

ATTACHMENT D: Sample Contract – Marine Delivery Option

BIODIESEL SUPPLY CONTRACT (CIP-CT-1 OPERATIONAL VOLUME)

Contract Number _____

This contract (“Contract”) is made this _____ day of May 2011 (“Execution Date”), by and between **HAWAIIAN ELECTRIC COMPANY, INC.**, a Hawaii corporation, with its principal place of business at 900 Richards St., Honolulu, Hawaii, 96813, United States of America (“Hawaiian Electric”), and _____ (“Seller”). Hawaiian Electric and Seller are each a “Party” and collectively the “Parties” to this Contract. This Contract shall become effective as provided in Section 2.3 below.

WHEREAS, Hawaiian Electric is in the business of generation, transmission and distribution of electrical power on the island of Oahu, State of Hawaii; and

WHEREAS, Hawaiian Electric seeks a supply of biodiesel fuel to be used to generate electricity in its generating unit located in Hawaiian Electric’s Barbers Point Tank Farm site in Campbell Estate Industrial Park, Kapolei, Oahu, Hawaii; and

WHEREAS, Seller is a supplier of biodiesel; and

WHEREAS, Seller represents that it is equipped and has the ability to supply biodiesel of such suitable type and quality and in a quantity sufficient to meet Hawaiian Electric’s requirements; and

WHEREAS, Seller is willing to sell and deliver such biodiesel to Hawaiian Electric, and Hawaiian Electric is willing to purchase and receive such biodiesel from Seller, under the terms and conditions set forth hereinafter;

NOW, THEREFORE, it is mutually agreed by the Parties hereto as follows:

ARTICLE I. DEFINITIONS

Except where otherwise indicated, the following definitions shall apply throughout this Contract.

- 1.1. “15-Day Notice” is defined in Section 6.3 below.
- 1.2. “Affiliate”, except where otherwise expressly provided, means a corporation controlling, controlled by or under common control with Seller or Hawaiian Electric, as the case may be.
- 1.3. “Applicable Law” means any and all applicable present and future laws, statutes, rules, regulations, ordinances, orders, codes, judgments, decrees, requirements, grants, concessions, franchises, directives, governmental restrictions or similar norm or decision of or by any Governmental Authority.
- 1.4. “ASTM” means the American Society for Testing and Materials.
- 1.5. “API MPMS” means the American Petroleum Institute’s Manual of Petroleum Measurement Standards.

- 1.6. "Biodiesel" for purposes of this contract shall mean B99 or B100 Dyed Biodiesel made or refined from feedstock, which biodiesel meets or is better than the specifications set forth in Attachment B to RFP (Biodiesel Specifications). The biodiesel must not contain petroleum fuels except to the extent required to qualify for an eligible tax credit such as the Alternative Fuels Blenders' Tax Credit. At no time will the biodiesel contain greater than one (1%) petroleum fuel. Biodiesel shall contain red dye to qualify the biodiesel as on off-road fuel for tax assessment purposes.
- 1.7. "Blender's Credit" is defined in Section 5.3 below.
- 1.8. "Btu" and "Btu content" means the British Thermal Unit and refers to the standard assessment of a fuel's gross heating value or gross heat content.
- 1.9. "Certificate of Quality" means the formal document recording Seller's laboratory determinations of the quality and Btu content of a particular sample of Biodiesel which represents a specific Delivery, said laboratory determinations having been performed in accordance with the standard test methods described in this Contract as provided in Section 9.2(a) below.
- 1.10. "CIP" means Campbell Estate Industrial Park, Kapolei, Oahu, Hawaii.
- 1.11. "Commission" means the State of Hawaii Public Utilities Commission.
- 1.12. "Commission Approval Order" is defined in section 2.2 below.
- 1.13. "Commission Approval Order Date" is the date the Commission files the Commission Approval Order.
- 1.14. "CT-1" means HECO's new combustion generating unit located in the Hawaiian Electric CIP Facility.
- 1.15. "Day" or "Days", unless specifically indicated otherwise, refers to calendar days.
- 1.16. "Deliver", "Delivery", "Deliveries", or "Delivered" means the delivery of Biodiesel to a Receiving Facility.
- 1.17. "Delivering Vessel Tank Final Sample" is defined in Section 9.3 below.
- 1.18. "Discharge Pier" is defined in Section 6.1 below.
- 1.19. "DOT" means the Department of Transportation of the State of Hawaii.
- 1.20. "Dyed" (biodiesel) means biodiesel that contains the dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of solid dye standard Solvent Red 26 in accordance with Internal Revenue Service 26 DFR 48.4082-1.
- 1.21. "Effective Date" is defined in section 2.3 below.
- 1.22. "Environmental Credit" means any environmental credit, offset, abatement, or other benefit associated with this Contract, production facility, plantations and/or the Biodiesel and its output allocated, assigned or otherwise awarded by any governmental or international agency to Hawaiian Electric or Seller based in whole or in part on the fact that the Production Facility and/or any part of the Production Facility is a non-fossil fuel production facility and/or generation facility and/or that Seller produces non-fossil fuel. Such Environmental Credits shall include, but not be limited to, emissions credits, the Alternative Fuels Blenders Tax Credit, any other environmentally related credits and any renewable energy credits
- 1.23. "ETA" means Estimated Time of Arrival.

- 1.24. "Event of Default" is defined in Section 17.1 below.
- 1.25. "Execution Date" is defined in the first paragraph above.
- 1.26. "First Delivery" means the date of the first delivery of Biodiesel to Hawaiian Electric at Hawaiian Electric's CIP Facility under this Contract following the Effective Date.
- 1.27. "Gallon" means a United States liquid gallon of 231 cubic inches.
- 1.28. "GET" means Hawaii State General Excise Tax.
- 1.29. "Governmental Authority" means any nation, government, any state or political subdivision thereof, any federal, state, territorial, municipal or other governmental or quasi-governmental authority, agency, court, or other body or entity of competent jurisdiction.
- 1.30. "Hawaiian Electric" means Hawaiian Electric Company, Inc.
- 1.31. "Hawaiian Electric's (or the Hawaiian Electric) CIP Facility" means Hawaiian Electric's fuel delivery staging area at Hawaiian Electric's CT-1 generation site located in CIP.
- 1.32. "HECO-NRDC Environmental Policy" means the *Environmental Policy For The Hawaiian Electric Company's Procurement Of Biodiesel From Palm Oil And Locally Grown Feedstocks* (prepared by HECO and NRDC, dated August 2007), a copy of which is attached hereto as Attachment F to RFP.
- 1.33. "HEI" means Hawaiian Electric Industries, Inc.
- 1.34. "HSE Data" is defined in Section 14.4 below.
- 1.35. "Independent Inspector" means a qualified third-party fuel inspection contractor acceptable to both Hawaiian Electric and Seller who shall provide fuel sampling and measurement oversight and related services, as set forth in Section 9.8 below.
- 1.36. "IRS" is defined in Section 5.3 below.
- 1.37. "Low Sulfur Diesel" is defined in Section 6.4 below.
- 1.38. "MECO" means Maui Electric Company, Limited.
- 1.39. "NOR" means Notice of Readiness.
- 1.40. "Offsetting Party" is defined in Section 19.12 below.
- 1.41. "Order" is defined in Section 3.2 below.
- 1.42. "Original Term" is defined in section 2.1 below.
- 1.43. "Party" and "Parties" are defined in the first paragraph above.
- 1.44. "Precautionary Sample" is defined in Section 9.2(b) below.
- 1.45. "Receiving Facility" means CIP CT-1.
- 1.46. "Shelf Life" is defined in Section 4.1 below.
- 1.47. "Specification" means the fuel quality specification set forth in Attachment B to RFP.
- 1.48. "USDOT" means the United States Department of Transportation.

