



**Hawaiian
Electric**

Model

*Power Purchase Agreement
For
Renewable Dispatchable Generation
(PV)*

October 2017

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This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of renewable dispatchable generation to be executed by Hawaiian Electric. The terms and conditions that may be offered by Hawaiian Electric in a renewable dispatchable generation power purchase agreement may be modified to reflect factors such as different renewable technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such power purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions.

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

POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION

THIS POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION ("Agreement") is made this ____ day of _____, 20__ (the "Execution Date"), by and between **Hawaiian Electric Company, Inc.**, a Hawai'i corporation (hereinafter called the "Company") and _____ (hereinafter called the "Seller").

WHEREAS, Company is an operating electric public utility on the Island of O'ahu, subject to the Hawai'i Public Utilities Law (Hawai'i Revised Statutes, Chapter 269) and the rules and regulations of the Hawai'i Public Utilities Commission (hereinafter called the "PUC"); and

WHEREAS, the Company System is operated as an independent power grid and must both maximize system reliability for its customers by ensuring that sufficient generation is available and meet the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Company desires to minimize fluctuations in its purchased energy costs by acquiring renewable dispatchable generation at a fixed Unit Price; and

WHEREAS, Seller desires to build, own, and operate a renewable energy facility that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute (codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95); and

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

WHEREAS, Facility will be located at _____, State of Hawai'i and is more fully described in Attachment A (Description of Generation and Conversion Facility) and Attachment B (Facility Owned by Seller) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein, (i) the electric energy generated by the Facility and (ii) the availability, at a fixed Unit Price for the duration of the Initial Term, of the Facility's Net Energy Potential to respond, subject to the Renewable Resource Variability, to Company's dispatch.

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

DEFINITIONS

When the capitalized terms set forth in the Schedule of Defined Terms are used in this Agreement, such terms shall have the meanings set forth in such Schedule.

ARTICLE 1 PARALLEL OPERATION

Company agrees to allow Seller to interconnect and operate the Facility to provide renewable dispatchable generation in parallel with the Company System; provided, however, that such interconnection and operation shall not: (i) adversely affect Company's property or the operations of its customers and customers' property; (ii) present safety hazards to the Company System, Company's property or employees or Company's customers or the customers' property or employees; or (iii) otherwise fail to comply with this Agreement. Such parallel operation shall be contingent upon the satisfactory completion, as determined solely by Company, of the Acceptance Test and, to the extent applicable, the Control System Acceptance Test, in accordance with Good Engineering and Operating Practices.

ARTICLE 2
PURCHASE AND SALE OF ENERGY AND DISPATCHABILITY;
RATE FOR PURCHASE AND SALE; BILLING AND PAYMENT

- 2.1 Purchase and Sale of Electric Energy and Dispatchability of Facility. Subject to the other provisions of this Agreement: (i) Company shall, by an Energy Payment, pay for the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company's dispatch of the Facility; and (ii) Company shall, by a Lump Sum Payment, pay for the availability of the Facility's Net Energy Potential to respond, subject to the Renewable Resource Variability, to Company's dispatch in accordance with this Agreement. Included in such purchase and sale of electric energy and such purchase and sale of dispatchability are all of the Environmental Credits associated with the electric energy. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawai'i general excise tax.
- 2.2 Payment for Electric Energy. Commencing on the Commercial Operations Date, in exchange for the electric energy delivered to the Point of Interconnection in response to Company's dispatch, Seller will be paid an Energy Payment on a monthly basis as provided in Section 1 (Price for Purchase of Electric Energy) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.
- 2.3 Lump Sum Payment for Dispatchability. Commencing on the Commercial Operations Date, in exchange for the availability of the Facility's Net Energy Potential to respond, subject to the Renewable Resource Variability, to Company's dispatch in accordance with this Agreement, Company shall pay to Seller a monthly Lump Sum Payment as provided in Section 2 (Lump Sum Payment for Dispatchability) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement. As more fully set forth in Section 3 (Calculation of Lump Sum Payment) of said Attachment J, the monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. For purposes of calculating the monthly Lump Sum Payment to be made to Seller for making the Facility's Net Energy Potential available for dispatch, the monthly Lump Payment shall be adjusted downward to account for **[inverter(s)]** that

are not available for dispatch because of a Force Majeure condition (i) at the Facility or (ii) that otherwise delays or prevents the Seller from making the **[inverter(s)]** in question available for dispatch, as more fully set forth in Section 3.iv of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.

