

## ATTACHMENT D

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

---

Contract Number \_\_\_\_\_

This contract ("Contract") is made this \_\_\_\_\_ day of October 2009, 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 ("HECO"), and \_\_\_\_\_ ("Seller").

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

WHEREAS, HECO seeks a supply of biodiesel fuel to be used to generate electricity in its new generating unit located in HECO'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 HECO's requirements; and

WHEREAS, Seller is willing to sell and deliver such biodiesel to HECO, and HECO 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. "Affiliate", except where otherwise expressly provided, means a corporation controlling, controlled by or under common control with Seller or HECO, as the case may be.
- 1.2. "Biodiesel" for purposes of this contract shall mean B99 or B100 biodiesel made or refined from feedstock, which biodiesel conforms to the specifications set forth in Attachment B to RFP (Biodiesel Specifications).
- 1.3. "CIP" means Campbell Estate Industrial Park, Kapolei, Oahu, Hawaii;
- 1.4. "Commission" means the State of Hawaii Public Utilities Commission.
- 1.5. "Commission Approval Order" is defined in section 2.2 below.
- 1.6. "Commission Approval Order Date" is the date the Commission files the Commission Approval Order.
- 1.7. "CT-1" means HECO's new combustion generating unit located in the HECO CIP Facility.
- 1.8. "Days", unless specifically indicated otherwise, refers to calendar days.

- 1.9. "Delivery" means the delivery of Biodiesel to the HECO CIP Facility.
- 1.10. "DOT" means the Department of Transportation of the State of Hawaii and/or of the United States, as the case may be.
- 1.11. "Effective Date" is defined in section 2.3 below.
- 1.12. "Gallon" means a United States liquid gallon of 231 cubic inches.
- 1.13. "HECO's (or the HECO) CIP Facility" means HECO's Barbers Point Tank Farm site in CIP.
- 1.14. "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.
- 1.15. "Specification" means the fuel quality specification set forth in Attachment B to RFP.
- 1.16. "Term" is defined in section 2.1 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 two years after the Commission Approval Order Date. HECO shall not order Biodiesel before the Commission Approval Order Date.

Section 2.2 Regulatory Approval: HECO 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 HECO's sole discretion; and (c) allows HECO to include the costs incurred by HECO pursuant to this Contract in its revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of HECO's rates and/or for cost recovery above those costs included in base rate through HECO'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 HECO if (a) it is not an unconditional approval or (b) HECO is not satisfied that the Order will not be appealed.

If HECO has not received the Commission Approval Order within 180 days of the date of this Contract, or if HECO's request for Commission approval of this Contract is denied, then either the Seller or HECO 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 HECO of the Commission Approval Order and (b) written notice of the same to Seller. 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 HECO, and HECO shall purchase and receive from Seller, Biodiesel as required by HECO to operate CT-1. HECO 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 two year Contract Term. HECO shall have no minimum purchase requirement. However, during the term of this Contract, HECO will purchase all Biodiesel to be used to operate CT-1 exclusively from Seller subject to the terms and conditions herein. Subject to availability, Seller shall sell and deliver and HECO 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. HECO shall have the right to purchase Biodiesel from another supplier of its choice if HECO's volume requirement exceeds 7,000,000 Gallons per rolling twelve (12) months and Seller is unable to sell and deliver such excess requirements. Seller shall be allowed \_\_\_\_\_ weeks to deliver the Biodiesel to HECO's CIP Facility upon notification to the Seller of a nominated quantity as specified by HECO.

### 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. The Biodiesel shall have at least a six (6) month shelf life from the date of delivery subject to HECO storing and maintaining the Biodiesel at all times in accordance with section X2.7 of ASTM D 6751.

### 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 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 Delivery Method: Seller is to arrange and pay for delivery of biodiesel to the HECO CIP Facility using trucks to discharge fuel at the receiving site directly into HECO's fuel tank(s). Care, custody, control, title and risk of loss shall pass to HECO as the Biodiesel passes the fitting of Seller's delivery truck's discharge outlet connected for the delivery of Seller's Biodiesel to the receiving hose at HECO's CIP Receiving Facility. Seller may elect the method of shipment and transport of the biodiesel to HECO's CIP Facility.