1.49. "Vessel O.B.Q. Samples" is defined in Section 9.2(a) below.

ARTICLE II. TERM

Section 2.1 Term: The term of this Contract (the "Original Term") shall commence on the date this Contract is made and shall expire three (3) years after the Commission Approval Order Date. Hawaiian Electric shall not order Biodiesel before the Commission Approval Order Date.

Section 2.2 Regulatory Approval: Hawaiian Electric will file an application with the Commission requesting approval of this Contract following its execution. This Contract is contingent upon the issuance of a decision and order by the Commission that (a) approves this Contract and its pricing and terms and conditions, (b) is final and reasonable, as determined in Hawaiian Electric's sole discretion; and (c) allows Hawaiian Electric to include the costs incurred by Hawaiian Electric pursuant to this Contract in its revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of Hawaiian Electric's rates and/or for cost recovery above those costs included in base rate through Hawaiian Electric's Energy Cost Adjustment Clause (hereinafter, the "Commission Approval Order").

Without limiting the foregoing, Seller accepts that the Commission Approval Order will not be deemed to be in a final form and reasonable to Hawaiian Electric if (a) it is not an unconditional approval or (b) Hawaiian Electric is not satisfied that the Order will not be appealed.

If Hawaiian Electric has not received the Commission Approval Order within 270 Days of the date of this Contract, or if Hawaiian Electric's request for Commission approval of this Contract is denied, then either the Seller or Hawaiian Electric may immediately terminate this Contract by providing written notice of such termination delivered to the other prior to the Effective Date. In such event of termination, each Party shall bear its own respective fees, costs and expenses incurred prior to termination, if any, in preparation for performance hereunder, and the Parties shall have no further obligation to each other with respect to this Contract except for Section 16.1 (indemnity) and any confidentiality obligations assumed by the Parties relating hereto.

Section 2.3 Effective Date: This Contract shall become effective (the "Effective Date") upon (a) receipt by Hawaiian Electric of the Commission Approval Order and (b) written notice of the same to Seller. Alternatively, the Parties may mutually agree in writing that some other date shall be deemed the Effective Date. Neither Party shall have any binding obligations under this Contract until the Effective Date, except that the Parties agree upon execution of this Contract to be bound by Sections 2.2 (Regulatory Approval), 13.1 (Force Majeure), 14.1 (Compliance with laws and regulations), 16.1 (Indemnity) and all provisions in Section 19.

ARTICLE III. QUANTITY

Section 3.1 Quantity of Biodiesel to be Supplied/Delivered: Subject to the terms and conditions herein, Seller shall sell and Deliver to Hawaiian Electric, and Hawaiian Electric shall purchase and receive from Seller, Biodiesel as required by Hawaiian Electric to operate CT-1. Hawaiian Electric anticipates that the average annual Biodiesel volume required will range between 3,000,000 Gallons and 7,000,000 Gallons during each rolling twelve (12) months of the three (3) year Original Term. Hawaiian Electric shall have no minimum purchase requirement. Subject to availability, Seller shall sell and Deliver and Hawaiian Electric shall purchase and receive such additional volumes in excess of 7,000,000 Gallons per rolling twelve (12) months as are mutually agreed upon by the Parties. Seller shall be allowed _____ weeks to Deliver the Biodiesel to Hawaiian

Electric's CIP Facility upon notification to the Seller of a nominated quantity as specified by Hawaiian Electric.

Section 3.2 Nomination and Designation of Delivery Amounts: Hawaiian Electric shall notify Seller when Hawaiian Electric needs Biodiesel by Delivering to Seller an order in the form attached hereto as Attachment C (an "Order"), provided, that, unless otherwise agreed by the Parties, no Order(s) shall exceed _____ Gallons in any given rolling 30 Day period. Hawaiian Electric's Delivery of an Order which complies with this Contract shall bind Hawaiian Electric to purchase the Biodiesel set forth in the Order. Each Order shall specify the quantity of Biodiesel and the applicable price for such Biodiesel calculated in accordance with this Contract. Seller shall be allowed _____ weeks to Deliver the Biodiesel to Hawaiian Electric's CIP Facility upon receipt by Seller of an Order which complies with this Contract.

ARTICLE IV. QUALITY

Section 4.1 Quality Of Biodiesel To Be Supplied/Delivered: The quality of Biodiesel to be sold and Delivered hereunder shall comply with the Specification attached as Attachment B to RFP and meet all Applicable Laws. The Biodiesel shall have at least a six (6) month shelf life from the date of Delivery subject to Hawaiian Electric storing and maintaining the Biodiesel at all times in accordance with section X2.7 of ASTM D 6751. "Shelf Life" is defined as the length of time the Biodiesel will maintain its quality per the Specifications.

All Biodiesel Delivered under this Contract shall comply with Applicable Laws and practices in accordance with State and Federal requirements to qualify for any tax-exemptions or tax breaks available for off-road alternative fuels over the Original Term. With the exceptions of red dye, Hawaiian Electric shall allow Seller to deduct Seller's reasonable out of pocket costs incurred to qualify for any tax-exemptions or tax breaks available for off-road alternative fuels over the Original Term from the credit amount incorporated into the Biodiesel Price per gallon as defined in Section 5.1.

ARTICLE V. PRICE

Section 5.1 Pricing: **[TBD: See Attachment C to RFP]**

Section 5.2 Pricing Illustration: Attachment C hereto contains a formula listing the components of the price to be calculated pursuant to Section 5.1.

Section 5.3 Alternative Fuel Blender's Tax Credit: In the event that the Internal Revenue Service ("IRS") or any Governmental Authority offers an alternative fuel blender's tax credit or similar credit for using Biodiesel ("Blender's Credit") that is available during the Original Term, Seller agrees to provide Hawaiian Electric with Biodiesel blended with petroleum diesel as is required to qualify the Biodiesel for the Blender's Credit as long as such blended Biodiesel meets the Specifications. Should such Applicable Law not require blending Biodiesel with diesel to qualify for the Blender's Credit, and there is no reduction in the amount of the Blender's Credit for B100 Biodiesel over B99 Biodiesel, then Seller shall provide Hawaiian Electric with one hundred percent (100%) Biodiesel from the time of the change through the remaining duration of the Original Term. In the event that the Blender's Credit ceases, then Seller shall provide Hawaiian Electric with Biodiesel from the time the Blender's Credit expires through the remaining duration of the Original Term. Any Blender's Credit available at the time of Biodiesel receipt at a Hawaiian Electric Receiving Facility and attributable to and/or based upon the amount of Biodiesel so Delivered to such Receiving Facility shall be passed

on to Hawaiian Electric at one hundred percent (100%) of its value as a reduction to per Gallon Biodiesel Price on Seller's invoice to Hawaiian Electric. If any Blender's Credit becomes available retroactively and is applicable to Biodiesel already received by Hawaiian Electric, then one hundred percent (100%) of the credit attributable to and/or based on such Biodiesel shall be passed on to Hawaiian Electric within thirty (30) Days after Seller receives retroactive credit for the applicable Biodiesel Deliveries as a reduction to the per Gallon Biodiesel Price on Seller's invoice to Hawaiian Electric.