2.4 Assurance of Capability of Facility to Deliver Net Energy Potential.

- (a) Design, Operation and Maintenance to Achieve Availability Benchmark and GPR Benchmark. In order to provide Company with reasonable assurance that, subject to the Renewable Resource Variability, the Facility's Net Energy Potential will be available for Company's dispatch: (i) the Availability Benchmark shall be used to evaluate the availability of the Facility for dispatch by Company and (ii) the GPR Benchmark shall be used to evaluate the efficiency of the Facility. Seller shall design, operate and maintain the Facility in a manner consistent with the standard of care reasonably expected of an experienced owner/operator with the desire and financial resources necessary to design, operate and maintain the Facility to achieve the Availability Benchmark and the GPR Benchmark. The foregoing is without limitation to Seller's other obligations under this Agreement, including the obligation to operate the Facility in accordance with Good Engineering and Operating Practices.
- (b) Acknowledgment of Uncertainties. The Parties acknowledge the inherent uncertainty in the calculation of the Availability Factor and the Measured Performance Ratio. Both Parties hereby assume the risk of such uncertainties and hereby waive any right to dispute:
- (i) the appropriateness of any of the Availability Benchmark, the Availability Factor or the methodology specified in this Agreement for the calculation of the Availability Factor; and
 - (ii) the appropriateness of any of the GPR Benchmark, the Measured Performance Ratio or the methodology specified in this Agreement for the calculation of the Measured Performance Ratio.

2.5 Availability Factor; Liquidated Damages; Termination Rights.

- (a) Calculation of the Availability Factor. Following the end of each LD Period, the Availability Factor shall be calculated for such LD Period as follows:

$$\text{Availability Factor} = 1 - \frac{\text{DownTime} - \text{ExcludedTime}}{\text{TotalTime} - \text{ExcludedTime}}$$

where:

TotalTime is the number of inverters in the Facility multiplied by the total number of seconds in the LD Period.

DownTime is a subset of TotalTime that "counts against" the Seller in calculating the Availability Factor. DownTime represents the aggregate of the number of seconds during the LD Period that one or more inverters are unavailable as indicated by the "inverter available" data point for such inverter sent via SCADA. DownTime is expressed as the total of the Facility's unavailable inverter-seconds (i.e., 1 unavailable inverter for 1 second) during the LD Period.

ExcludedTime is a subset of TotalTime that does not "count against" the Seller in calculating the Availability Factor. ExcludedTime is expressed in unavailable inverter seconds and is calculated by multiplying the number of inverters in the Facility that are unavailable by the total number of seconds in the LD Period when such unavailability is the result of any of the following conditions :

- The Facility or a portion of the Facility is unavailable due to Force Majeure.
- The Facility is unavailable due to a Forced Outage resulting from conditions on the Company System other than (i) Seller-Attributable System Conditions or (ii) conditions that the Facility is required to ride-through under Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller).
- The Facility is unavailable for reasons other than Seller-Attributable Non-Generation.
- The "Plane of Array Irradiance" data point sent via SCADA is less than 50 W/m².

- (b) Availability Benchmark and Liquidated Damages. For each LD Period, Seller shall achieve an Availability Factor, as calculated as provided in Section 2.5(a) (Calculation of Availability Factor) of this Agreement, of not less than the Availability Benchmark. For avoidance of doubt, because the Availability Factor is calculated over an LD Period of 12 calendar months, the first month for which liquidated damages may be assessed under this Section 2.5(b) (Availability Benchmark and Liquidated Damages) would be the last calendar month of the initial Contract Year. If the Availability Factor for a LD Period is less than the Availability Benchmark, Seller

shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the Availability Benchmark for such LD Period, an amount calculated in accordance with the following formula:

<u>Availability Factor</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
98.9% and below%	For each one-tenth of one percent (0.001) by which the Availability Factor for such LD Period falls below the Availability Benchmark, an amount equal to one-tenth of one percent (0.001) of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period.