ISO Container (Transport Container), Option 1:

Seller may elect to deliver biodiesel in suitable 6,000 gallon ISO containers (Transport Containers) for direct discharge into the fuel tank(s) at HECO's CIP Facility Fuel Delivery Receiving Truck Manifold.

Bulk Marine Vessel, Option 2:

If Seller elects to transport biodiesel to the island of Oahu in bulk ex-ship, Seller is responsible to arrange and pay for discharge of biodiesel inside customs passing the outboard flange of Seller's delivering vessel's cargo discharge hose connected to a nominated petroleum receiving facility on the island of Oahu. Seller shall be responsible for all throughput and terminalling payment and arrangements at a nominated facility to receive and store the biodiesel from the discharge pier until which time the seller can arrange and pay for trucking of the biodiesel to HECO's CIP Facility Fuel Delivery Receiving Truck Manifold.

Section 6.2 Shipping and Transport: Seller shall deliver, at its cost, Biodiesel using 6000 (approximate) Gallon ISO containers on suitable container chassis (each, a "Transport Container"), or using tanker trucks loaded from a bulk terminalling facility, to HECO at HECO's CIP Facility Fuel Delivery Receiving Truck Manifold for discharge of the fuel upon arrival at the Facility. Seller will be responsible for providing 4" Kamlock fittings on the Transport Containers or tanker trucks capable of connecting to HECO's 4" male Kamlock fitted hose. Fuel will be discharged into one of two fuel storage tanks at the CIP Facility, with each storage tank having a safe-fill receiving capacity of 1.8 million gallons. Seller may coordinate a designated storage facility or third party receiving facility to stage the Transport Containers on Oahu prior to delivery to the CIP Facility and after completion of discharge. HECO will not provide a storage or staging site for the Transport Containers and will not take ownership of the Transport Containers. All Biodiesel is expected to be shipped to a harbor on the island of Oahu, Hawaii within TBD weeks after notification to the Seller of a nominated quantity as specified by HECO for delivery into a receiving facility at the harbor and further delivery by Transport Container or tanker truck to HECO's CIP Facility promptly thereafter. Fuel deliveries to HECO's CIP Facility Fuel Tanks shall normally occur during the hours of 0600-1800, Monday to Friday, unless otherwise agreed to by HECO.

Section 6.3 Coordination: Deliveries shall be made by Seller from Seller's nominated vessel(s), transport container(s), and/or tanker truck(s) through and to HECO's CIP Facility Fuel Delivery Receiving Truck Manifold. The Parties shall mutually coordinate the delivery of Biodiesel jointly with Seller's designated transporter(s). Seller shall provide the relevant contact information of the individual person at its designated transporter. HECO shall copy such designated person on all communications relating to the transport and logistical details of the Biodiesel delivery. Transport scheduling shall be flexible in an attempt to meet HECO's operational requirements. HECO or HECO's designated shipping agent shall notify Seller and its transporter in writing of the designated receiving arrangements for each Transport Container or tanker truck prior to loading of such Transport Container or tanker truck for delivery to HECO's CIP Facility.

HECO has full responsibility and will be required to pay for any additional demurrage outside of the designated window of delivery of Transport Containers to the Receiving Facility provided Seller has met its obligations to deliver the Transport Containers. HECO shall not be liable for demurrage to the extent that allowed laytime is exceeded due to the malfunction or other condition of Seller's Transport Container, truck, or discharge equipment.

Seller shall provide HECO a specific (5) day delivery window upon no less than fifteen (15) days notice prior to the first day of the proposed shipment period ("15-Day Notice") for delivery of each Transport Container or tanker truck to HECO's CIP Facility. HECO may reject the proposed delivery window upon providing Seller notice, no later than two (2) business days from the receipt of Seller's 15-Day Notice, supply an alternate one (1) day delivery window, provided that the (1) day period is within three (3) days of the date of Seller's first proposed five (5) day delivery window.