Section 5.4 Environmental Credit: To the extent not prohibited by Applicable Law, any current and/or future Environmental Credit that is attributable to and/or based upon the amount of Biodiesel sold and Delivered to a Receiving Station shall belong to and/or become the property of Hawaiian Electric. Seller shall use its commercially reasonable efforts to ensure that such portion of such Environmental Credits are vested in Hawaiian Electric, and shall execute all documents, including, but not limited to, documents transferring such portion of such Environmental Credits, without further compensation, provided, however, that Hawaiian Electric agrees to pay for all reasonable costs associated with such efforts and/or documentation.

Section 5.5 Rounding: All prices, price formula component value averages and other sums payable with respect to Biodiesel purchased hereunder, shall be stated in the nearest hundredths of a dollar unless specifically provided otherwise.

ARTICLE VI. DELIVERY

Section 6.1 Marine Delivery Shipment: The Biodiesel shall be Delivered in bulk ex-ship inside customs passing the outboard flange of Seller's Delivering vessel's cargo discharge hose connected to a nominated petroleum Receiving Facility at Kalaeloa Barbers Point Harbor, Oahu, Hawaii, USA ("Discharge Pier"). Hawaiian Electric shall not be deemed to warrant the safety of public channels, fairways, approaches thereto, anchorages or other publicly maintained areas either inside or outside the Kalaeloa Barbers Point Harbor area where the Discharge Pier is located. Hawaiian Electric shall not be liable for any loss, damage, injury or delay resulting from conditions at any port, berth, dock, anchorage or other place not caused by Hawaiian Electric's gross negligence or which could have been avoided by the exercise of reasonable care on the part of Seller's nominated vessel's master. Biodiesel shall be Delivered by Seller to Hawaiian Electric at a temperature of 20 degrees Fahrenheit above the pour point of the Biodiesel or at the loaded temperature, whichever is the higher.

Section 6.2 Coordination: The Parties shall mutually coordinate the Delivery of Biodiesel from Seller's nominated vessel. No later than eighty (80) Days prior to the date of anticipated Delivery Seller and Hawaiian Electric shall select a mutually agreed upon shipping agent that will be appointed no later than sixty (60) Days prior to the anticipated Delivery date. No later than sixty (60) Days prior to the date of anticipated Delivery, Seller shall provide to Hawaiian Electric all required information for Delivery of the biodiesel. No later than thirty (30) Days prior to the first Day of the calendar month of anticipated Delivery, Seller shall make its best reasonable effort to provide Hawaiian Electric an anticipated fourteen (14) Day Biodiesel delivery window. No less than five (5) Days prior to loading, Seller shall make its best reasonable effort to provide Hawaiian Electric a proposed five (5) Day Biodiesel delivery window, which is within the date range of the previously advised fourteen (14) Day Biodiesel delivery window. Within three (3) Days after loading, Seller shall advise Hawaiian Electric the loaded volume of the Biodiesel and makes its best reasonable effort to estimate the intended volume of the Biodiesel to be Delivered to Hawaiian Electric and provide Hawaiian Electric with a vessel's estimated time of arrival ("ETA"), which is within the date range of the previously advised five (5) Day Biodiesel delivery window. Seller shall consecutively provide Hawaiian Electric with ten (10) Days, seven (7) Days, five (5) Days, four (4) Days, three (3) Days, two

(2) Days and twenty-four (24) hour notices of Seller's nominated vessel's ETA at Kalaeloa Barbers Point Harbor, Oahu, Hawaii. Seller shall also give Hawaiian Electric notice of any ETA changes if greater than twelve (12) hours. Seller shall be responsible to reserve the appropriate Biodiesel cargo Discharge Pier at Kalaeloa Barbers Point Harbor, Oahu, Hawaii through the customary channel in the State of Hawaii Department of Transportation – Harbor's Division. Hawaiian Electric shall not be responsible to reimburse Seller for demurrage incurred on Seller's nominated vessel due to Seller's failure to obtain pier reservations in a timely manner. Seller's notices and advice may be given Hawaiian Electric by electronic mail or telephone.

Section 6.3 Delivery Fees/Agents: Dues and other charges on Seller's nominated vessel (whether or not such dues or charges are based on the quantity of Biodiesel Delivered or on the freight and without regard from whom such dues or charges are withheld) shall be paid by Seller. Seller shall be responsible for any State fee imposed for use of the vessel Discharge Pier in the nature of wharfage or pipeline toll. Seller shall employ and also be responsible for costs of any support vessels, pilots, mooring masters, or line handlers required at the discharging pier, all of which shall be servants of Seller. Neither Hawaiian Electric, nor any of its associated or affiliated companies, nor any of the employees, servants, representatives and agents of any of the foregoing, shall be responsible for any losses, damages, delays or liabilities resulting from any negligence, incompetence or incapacity of any tug, pilot or line handler required at the Discharge Pier.

Section 6.4 Displacement of Receiving Pipeline: Seller's nominated vessel shall receive up to 1,000 barrels of No. 2 Diesel S15 ("Low Sulfur Diesel"). Such tank shall be stripped and dry and otherwise suitable for the purpose of receiving Low Sulfur Diesel prior to the start of the Biodiesel cargo discharge operations and re-deliver Low Sulfur Diesel through the cargo discharge hose immediately upon the completion of the Biodiesel cargo discharge in order to displace the Biodiesel cargo from the receiving pipeline. The quantity of Hawaiian Electric's Low Sulfur Diesel received and re-Delivered by Seller's nominated vessel shall be determined under the supervision of the Independent Inspector. Hawaiian Electric shall be reimbursed at actual cost by Seller in the event that the quantity of Hawaiian Electric's Low Sulfur Diesel re-delivered is less than 99.5% of the quantity received by Seller's nominated vessel.

Hawaiian Electric is responsible for all costs associated with the Displacement of the Receiving Pipeline, except for any shortfall in the Low Sulfur Diesel as described in Section 6.4.

Section 6.5 Vessel Discharge Rate: Seller agrees that Seller's nominated vessel shall use its best reasonable effort to discharge the Biodiesel promptly, minimum rate of 3,000 barrels per hour, or to maintain a pressure of 115 psi at the ship's rail in order to efficiently discharge the Biodiesel cargo. In circumstances where the re-berthing of Seller's nominated vessel is required to complete the Biodiesel cargo discharge operations, Seller and Hawaiian Electric shall mutually make reasonable best efforts to re-schedule Seller's nominated vessel promptly upon completion of Seller's and others' cargo operations and any time spent re-berthing, conducting a second discharge operation and any costs for a second or delayed displacement of the Biodiesel cargo in the receiving pipeline shall be for the account of Seller unless and to the extent the re-berthing, second cargo discharge operation and second or delayed displacement of the receiving pipelines are necessary as a result of the gross negligence of Hawaiian Electric or Hawaiian Electric's agent.