For purposes of determining liquidated damages under the preceding formula, the amount by which the Availability Factor for the LD Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the Availability Benchmark for a LD Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

(c) Payment of Liquidated Damages for Failure to Achieve the Availability Benchmark. With respect to the liquidated damages for a calendar month payable under Section 2.5(b) (Availability Benchmark and Liquidated Damages), Company shall have the right, at any time on or after the AF LD Assessment Date for such liquidated damages, at Company's option, to off-set such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw such liquidated damages from the Operating Period Security, as follows:

(i) if the Monthly Report for a given calendar month shows an Availability Factor for the LD Period in question for which liquidated damages are payable under Section 2.5(b) (Availability Benchmark and Liquidated Damages) and Company does not submit a

Notice of AF Disagreement with respect to such Monthly Report, the Company shall have the right to off-set or draw the amount of liquidated damages for such calendar month as calculated on the basis of such Availability Factor; and

(ii) in all cases in which Company submits a Notice of AF Disagreement for a given Monthly Report, Company shall have the right to off-set or draw all or any portion of the amount of liquidated damages for calendar month in question as calculated on the basis of the Availability Factor for the LD Period in question, as shown in such Notice of AF Disagreement; provided, however, that:

(aa) if the amount off-set or drawn by the Company exceeds the amount of liquidated damages for such calendar month that are eventually found to be payable pursuant to the Availability Factor for the LD Period in question as determined under either Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(h) (Written Decision of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Company shall promptly repay such excess to Seller together with, unless the Parties otherwise agree in writing, interest from the date of Company's off-set or draw until the date that such excess is repaid to Seller at the average Prime Rate for such period; and

(bb) if Company does not exercise its rights to set-off or draw liquidated damages for such calendar month, or does not set-off or draw the full amount of the liquidated damages for such calendar month that are eventually found to be payable pursuant to the determination of the Availability Factor for the LD Period in question as determined under either Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(h) (Written Decision of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by

Independent AF Evaluator) to this Agreement, Seller shall promptly, upon determination of such Availability Factor as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the AF LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to off-set such interest for the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to off-set liquidated damages and/or interest from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw such liquidated damages and/or interest from the Operating Period Security shall not constitute a waiver by Company of its right to do so.

- (d) Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.5(b) (Availability Benchmark and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the Availability Benchmark for a LD Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the Availability Benchmark. Accordingly, and without limitation to Company's rights under said Section 2.5(b) (Availability Benchmark and Liquidated Damages) for those LD Periods during which the Seller failed to achieve the Availability Benchmark, the failure of the Facility to achieve an Availability Factor of not less than **84%** for each of three consecutive Contract Years shall constitute an Event of Default under Section 15.1(b) of this Agreement for which Company shall have the rights (including but not limited to the termination rights)

set forth in Article 15 (Event of Default) and Article 16 (Damages in the Event of Termination by Company).

2.6 Measured Performance Ratio; Liquidated Damages; Termination Rights.

(a) Calculation of Measured Performance Ratio ("MPR").

- (i) The Measured Performance Ratio ("MPR") represents the Facility's measured AC power output compared to its theoretical DC power output under the standard test conditions of 1000 W/m² and 25°C, as adjusted for the plane of array irradiance conditions measured at the Site.
- (ii) Following the end of each LD Period, the Measured Performance Ratio shall be calculated for such LD Period (using the previous 12 months of 2-second data provided via SCADA) as follows:

$$MPR = \frac{\sum_i P_{AC,i}}{\sum_i \left[P_{DCSTC} \left(\frac{G_{POA_i}}{G_{STC}} \right) \right]}$$

Where:

i = each 15 minute interval where the measured plane of array irradiance exceeds 600W/m²

P_{AC} is the measured AC power output of the Facility averaged over time period *i* (MW)

G_{STC} = plane of array irradiance at the standard condition of 1000 W/m²

P_{DCSTC} is the DC rated capacity of the Facility at the standard test conditions of 1000 W/m² and 25°C (MW), (i.e. the DC power rating of the PV panels at standard test conditions multiplied by the number of panels in the Facility);

G_{POA} is the measured plane of array irradiance averaged over time period *i* (W/m²);

- (iii) The data used in the foregoing calculation shall be filtered by including only periods in which, for the entire 15-minute interval, both the plane of array irradiance is not less than 600 W/m² and the Facility is in Full Dispatch. The aforementioned 15-minute intervals are fixed intervals that commence, in sequence, at the top of each hour and at 15, 30 and 45 minutes past the hour.