Notices may be given by electronic mail, facsimile or telephone.

Seller's delivery of Transport Containers by ocean going vessel and truck shall comply with all applicable federal, state and local laws, rules and regulations. HECO shall provide Seller with the Receiving Facility's operations manual, truck and Transport Container acceptance standards and any other applicable safety and operations procedures and acceptance standards, and any amendments thereto, during the term of this Contract.

## ARTICLE VII. SELLER'S REPRESENTATIONS AND WARRANTIES

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

- (a) Ability to Supply: During the Term, Seller shall maintain in full force and effect the capability to supply Biodiesel sufficient to meet Seller's obligations under this Contract.
- (b) Ability to Deliver: During the Term, Seller shall own, lease or have the right to use facilities sufficient to meet Seller's delivery obligations under this Contract.
- (c) Seller's Vessel/Truck Condition/Service: Seller's nominated transport providers employed to deliver the Biodiesel to HECO shall comply with all applicable federal, state and local laws, rules and regulations.

Section 7.2 Environmental Sustainability:

- (a) Feedstock: Seller shall supply Biodiesel that complies with the requirements of the HECO-NRDC Environmental Policy or demonstrate feedstock cultivation practices that follow the HECO-NRDC Environmental Policy as applicable, which feedstock shall meet sustainable environmental standards endorsed by an independent governing body as mutually agreed to by the Parties. Upon mutual written agreement, the parties may adopt for this Contract any future amendments to or subsequent versions of the HECO-NRDC Environmental Policy
- (b) Chain of Custody Tracking: Seller must maintain a clear, documented and verifiable chain of custody for all feedstocks.
- (c) 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.

- (d) 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 HECO in accordance with the terms and procedures set forth in section 9.4.

## ARTICLE VIII. DETERMINATION OF QUANTITY

Section 8.1 Measurement of Quantity: The quantity of Biodiesel sold and purchased under this Contract shall be determined at the time of the discharging of each Transport Container or tanker truck by HECO's automated discharge rack control system at HECO's CIP Facility which shall employ calibrated meters, corrected in each instance to measure volume in U.S. gallons 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.

HECO shall perform normal maintenance procedures to maintain the accuracy of the meters used to measure the quantity of Biodiesel discharged from Transport Container(s) or tanker truck(s) for delivery to HECO. HECO, also at its own expense, shall test for accuracy and calibrate the meters on a semi-annual basis or as required and agreed by the Parties. HECO shall provide Seller with a written schedule of calibration test times and Seller shall have the right to have its representative present to observe each calibration test.

Section 8.2 Quantity Disputes: If Seller or HECO has reason to believe that the quantity of Biodiesel for a particular delivery is inaccurate by an amount in excess of 1%, the 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 Section shall be drawn, taken and made, respectively, under the supervision of the independent Inspector. Seller and HECO shall share equally the cost of independent inspections. The quality of Biodiesel sold and delivered to HECO shall comply with the Specification subject to section 4.1. The Biodiesel shall have a six (6) month shelf life from the date of manufacture subject to HECO storing and maintaining the Biodiesel at all times in accordance with section X2.7 of ASTM D 6751.

Section 9.2 Precautionary Sampling Prior to Loading: In order to reduce the likelihood of Seller's delivery resulting in quality problems arising in the receiving tank(s) at the Receiving Facility, Seller agrees to use, and cause its transporter to use, all prudent and industry standard operating practices and procedures during the loading, transport and unloading of Biodiesel from Seller's Facility to the Receiving Facility. Seller shall, or shall cause its transporter to, thoroughly maintain, clean and prepare all Transport Containers or tanker trucks consistent with such industry standard operating procedures.

Testing shall be conducted on Biodiesel and certified on the representative biodiesel lot to be delivered with sampling performed prior to loading of the biodiesel into Transport Containers or prior to loading of terminalled biodiesel into tanker trucks using the following procedure:

- (a) 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 tanks in such a manner as to be representative of the relevant cargo after the arrival at HECO's CIP Facility, but prior to commencement of loading the Transport Container or tanker truck. 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 HECO (or if biodiesel is to be loaded into tanker trucks on the island of Oahu, delivered to HECO via on-island courier within 24 hours) 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 HECO 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 45 days.