Section 6.6 Laytime and Demurrage: When Seller's nominated vessel is ready to discharge and is within the Biodiesel Delivery Window, which shall be deemed to be the 24-hour period commencing 00:01 hours local time on the calendar Day of the ETA advised Hawaiian Electric ten (10) Days prior to arrival and ending 24:00 hours local time that same calendar Day as per this Section 6, Seller shall provide Hawaiian Electric Notice of Readiness ("NOR"). Laytime shall commence six (6) hours after NOR is tendered or three (3) hours after Seller's nominated vessel is secure at the Discharge Pier, whichever shall first occur, provided that the end of said six (6) hours is within the Biodiesel Delivery Window. If Seller's Nominated Vessel tenders NOR before the Biodiesel

Delivery Window, the NOR shall be effective 00:01 hours local time on the Biodiesel Delivery Window. Allowable laytime shall be equal to the total volume of the shipment in barrels, as determined by the Independent Inspector from gauging the receiving or issuing tank(s) in Hawaiian Electric's Receiving Facility, divided by 1,000 barrels per hour plus additional time required for the receiving and discharging of the Pipeline Displacement Medium. Laytime shall cease when the hoses are disconnected. Demurrage shall be payable at a rate equal to Seller's actual invoiced demurrage cost for each hour used and prorated for each portion of an hour used in excess of allowable laytime.

ARTICLE VII. SELLER'S REPRESENTATIONS AND WARRANTIES

Section 7.1 Seller's Representations and Warranties: Hawaiian Electric is willing to purchase the Biodiesel on the condition that Seller agrees, represents and warrants as follows:

- (a) Ability to Supply: During the Original Term, Seller shall maintain in full force and affect the capability to supply Biodiesel sufficient to meet Seller's obligations under this Contract. Upon Hawaiian Electric's reasonable request, Seller shall provide Hawaiian Electric assurances of Seller's ability to perform under this Contract. Hawaiian Electric and Seller shall, following the Execution Date, mutually define and agree upon the specific assurances to be provided under this Section 7.1.
- (b) Quality: All Biodiesel Delivered hereunder shall comply with the terms of this Contract.
- (c) Ability to Deliver: During the Original Term, Seller shall own, lease or have the right to use facilities sufficient to meet Seller's Delivery obligations under this Contract.
- (d) Seller's Vessel Condition/Service:

(1) Seller's nominated vessel employed to Deliver the Biodiesel to HECO shall comply with all applicable federal, state and local laws, rules and regulations, including the receiving pipeline Operations Manual and Receiving Facility Operations Manual and their respective vessel acceptance standards for vessel acceptance quality, pollution mitigation, required pollution liability, P&I and other insurance coverages. HECO shall provide Seller with the referenced Operations Manuals of the receiving pipeline operator and Receiving Facility, respectively.

(2) While at the Biodiesel Discharge Pier, Seller's nominated vessel shall operate in compliance with the Third Party Receiving Facility's operations manual as approved by the U.S. Coast Guard. In addition, any state or federal manning requirements shall be provided by Seller to attend Seller's nominated vessel during a marine delivery operation.

Section 7.2 Environmental Sustainability:

- (a) Feedstock: Seller shall supply Biodiesel that complies with the requirements of the HECO-NRDC Environmental Policy. In addition, Seller shall supply Biodiesel that complies with the Principles and Criteria of the Roundtable for Sustainable Biofuels. Seller must maintain a clear, documented and verifiable chain of custody for all feedstocks.
- (b) Modifications: The Parties may, from time to time hereinafter, mutually agree in writing to utilize additional and/or other criteria, guidelines and/or other regulations with respect to which environmentally sustainable production methods and practices may be evaluated and/or certified for purposes of this Contract.
- (c) Remedy: In addition to any other remedies available under this Contract and at law and/or equity, Biodiesel not certified as required herein, or otherwise not meeting the

sustainable environmental standards warranted may be rejected by Hawaiian Electric in accordance with the terms and procedures set forth in Section 9.4. Seller shall cooperate with any reasonable request by Hawaiian Electric to provide documentation verifying the source and constituents of the feedstock.

- (d) Certification: Seller represents and warrants and will certify that all feedstock used to produce the Biodiesel Delivered under this Contract complies with the feedstock requirements specified in Section 7.2(a). Any certifications that Hawaiian Electric may require under this Section 7.2(g) shall be made by an officer of Seller (acceptable to Hawaiian Electric in its reasonable discretion) for each Delivery of Biodiesel to Hawaiian Electric. Such certifications shall be in form and substance acceptable to Hawaiian Electric in its reasonable discretion.

ARTICLE VIII. DETERMINATION OF QUANTITY

Section 8.1 Measurement of Quantity: The quantity of the Biodiesel sold and purchased under this Contract shall be determined at the time of such shipment by gauging the receiving tank(s) immediately before and after pumping under the supervision of the Independent Inspector. Seller and Hawaiian Electric shall share equally the cost of independent inspections. The quantity of Biodiesel received by Hawaiian Electric from Seller shall be measured in U.S. gallon consisting of two hundred thirty-one (231) cubic inches when corrected to 60 degrees Fahrenheit. All gauging, sampling and testing of the Biodiesel shall be performed in accordance with the latest methods of the American Petroleum Institute's Manual Of Petroleum measurement Standards (API MPMS) and the American Society for Testing and Materials (ASTM). All quantity determinations shall be made in accordance with then currently applicable ASTM methodology. The actual quantity received and Delivered shall be the measured quantity reported in Gallons at 60 degrees Fahrenheit. However, it is recognized that volume correction factors and other measurement standards for bulk Biodiesel movements have yet to be fully developed or universally adopted. The Parties agree to mutually consider and implement such standards when and as applicable. The Independent Inspector shall prepare and sign a Certificate of Quantity stating the quantity of Biodiesel determined according to the provisions of this Section to have been Delivered to Hawaiian Electric and received by Hawaiian Electric or its nominated third-party Receiving Facility; it shall furnish Seller and Hawaiian Electric each with a copy of such Certificate; and advise by facsimile or electronic mail the quantity of Biodiesel Delivered to Hawaiian Electric and received by Hawaiian Electric or the third party Receiving Facility to Seller and Hawaiian Electric. The data in the Independent Inspector's Certificate of Quantity prepared as provided herein shall, absent fraud or errors and omissions, be binding and conclusive upon both Parties, and shall be used for verification of the Biodiesel sales invoice.

Section 8.2 Quantity Disputes: If Seller or Hawaiian Electric has reason to believe that the quantity of Biodiesel for a particular Delivery is inaccurate by an amount in excess of 1%, that Party shall within five (5) Days of the date of Delivery, present the other Party with documentation supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes and adjust the quantity, if justified for the transport container or tanker truck Delivery in question. If the period of time for which the material inaccuracy cannot be definitely known and is not mutually agreed upon, the correction shall be prorated on a 50% basis over the time elapsed between the last prior calibration test and the date the inaccuracy is corrected. Any invoice previously issued by the Seller on the basis of an inaccurate volume determination shall be promptly adjusted by Seller.

ARTICLE IX.
DETERMINATION OF QUALITY

Section 9.1 Biodiesel Quality: All samples, measurements and determinations referenced in this Article IX shall be drawn, taken and made, respectively, under the supervision of the Independent Inspector. Seller and Hawaiian Electric shall share equally the cost of independent inspections. The quality of Biodiesel sold and Delivered to the Receiving Facility shall comply with the Specification and Section 4.1.