(iv) The Measured Performance Ratio shall be calculated for the set of filtered SCADA data points available for the applicable LD Period. The result of the foregoing calculation for the entire LD Period shall be the Measured Performance Ratio (MPR) for such LD Period.

(b) Determination of GPR Benchmark.

(i) Upon Commencement of Commercial Operations. If a copy of the IE Energy Assessment Report together with the weather profile relied upon in arriving at the NEP IE Estimate is not provided to Company, the GPR Benchmark for the period commencing on the Commercial Operations Date through the end of the calendar month during which the Initial OEPR is issued shall be **0.9**. If a copy of the IE Energy Assessment Report together with the supporting data (plane of array irradiance and corresponding power output) relied upon in arriving at the NEP IE Estimate is provided to Company, the GPR Benchmark shall be calculated using such supporting data and the Measured Performance Ratio formula in Section 2.6(a)(ii) of this Agreement. Within 30 Days of Company's receipt of the IE Energy Assessment Report together with the aforementioned supporting data, Company shall provide written notice to Seller of either (aa) the GPR Benchmark derived from such supporting data or (bb) Company's inability to reasonably derive a GPR Benchmark from such supporting data, in which case the GPR Benchmark shall be **0.9**.

(ii) Commencing With Initial OEPR. For the period commencing with the first Day of the calendar month following the issuance of the Initial OEPR through the end of the calendar month during which the first Subsequent OEPR is issued, the GPR Benchmark shall be calculated using the supporting data (plane of array irradiance and corresponding power output) relied upon in arriving at the Initial OEPR's NEP OEPR Estimate and the Measured Performance Ratio formula in Section 2.6(a)(ii) of this Agreement. Within 30 Days of Company's receipt of the Initial OEPR together with the aforementioned supporting data, Company shall either (i) provide written notice to Seller of the

GPR Benchmark derived as aforesaid or (ii) if Company is unable to reasonably derive a GPR Benchmark as aforesaid, deliver a written request to the OEPR Evaluator (with a copy to Seller) that such OEPR Evaluator issue, within 30 Days, a written clarification of the Initial OEPR specifying the GPR Benchmark. If such request for clarification is made to the OEPR Evaluator, within 10 Business Days following the expiration of the 30-Day period provided for receipt of such OEPR Evaluator's reply, Company shall provide written notice to Seller of either (i) the GPR Benchmark derived from such written clarification by the OEPR Evaluator or (ii) the designation of **0.9** as the GPR Benchmark due to either the failure of the OEPR Evaluator to issue a written clarification or, if a written clarification was issued, the inability of Company to reasonably derive a GPR Benchmark on the basis of such written clarification.

- (iii) Commencing With the First Subsequent OEPR and Thereafter. Commencing with the issuance of the first Subsequent OEPR, for each period commencing with the first Day of the calendar month following the issuance of a Subsequent OEPR (including but not limited to the first Subsequent OEPR) through the end of the calendar month during which the next Subsequent OEPR is issued, the GPR Benchmark shall be calculated using the supporting data (plane of array irradiance and corresponding power output) relied upon in arriving at the NEP OEPR Estimate of the most recent Subsequent OEPR and the Measured Performance Ratio formula in Section 2.6(a)(ii) of this Agreement. Within 30 Days of Company's receipt of each Subsequent OEPR, Company shall either (i) provide written notice to Seller of the GPR Benchmark derived as aforesaid or (ii) if Company is unable to reasonably derive a GPR Benchmark as aforesaid, deliver a written request to the OEPR Evaluator (with a copy to Seller) that such OEPR Evaluator issue, within 30 Days, a written clarification of such Subsequent OEPR specifying the GPR Benchmark. If such request for clarification is made to the OEPR Evaluator, within 10 Business Days following the expiration of the 30-Day period provided for the receipt of such OEPR Evaluator reply, Company shall provide written

notice to Seller of either (i) the GPR Benchmark derived from such written clarification by the OEPR Evaluator or (ii) the designation of **0.9** as the GPR Benchmark due to either the failure of the OEPR Evaluator to issue a written clarification or, if a written clarification was issued, the inability of Company to reasonably derive a GPR Benchmark on the basis of such written clarification.