Seller agrees to provide HECO and the Independent Inspector with the results of its determinations (a Certificate of Quality) representing the quality of the Precautionary Sample no later than seventy two (72) hours after the completion of the loading of Seller's Transport Container(s). Should Seller's laboratory be unable to determine the Biodiesel to be delivered is in conformance with the Specification within such a period, HECO shall not have an obligation to receive or store any nonconforming Biodiesel on Seller's behalf.

- (b) 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 Transport Containers will not ship to HECO until such time as the loaded Biodiesel is determined to conform with the Specification.

Section 9.3 Quality Dispute: If Seller or HECO has reason to believe that the quality of Biodiesel delivered does not meet the Specification 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 HECO'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.

Section 9.4 Remedy: If a quality problem occurs or if the quality of the Biodiesel received by HECO from Seller fails to conform to the Specification, both Seller and HECO shall in good faith attempt to minimize the impact of any such quality problem. At HECO's reasonable discretion, such efforts may include Specification waiver. Notwithstanding the preceding, HECO shall always have the right to refuse delivery of any Biodiesel with prior written notice to Seller or its permitted agents that HECO in good faith shall have reason to believe (with justification) does not meet the Specification. If all such and similar efforts fail to resolve the quality problem, HECO may return off-Specification delivered Biodiesel to Seller at HECO's Facility, in which case Seller shall endeavor to replace the off-Specification Biodiesel by delivering an equal volume of HECO verified on-specification Biodiesel to HECO's Facility in a timely manner. HECO may, at its option, seek other supplies of Biodiesel if in HECO's reasonable discretion the delivery of non-conforming Biodiesel may not be remedied in time to prevent a possible interruption of HECO's operations. 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 HECO'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 HECO 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 HECO under the terms of this Contract.

Section 9.5 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 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 HECO.

#### ARTICLE X. INVOICING AND PAYMENT

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

Hawaiian Electric Company  
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 HECO, 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 HECO 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 HECO as the Biodiesel passes the fitting of Seller's delivery truck's discharge outlet connected for the delivery of Seller's Biodiesel to the receiving flange/hose at HECO's CIP Facility Fuel Delivery Truck Receiving Manifold.

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 HECO 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.

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 HECO to Seller in respect to such premiums.

Section 12.3 Evidence of Insurance: Seller agrees to issue, or cause to be issued, to HECO, Certificates of Insurance evidencing compliance with this Article XII no later than 30 days prior to the loading of the Biodiesel to be sold and delivered to HECO onto Seller's nominated vessel.

Section 12.4 Failure to Procure Insurance: In the event a party 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 12.5 Performance Bond/Letter of Credit: A Performance Bond or an Irrevocable Standby Letter of Credit in the form reasonably acceptable to HECO shall be furnished by Supplier and deposited with HECO in the amount of five million dollars (\$5,000,000.00), guaranteeing Supplier'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 Term. Said Bond is to be submitted to HECO 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 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, HECO shall have the option while such suspension or reduction continues to terminate this Contract on written notice to Seller.

### 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 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 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 HECO 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 HECO, 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 14.3 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 HECO 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 Transport Containers, tanker trucks, or other storage vessels, 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 HECO, in which case HECO 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 equipment, 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 HECO or others. Failing such action by Seller or its agents, HECO, 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 HECO, and prompt reimbursement shall be made as appropriate; provided, however, that should Seller or its agents give notice to HECO to discontinue said measures (and to the extent government authorities allow HECO to discontinue said measures) the continuance of HECO'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.

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

Section 15.3: Release Liability: Should HECO 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 HECO harmless to the extent not caused by HECO's gross negligence or willful misconduct.

#### ARTICLE XVI. INDEMNITY

Section 16.1 Indemnity: Seller shall indemnify, defend and hold harmless HECO, 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 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 HECO and Seller, provided, however, that no assignments of this Contract shall be made by HECO 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 nor 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 hereto.

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 HECO 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 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 19.11 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