Section 9.2 Precautionary Load Port Sampling: In order to reduce the likelihood of Seller's marine Delivery resulting in quality problems arising in the receiving tank(s) at the third party receiving facilities, Seller agrees to:

- (a) Permit the Independent Inspector to inspect the receiving cargo tanks of Seller's vessel immediately prior to the commencement of the loading of the Biodiesel cargo to ensure that they contain no more than reasonable minimum retains of the previous cargo and shall draw composite samples of any retain ("Vessel O.B.Q. Samples"), if such retain is accessible to standard sampling equipment. The Vessel O.B.Q. Samples shall be sealed and held by the Independent Inspector for a period of not less than three (3) months,

And

- (b) Test a volumetric weighted average composite of samples of the Biodiesel cargo ("Precautionary Sample"). The Precautionary Sample shall be drawn under the supervision of the Independent Inspector from Seller's vessel's tanks at the completion of loading in such a manner as to be representative of the relevant cargo after the arrival of the vessel at the designated Oahu Harbor, but prior to commencement of the cargo at the Discharge Pier. This sample should be divided into three (3) parts, one of which is to be tested by Seller, one to be sent via air freight to Hawaiian Electric and one part retained by the Independent Inspector. The Precautionary Sample shall be divided into a minimum of three (3) parts as follows:
 - 1. One part shall be provided to Seller's laboratory for analysis to determine quality;
 - 2. One part shall be provided to Hawaiian Electric for the purpose of verifying Seller's determinations;
 - 3. At least one part shall be sealed and provided to the Independent Inspector to be retained for a period of not less than forty-five (45) Days.

Seller agrees to provide Hawaiian Electric and the Independent Inspector with the results of its determinations representing the quality of the Precautionary Sample no later than seventy-two (72) hours after the completion of the loading of Seller's vessel. Should Seller's laboratory be unable to determine the Biodiesel to be Delivered by Marine Delivery is in conformance with the Specification within such a period. Any nonconforming Marine Delivery shall not be offloaded from Seller's nominated vessel into Hawaiian Electric's designated third-party facilities receiving tank. Hawaiian Electric shall not have an obligation to store any nonconforming Biodiesel on Seller's behalf.

- (c) Seller agrees that should its laboratory testing of the Precautionary Sample indicate a potential quality problem, including but not limited to, a quality as determined that does not conform to the Specification, the vessel operator shall not be instructed to commence Delivery of its cargo to Hawaiian Electric until such time as the loaded Biodiesel is determined to conform with the Specification.

Section 9.3 Discharge Pier Sampling/Determination of Final Quality: The quality of the Biodiesel Delivered by Seller's nominated vessel shall be determined on the basis of a volumetric weighted average composite of samples drawn by the Independent Inspector from Seller's nominated vessel's discharging tank(s) in such a manner as to be representative of the entire Delivery cargo ("Delivering Vessel Tank Final Sample"). The Delivering Vessel Tank Final Sample shall be divided into a minimum of three (3) parts as follows:

1. One part shall be provided to Seller's laboratory for analysis to determine quality;
2. One part shall be provided to Hawaiian Electric for the purpose of verifying Seller's determinations;
3. At least one part shall be sealed and provided to the Independent Inspector to be retained for a period of not less than forty-five (45) Days.

Seller agrees to provide Hawaiian Electric and the Independent Inspector with the Certificate of Quality representing the Delivering Vessel Tank Final Sample in a timely manner and will make reasonable good faith efforts to provide this Certificate of Quality no later than forty-eight (48) hours after Seller's laboratory determines the Biodiesel Delivered by Seller's nominated vessel is in conformance with the Specification. Hawaiian Electric shall have no obligation to accept Biodiesel for which Seller has not provided the Certificate of Quality. Hawaiian Electric shall have the right to perform laboratory analyses in order to verify the results of Seller's laboratory analyses; provided however, that such verification analyses shall be performed in a timely manner.

Section 9.4 Quality Dispute: If Seller or Hawaiian Electric has reason to believe that the quality of Biodiesel Delivered does not meet the Specifications or that the quality of Biodiesel stated in the Certificate of Quality is incorrect such as but not limited to a case where the arithmetic difference between Hawaiian Electric's and Seller's laboratory determination is greater than the then existing reproducibility standard for the appropriate test method specified herein, then that Party shall within three (3) business days after the issuance date of the complete Certificate of Quality, present the other Party with documents supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes. In the event of an unresolvable difference between Seller and Hawaiian Electric, the sealed part of the Precautionary Sample in the possession of the Independent Inspector shall be provided to an independent testing laboratory for an official determination, which shall be final and binding upon both Parties. Seller and Hawaiian Electric shall share equally the costs of such independent tests and determinations.

Section 9.5 Remedy: If a quality problem occurs or if the quality of the Biodiesel received by Hawaiian Electric from Seller fails to conform to the Specifications, Hawaiian Electric shall promptly notify Seller in writing or by telephone call followed up with a writing, stating the basis for its determination that there is a potential quality problem. Seller and Hawaiian Electric shall promptly meet and in good faith attempt to minimize the impact of any such quality problem. At Hawaiian Electric's sole and absolute discretion, such efforts may include Specification waiver. Notwithstanding the preceding, Hawaiian Electric shall always have the right to refuse Delivery of any Biodiesel that Hawaiian Electric in good faith shall have reason to believe does not meet Specifications. If all such and similar efforts fail to resolve the quality problem, Hawaiian Electric may return non-conforming Biodiesel to Seller at the Receiving Facility, in which case Seller shall replace the non-conforming and other downgraded Biodiesel in a timely manner with Biodiesel meeting the required quality Specifications. All costs and expenses of remedying the Delivery of non-conforming Biodiesel, or arising from non-conforming Biodiesel (including, without limitation, the testing, transportation, re-refining, and handling costs incurred in returning, replacing or otherwise correcting off-specification Biodiesel, the emptying and cleaning of storage tanks containing non-conforming Biodiesel or Hawaiian Electric's Biodiesel downgraded by commingling with the non-conforming

Biodiesel if reasonably necessary) shall be paid by Seller. Any remedy of non-conforming Biodiesel accepted by Hawaiian Electric under this Section shall not operate or be construed to remedy any similar non-conforming Biodiesel or to change the specifications of Biodiesel acceptable to Hawaiian Electric under the terms of this Contract. In addition, Hawaiian Electric shall not be obligated to pay for any Biodiesel that fails to meet the Specifications.

Section 9.6 Records/Right to Audit: Seller shall retain any and all documents and records regarding the Delivery, quantity and quality of Biodiesel sold and purchased under the terms of this Contract for the twelve (12) months after the date of the invoice for such Biodiesel, or until any dispute regarding such Delivery, quantity and quality is resolved. Seller shall promptly make such records available for review to Hawaiian Electric at its request. Biodiesel records maintained by Seller shall include but not be limited to daily reconciliations of Biodiesel quantities as measured in the issuing tank(s) and as metered at the truck loading system at Seller's Production Facility.

Section 9.7 Inspection: Hawaiian Electric may be represented and participate in all sampling, quality, inspection, measurements and tests of Biodiesel which may be conducted pursuant to this Contract and to inspect any equipment owned or controlled by Seller and used in determining the quantity, quality or heat content of Biodiesel, provided that any such participation by Hawaiian Electric shall not materially interfere with or otherwise disrupt such inspection, measurement and tests conducted by Seller. Hawaiian Electric may, upon reasonable notice to Seller and during normal business hours and at Hawaiian Electric's expense, inspect and audit any sample analysis of Biodiesel, including records and data used in the preparation of such analysis.

Section 9.8 Independent Inspector: Hawaiian Electric and Seller shall agree on a list of Independent Inspectors which shall be attached hereto as "Attachment D - Independent Inspectors List" containing the names of Independent Inspectors which both Parties agree are fully qualified to perform the Independent Inspector functions under this Article IX.

