit rate procurement” or “CCRP” mechanism outlined in the Phase 1 CBRE Framework. [↑](#footnote-ref-2)