ARTICLE X. INVOICING AND PAYMENT

Section 10.1 Invoicing: Invoices will be prepared and dated following Delivery of Biodiesel to Hawaiian Electric and shall be sent by mail to Hawaiian Electric at the following address:

Hawaiian Electric Company, Inc.
P.O. Box 2750
Mail Stop: WP-2/IF
Honolulu, HI 96840-0001
Attn: Fuels Resources Division

Invoices shall be accompanied by full documentation, acceptable to Hawaiian Electric, including quantity documentation and price calculation.

Section 10.2 Payment: Payment of Seller's invoice(s) shall be made by bank wire transfer of immediately available funds in U. S. Dollars. Timing of payments for sales and Deliveries received shall be based upon net 30 Days of the invoice issue date, which shall be the later of the invoice date or the postmarked mailing date of the invoice. Details about the Seller's banking information will be mailed to Hawaiian Electric before the first invoice is postmarked.

ARTICLE XI.
TITLE, CUSTODY AND RISK OF LOSS

Section 11.1 Title, Custody and Risk of Loss: Care, custody, control, title and risk of loss shall pass to Hawaiian Electric at the point at which the Biodiesel passes into Hawaiian Electric's receiving/intake flange/hose at the Receiving Facility.

ARTICLE XII.
INSURANCE AND BOND

Section 12.1 Seller's Insurance Coverages: Seller's nominated vessel shall, at its sole expense including the expense of deductibles, premiums, calls and policy charges, procure and maintain the following insurances for the duration of this Contract:

- (a) Cargo insurance, which is to remain in force during the period of time from the moment the Biodiesel is loaded onto Seller's nominated vessel at the loading port until title to and risk of loss of the Biodiesel passes to Hawaiian Electric in accordance with Section 11.1. Such insurance shall cover all of the risks covered under a standard Lloyd's Maritime Insurance policy, including all the denominated "Institute Cargo Clauses" (Free of Particular Average, F.P.A. and clauses referring to wars, strikes, riots and civil disturbances),
- (b) Marine and War Risk Hull & Machinery coverage (including 4/4ths Collision Liability) subject to an Amount Insured not less than the full value of the vessel.
- (c) Full form Protection & Indemnity Insurance, including Excess Collision, pollution/environmental risk coverage, upon the vessel pursuant to a standard Protection & Indemnity Club entry, with a Club which is a member of the International Group of Protection and Indemnity Clubs, with minimum limits for pollution/environmental risks to be \$ 1,000,000,000 per occurrence or the maximum commercially available, whichever is greater
- (d) Standard Workers Compensation and Employers Liability Insurance endorsed to be applicable to the state of Hawaii as well as the Longshore Act, with statutory limits for workers compensation and limits of \$5,000,000 per occurrence for employers liability.
- (e) Other Coverage. Seller and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force and effect at all times during the Original Term on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Biodiesel to Hawaiian Electric, any other insurance or surety bonding that may be required under the laws, ordinances and regulations of any governmental authority, including the Federal Motor Carrier Act of 1980 and all rules and regulations of the DOT and/or the USDOT.

Section 12.2 Insurance Paid: Premiums for all necessary insurance policies are included in the Delivered price of Biodiesel as determined in Section 5.1. No special payments shall be made by Hawaiian Electric to Seller in respect to such premiums.

Section 12.3 Evidence of Insurance: Seller agrees to issue, or cause to be issued, to Hawaiian Electric, Certificates of Insurance evidencing compliance with this Article XII no later than thirty (30) Days prior to the loading of the Biodiesel to be sold and Delivered to Hawaiian Electric onto Seller's Transport Container.

Section 12.4 Waiver of Subrogation: Seller and anyone acting under its direction or control or on its behalf will cause its insurers (except for Worker's Compensation insurance) to waive all rights of subrogation which Seller or its insurers may have against Hawaiian Electric, Hawaiian Electric's agents, or Hawaiian Electric's employees.

Section 12.5 Failure to Procure Insurance: In the event Seller fails to procure and/or maintain an insurance as required above, an insurance fails for any reason (including, without limitation, breach of policy condition or warranty) and/or an insurer otherwise refuses or is unable to pay, the Party required to procure that insurance shall be deemed an insurer or self-insurer, shall accept and pay claims which would have otherwise been submitted to the failed insurance and shall indemnify and hold harmless (including legal fees and costs) the other Party of and from any loss, damage, expense, claim, liability and/or suit resulting from such failure.

Section 12.6 Performance Bond/Letter of Credit: A Performance Bond or an Irrevocable Standby Letter of Credit in the form reasonably acceptable to Hawaiian Electric shall be furnished by Seller and deposited with Hawaiian Electric in the amount of five million dollars (\$5,000,000.00), guaranteeing Seller's full compliance with and performance under this Contract. The Performance Bond or Irrevocable Standby Letter of Credit shall remain in effect from the Effective Date until the end of the Original Term. Said Bond is to be submitted to Hawaiian Electric no later than thirty (30) Days following the Effective Date.

ARTICLE XIII. FORCE MAJEURE

Section 13.1 Force Majeure: Neither Party shall be liable in any manner for failure to Deliver or to receive Biodiesel hereunder or any other failure to perform or delay in performing any obligations herein imposed in this Contract for the time and to the extent such failure or delay is caused by an event or act of force majeure, which shall be defined as an act of God, hurricane, flood, volcanic eruption, earthquake; war, rebellion, insurrection, riot, strike, lockout; fire, explosion, or destruction from any involuntary cause of HECO's Receiving Facility or any significant part thereof; or compliance, voluntary or involuntary, with a direction or request of any governmental authority or person purporting to act with government authority, including any such direction or request limiting HECO's recovery of all fuel costs incurred under this Contract; or any other cause or causes (except financial) not within the control of the affected party. A Party rendered unable to fulfill any obligation under this Contract due to an event or act of force majeure shall make all reasonable effort to remove such inability in the shortest possible time.

The Party claiming force majeure agrees to give the other Party prompt written notice of an act or event of force majeure, specifying the anticipated effect and duration of any suspension or reduction of Deliveries of Biodiesel arising therefrom. The Party claiming force majeure shall use due diligence to cure any act or event of force majeure, and shall give the other Party prompt notice when it expects the act or event of force majeure to terminate.

If Delivery is suspended or reduced by Seller pursuant to an event or act of force majeure, it shall not be a breach of this Contract for HECO to buy Biodiesel from a supplier other than Seller for the quantities of Biodiesel which Seller does not Deliver; and HECO shall not be obligated to buy, after the period of suspension or reduction, the undelivered quantity of Biodiesel which normally would have been sold and Delivered hereunder during the period of suspension or reduction.

Section 13.2 Option to Terminate: If Delivery of Biodiesel is suspended or reduced pursuant to an event or act of force majeure for more than thirty (30) Days, Hawaiian Electric shall have the option while such suspension or reduction continues to terminate this Contract on written notice to

Seller. If Hawaiian Electric terminates this Contract pursuant to this Section 13.2, then this Contract shall be terminated and this Contract shall be of no further force and effect and the Parties shall each be relieved of any and all further obligations to each other, save and except for any obligations and liabilities incurred by a Party prior to the date of termination.

ARTICLE XIV. COMPLIANCE WITH LAWS AND REGULATIONS

Section 14.1 Compliance with Laws and Regulations: This Contract is subject to all applicable present and future laws, statutes, orders, rules, and regulations of governmental or quasi-governmental authorities having jurisdiction over the Parties. Seller shall fully comply with all statutes, ordinances, rules, regulations, and requirements of all city, county, state, federal and other applicable government authorities which are now or may hereafter be in force.

Section 14.2 Inspection and Financial Responsibility of Delivering Vessel: Seller's nominated vessel Delivering the Biodiesel to Hawaiian Electric shall be subject to inspection by the U.S. Coast Guard, any local Port Authority and, at Seller's option, by Hawaiian Electric or Hawaiian Electric's representative. Any such inspection of Seller's nominated vessel shall not relieve Seller of any obligation or liability hereunder including, without limitation, responsibility for the safe operation of Seller's nominated vessel. Prior to the discharge of the Biodiesel cargo, Seller's nominated vessel shall furnish to Hawaiian Electric and Hawaiian Electric's representative evidence of sufficient insurance and other financial responsibility to cover oil spill clean up costs and other potential liability, such evidence of financial responsibility to be in such amount and in such form as Hawaiian Electric's and Hawaiian Electric's representative may reasonably require. If Seller's nominated vessel fails an inspection or fails to provide satisfactory evidence of financial responsibility, Hawaiian Electric or Hawaiian Electric's representative may refuse to accept Delivery of the Biodiesel, without liability of any kind to Seller for any delay or other cost, and without being in breach of this Contract. Seller's nominated vessel shall have no right to utilize the facilities of Hawaiian Electric, the receiving pipeline operator or Hawaiian Electric's third-party facility and shall not be entitled to demurrage during any period while Seller's nominated vessel is correcting any deficiency or awaiting evidence of financial responsibility

Section 14.3 U.S. Coast Guard/Port of Delivery Compliance: Seller shall fully comply with all U.S. Coast Guard and other regulations of state and local authorities which pertain to the port of Delivery which directly or indirectly affect the Biodiesel sold and to be Delivered hereunder, or any Delivery, transportation, handling and storage of Biodiesel sold hereunder including without limitation requirements or recommendations at the Port of Delivery such as those pertaining to fire, spillage or loss of Biodiesel. In the event any Contract, or any action or obligation imposed upon a Party thereby, shall at any time be in conflict with any such regulation, requirement or recommendation, the Contract, action or obligation so adversely affected shall immediately be modified to conform to the requirements of the regulation, requirement or recommendation, and all other provisions of the Contract shall remain effective. Seller shall be responsible for ensuring that Seller and Seller's nominated vessel comply with all such regulations, requirements and recommendations which directly or indirectly affect the Delivery, handling or storage of the Biodiesel, whether they relate to vessel operations, health, safety or the environment, including, but not limited to, a requirement that Seller's nominated vessel have an officer fluent in English present at all times during the Delivery of the Biodiesel. Seller's nominated vessel shall also comply with cargo discharging practices recommended by its P&I Club or by the operator of the shore-side receiving pipeline or third-party facility. Seller's nominated vessel shall provide the personnel of the shore-side pipeline or third-party Receiving Facility, as the case may be, with safe access to Seller's nominated vessel for the purpose of conducting a pre-transfer conference, whether or not same is specifically required by U.S. Coast Guard regulations. Seller's nominated vessel shall comply with all safety and other procedures of the Receiving Facility. If Seller's nominated vessel fails to comply with this Section 14.3, or if Delivery

would otherwise be in violation of any federal, state, or local law or regulation, Hawaiian Electric may refuse to receive the Biodiesel, without liability or any kind to Seller (including without limitation demurrage), and without being in breach of this Contract.

Section 14.4 Material Safety Compliance: Seller warrants that it is fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to Biodiesel. Seller shall furnish to Hawaiian Electric health, safety and environmental information (including without limitation Material Safety Data Sheets, "HSE Data") concerning health, safety and environmental aspects of the Biodiesel purchased by Hawaiian Electric, including health, safety and environmental warnings, if any, required by applicable law. Seller shall not be entitled to rely upon such HSE Data as being an inclusive presentation of all potential health, safety and environmental risks associated with the Biodiesel to be Delivered. Seller shall furnish HSE Data to, and otherwise inform, Seller's nominated vessel of all such risks, and the Master shall advise and instruct all crew, seamen and employees about the hazards, if any, associated with Biodiesel and the safe and proper methods of handling and storing Biodiesel. Compliance by the Seller with recommendations in HSE Data shall not excuse the Seller from its obligations under Article XVI and this Section 14.4

Section 14.5 Permits and Licenses: Seller shall secure and pay for all required permits and licenses, and shall comply with all applicable federal, state and local statutes, regulations and public ordinances applicable to this Contract, (including the provisions of the Occupational Safety and Health Act of 1970 and all amendments thereto, and the DOT Hazardous Materials Regulations), and shall indemnify, defend and save Hawaiian Electric harmless from any and all liability, fines, damage, cost and expense, including but not limited to reasonable attorneys' fees and costs, arising from Seller's failure to do so.

ARTICLE XV RELEASES

Section 15.1: Spill/Environmental Pollution: In the event any spill or discharge occurs from Seller's nominated vessel, or if any spill, discharge, or pollution damage is caused by or is threatened in connection with the Delivery or discharging of Biodiesel, then all regulatory notifications and filings, as well as all efforts and costs of containment and clean up shall be the responsibility of Seller, except to the extent that such spill, discharge, or pollution damage is directly attributable to the negligence or willful misconduct of Hawaiian Electric, in which case Hawaiian Electric shall then to the extent of its negligence or misconduct be responsible for such costs of containment and cleanup.

Section 15.2 Pollution Mitigation: When an escape or discharge of oil or any polluting substance occurs in connection with or is caused by Seller's vessel, or occurs from or is caused by discharging operations, Seller or its agents shall promptly take whatever measures are necessary or reasonable to prevent or mitigate environmental damage, without regard to whether or not said escape or discharge was caused by the gross negligence or willful misconduct of Seller's equipment or Seller or Hawaiian Electric or others. Failing such action by Seller or its agents, Hawaiian Electric, on Seller's behalf, may promptly take whatever measures are reasonably necessary to prevent or mitigate pollution damage and notify Seller as soon as practicable thereafter of such actions. Each Party in good faith shall keep the other advised of the nature and results of the measures taken, and if time permits, the nature of the measures intended to be taken.

The cost of all such measures taken shall be borne by Seller except to the extent such escape or discharge was caused or contributed to by Hawaiian Electric, and prompt reimbursement shall be made as appropriate; provided, however, that should Seller or its agents give notice to Hawaiian Electric to discontinue said measures (and to the extent government authorities allow Hawaiian Electric to discontinue said measures) the continuance of Hawaiian Electric's actions will no longer be

deemed to have been taken pursuant to the provisions of this clause. Each Party in good faith shall provide written notice to the other of such actions and measures taken.

Notwithstanding any other provision in this Contract, the foregoing provisions shall be applicable only between Seller and Hawaiian Electric and shall not affect, as between Seller and Hawaiian Electric, any liability that either Seller or Hawaiian Electric shall have to any third parties, including the State of Hawaii and the U.S. Government, if either Party shall have such liability.

Section 15.3: Release Liability: Should Hawaiian Electric incur any liability under Chapter 128D of the Hawaii Revised Statutes as a result of a spill from Seller's nominated vessel during discharge, Seller shall indemnify and hold Hawaiian Electric harmless to the extent not caused by Hawaiian Electric's gross negligence or willful misconduct.

ARTICLE XVI. INDEMNITY

Section 16.1 Indemnity: Seller shall indemnify, defend and hold harmless Hawaiian Electric, its directors, officers, employees, agents (including but not limited to affiliates and contractors and their employees), successors and assigns, from and against all liabilities, losses, penalties, claims, demands, fines, judgments, actions, costs and expenses (including reasonable attorneys' fees and costs of litigation), and proceedings of any nature whatsoever, based upon or arising out of damage to property, injuries to persons (including death) or violation of law, to the extent the same is caused by or attributable to (a) Seller's failure to perform obligations under this Contract; and/or (b) Seller's negligent, intentional or wrongful acts or omissions relating to this Contract or performance of this Contract.

ARTICLE XVII. DEFAULT

Section 17.1 Default: The failure of either Party to promptly and completely perform any obligation under this Contract shall constitute default. If HECO or Seller considers the other Party (the "Defaulting Party") to be in default under this Contract, such Party (the "Non-Defaulting Party") shall give the Defaulting Party prompt written notice thereof, describing the particulars of such default. The Defaulting Party shall thereafter have thirty (30) Days from the receipt of said notice in which to remedy such default. If the default is not cured, the Non-Defaulting Party may, without prejudice to any other right or remedy of such Party in respect of such default, immediately terminate this Contract by written notice to the Defaulting Party. Any termination shall be without prejudice to accrued rights, including without limitation the right of either Party to damages arising from such breach or prior breaches hereof. All rights and remedies hereunder are independent of each other and election of one remedy shall not exclude another.

Notwithstanding the foregoing, if Seller's default is not Delivering Biodiesel as required by this Contract, Seller's time to cure shall be five (5) Days from HECO's notice of default. Without limiting any other right or remedy, if Seller does not cure the default in such time by Delivering compliant Biodiesel to HECO and Seller fails to provide alternative arrangements reasonably approved by Buyer, HECO may immediately acquire substitute Biodiesel from another supplier ("Cover Supplies"), and, except as otherwise provided in this Contract, Seller shall be liable to HECO for the difference in cost between the fuel acquired from the other supplier and the price HECO would have paid Seller under this contract for the same amount of fuel Delivered at the same time as the replacement fuel, plus all reasonable costs and expenses incurred by HECO in obtaining such cover ("Cover Costs").

Section 17.2 Consequential Damages: In no event shall either Party be liable to the other for any indirect or consequential damages arising from breach of this Contract.

ARTICLE XVIII. NOTICE

Section 18.1 Notices: Except as otherwise expressly provided in this Contract, all notices shall be given in writing, by facsimile, electronic mail or first class mail, postage prepaid, to the following addresses, or such other address as the Parties may designate by notice:

[Seller]

Hawaiian Electric Company, Inc.
PO Box 2750
Mail Stop: WP-2/IF
Honolulu, HI 96840-0001
Attention: Christina Smith, Fuels Resources Division

Notice shall be deemed to have been delivered upon the earlier to occur of actual receipt or two (2) Days after sending.

ARTICLE XIX. GENERAL PROVISIONS

Section 19.1 Waiver and Severability: If any section or provision of this Contract or any exhibit or rider hereto is held by any court or other competent authority to be illegal, unenforceable or invalid, the remaining terms, provisions, rights and obligations of this Contract shall not be affected. The failure of a Party hereunder to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. In no event shall any waiver by either Party of any default under this Contract operate as a waiver of any further default.

Section 19.2 Assignment: This Contract shall extend to and be binding upon the respective successors and assigns of Hawaiian Electric and Seller, provided, however, that no assignments of this Contract shall be made by Hawaiian Electric or Seller without the prior written consent of the other Party.

Section 19.3 Conflicts of Interest: Conflicts of interest related to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither Party nor any director, employee or agent of a Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither Party, or any director, employee or agent of a Party shall enter into any business arrangement with any director, employee or agent of the other Party (or any affiliate), unless such person is acting for and on behalf of the other Party, without prior written notification thereof to the other Party.

Section 19.4 Applicable Law/Venue: This Contract is made under and shall be governed by and construed in accordance with the laws of the State of Hawaii. Each Party agrees and consents that any dispute, litigation, action or proceeding arising out of this Contract, however defined, shall be brought exclusively in the State of Hawaii in a court of competent jurisdiction.

Section 19.5 Entire Agreement/Modification: This Contract shall constitute the entire understanding between the Parties with respect to all matters and things herein mentioned. It is expressly acknowledged and agreed by and between the Parties that neither Party is now relying

upon any collateral, prior or contemporaneous agreement, assurance, representation or warranty, written or oral, pertaining to the subject matter contained herein. This Contract shall not be modified or changed except by written instrument executed by the duly authorized representatives of the Parties.

Section 19.6 Contract Is Not an Asset/Bankruptcy: This Contract shall not be deemed to be an asset of either Party, and, at the option of a Party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings affecting the other Party.

Section 19.7 Status of the Parties: Nothing in this Contract shall be construed to constitute either Party as a joint venturer, co-venturer, joint lessor, joint operator or partner of the other. In performing services pursuant to this Contract, Seller is acting solely as an independent contractor maintaining complete control over its employees and operations. Unless otherwise provided in this Contract, neither Hawaiian Electric nor Seller is authorized to take any action in any way whatsoever for or on behalf of the other.

Section 19.8 Headings: The headings or captions are for convenient reference only and have no force or effect or legal meaning in the construction or enforcement of this Contract.

Section 19.9 No Dissemination (Confidentiality). Seller shall not publish, release, disclose, or disseminate to any third party any confidential information gained from HECO under or relating to this Contract without prior written consent given by an officer of HECO.

Section 19.10 Notice of Certain Events: To the extent any of the following events occur and could reasonably be likely to have a material adverse effect on Seller's performance under this Contract, the Seller shall provide Hawaiian Electric with timely notice of the occurrence of such event and the Seller's proposed measures to ensure that such event will not lead to an Event of Default or otherwise materially impair Seller's ability to perform its obligations under this Contract:

(a) Any final non-appealable order, judgment or decree is entered in any proceeding, which final order, judgment or decree provides for the payment of money in excess of five Hundred Thousand Dollars (\$500,000) by Seller, and Seller shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within sixty (60) Days from the entry thereof, and within such period of sixty (60) Days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal.

(b) Seller shall have received any notice that it is not in compliance with any of the applicable material permits that enable Seller to operate any of its facilities required for Seller's performance under this Contract.

Section 19.11 Attorneys' Fees: If there is a dispute between the Parties and either Party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or interpret the terms of this Contract, the prevailing Party shall be awarded its reasonable attorneys fees and costs.

Section 19.12 Offsets: In the event that a Party owes the other Party ("Offsetting Party") any amount under this Contract (less any amounts disputed in good faith pursuant to Section 19.5), the Offsetting Party owed such amount may at any time offset any and all amounts that are due and owed to the other Party against such amount that the other Party owes the Offsetting Party. The Offsetting Party asserting an offset shall provide a prompt written explanation of the amount and the basis for the offset.

Section 19.13 Counterparts: This Contract may be executed in as many counterparts as desired by the Parties, any one of which shall have the force and effect of an original but all of which

together shall constitute the same instrument. This Contract may also be executed by exchange of executed copies via facsimile or other electronic means, such as PDF, in which case -- but not as a condition to the validity of the Contract -- each Party shall subsequently send the other Party by mail the original executed copy. A Party's signature transmitted by facsimile or similar electronic means shall be considered as an "original" signature for purposes of this Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year first above written.

HAWAIIAN ELECTRIC COMPANY, INC.
("HECO")

Date: _____

By _____

Its

Date: _____

By _____

Its

[SELLER]
("Seller")

Date: _____

By _____

Print Name: _____

Its

Date: _____

By _____

Print Name: _____

Its