(iv) Disagreement Over Determination of GPR Benchmark. Any disagreement over the determination of the GPR Benchmark shall be resolved as set forth in Section 2 (Disagreements Concerning Availability Factor, GPR Benchmark and Measured Production Ratio) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

(c) GPR Benchmark and Liquidated Damages. For each LD Period, Seller shall achieve a Measured Performance Ratio, as calculated as provided in Section 2.6(a) (Calculation of Measured Performance Ratio) of this Agreement, of not less than 95% the GPR Benchmark as adjusted by the degradation factor set forth below. For avoidance of doubt, because the Measured Performance Ratio is calculated over an LD Period of 12 calendar months, the first month for which liquidated damages may be assessed under this Section 2.6(c) (GPR Benchmark and Liquidated Damages) would be the last calendar month of the initial Contract Year. If the Measured Performance Ratio for a LD Period is less than 95% the GPR Benchmark as adjusted by the degradation factor set forth below, Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the GPR Benchmark for such LD Period, an amount calculated in accordance with the following formula:

<u>Measured Performance Ratio</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
<p>Within the bandwidth (the "<u>Tier 1 Bandwidth</u>") of (i) 0.001 less than GPR Benchmark*DF*0.95</p>	<p>For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such LD Period falls within the bandwidth specified in this subparagraph, an amount equal to one-tenth of one percent (0.001) of the Applicable Period Lump Sum</p>

**and (ii) GPR
Benchmark*DF*0.9**

Payment for the last calendar month of such LD Period. The upper end of the aforementioned bandwidth consists of and includes the product, less 0.001, of the GPR Benchmark, the applicable degradation factor (DF), and 95%. The lower end of the aforementioned bandwidth consists of and includes the product of the GPR Benchmark, the applicable degradation factor (DF), and 90%; plus

**Within the
bandwidth (the
"Tier 2
Bandwidth" of (i)
0.001 less than
GPR
Benchmark*DF*0.9
and (ii) GPR
Benchmark*DF*0.8**

For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such LD Period falls within the bandwidth specified in this subparagraph, an amount equal to two-tenths of one percent (0.002) of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period. The upper end of the aforementioned bandwidth consists of and includes the product, less 0.001, of the GPR Benchmark, the applicable degradation factor (DF), and 90%. The lower end of the aforementioned bandwidth consists of and includes the product of the GPR Benchmark, the applicable degradation factor (DF), and 80%. plus

**0.001 less than
GPR
Benchmark*DF*0.8
and below**

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

For purposes of the foregoing calculations under this Section 2.6(c) (GPR Benchmark and Liquidated Damages), the degradation factor (DF) is calculated for each Contract Year (e.g., second Contract Year, third Contract Year, fourth Contract Year, etc.) as follows:

$DF = 0.994^{(\text{Applicable Contract Year} - 1)}$. For purposes of the foregoing formula, the "Applicable Contract Year" is the Contract Year within which the calendar month in question falls. If all of the months of an LD Period fall within the same Contract Year, that Contract Year is the "Applicable Contract Year." For example, if all of the months of an LD Period fall within the third Contract Year, the value assigned to the "Applicable Contract Year" would be "3" and the formula for calculating the DF for such LD Period would be: $DF = 0.994^{(3-1)}$. However, because the LD Period is a rolling 12-month period, the LD Period will often straddle two consecutive Contract Years. In such cases, all of the months falling within the same Contract Year will be assigned the value for such Contract Year and the value assigned to the "Applicable Contract Year" for purposes of the foregoing formula shall be the average of the assigned monthly values for such 12-month LD Period. For example, for an LD Period which has four months in the third Contract Year and eight months in the fourth Contract Year, the value assigned to the "Applicable Contract Year" for such LD Period would be 3.66, as calculated as follows:

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

and the formula for calculating the DF for such LD Period would be $DF = 0.994^{(3.66 - 1)}$. For purposes of determining liquidated damages under this Section 2.6(c) (GPR Benchmark and Liquidated Damages), the amount by which the Measured Performance Ratio for the LD Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the GPR Benchmark for a LD Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (d) Payment of Liquidated Damages for Failure to Achieve the GPR Benchmark. With respect to the liquidated damages for a calendar month payable under Section 2.6(c) (GPR Benchmark and Liquidated Damages), Company shall have the right, at any time on or after the MPR LD Assessment Date for such liquidated damages, at Company's option,

to off-set such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw such liquidated damages from the Operating Period Security, as follows:

- (i) if the Monthly Report for a given calendar month shows a Measured Performance Ratio for the LD Period in question for which liquidated damages are payable under Section 2.6(c) (GPR Benchmark and Liquidated Damages) and Company does not submit a Notice of MPR Disagreement with respect to such Monthly Report, the Company shall have the right to off-set or draw the amount of liquidated damages for such calendar month as calculated on the basis of such Measured Performance Ratio; and
- (ii) in all cases in which Company submits a Notice of MPR Disagreement for a given Monthly Report, Company shall have the right to off-set or draw all or any portion of the amount of liquidated damages for calendar month in question as calculated on the basis of the Measured Performance Ratio for the LD Period in question, as shown in such Notice of MPR Disagreement; provided, however, that:
 - (aa) if the amount off-set or drawn by the Company exceeds the amount of liquidated damages for such calendar month that are eventually found to be payable pursuant to the Measured Performance Ratio for the LD Period in question as determined under either Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(h) (Written Decision of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Company shall promptly repay such excess to Seller together with, unless the Parties otherwise agree in writing, interest from the date of Company's off-set or draw until the date that such excess is repaid to Seller at the average Prime Rate for such period; and
 - (bb) if Company does not exercise its rights to set-off or draw liquidated damages for such

calendar month, or does not set-off or draw the full amount of the liquidated damages for such calendar month that are eventually found to be payable pursuant to the determination of the Measured Performance Ratio for the LD Period in question as determined under either Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(h) (Written Decision of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Seller shall promptly, upon determination of such Measured Performance Ratio as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the MPR LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to off-set such interest for the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to off-set liquidated damages and/or interest from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment for Dispatchability) of this Agreement or to draw such liquidated damages and/or interest from the Operating Period Security shall not constitute a waiver by Company of its right to do so.

- (e) MPR Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.6(c) (GPR Benchmark and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the GPR Benchmark for a LD Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially

underperform the GPR Benchmark. Accordingly, and without limitation to Company's rights under said Section 2.6(c) (GPR Benchmark and Liquidated Damages) for those LD Periods during which the Seller failed to achieve the GPR Benchmark, the failure of the Facility to achieve, for each of three consecutive Contract Years, a Measured Performance Ratio of not less than the Tier 2 Bandwidth for such Contract Year shall constitute an Event of Default under Section 15.1(c) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

- 2.7 No Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, Company shall not be obligated to accept or pay for any electric energy delivered by Seller. Company shall not, and shall not be obligated to, make any payment for the availability of the Facility prior to the Commercial Operations Date.
- 2.8 Sales of Electric Energy By Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Seller).
- 2.9 Company's Obligation to Provide Certain Data. By the fifth (5th) Business Day of each calendar month, Company shall provide Seller or its designated agent with the appropriate data for Seller to compute the amount to be paid for the electric energy purchased by Company in the preceding calendar month as determined in accordance with this Agreement.
- 2.10 Seller's Preparation of the Monthly Invoice. By the tenth (10th) Business Day of each calendar month, Seller shall submit to Company an invoice that separately states the following for the preceding month: (i) the Actual Output during this period; (ii) the charge for electric energy purchased by Company, as set forth in Attachment J (Company Payments for Energy and Dispatchability) of this Agreement; (iii) the monthly Lump Sum Payment for this period; and (iv) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement.

- 2.11 Payment Procedures. By the twentieth (20th) Business Day of each calendar month (but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty Business Days in that month), Company shall, subject to Company's right to off-set liquidated damages as provided in Section 2.5(c) (Payment of Liquidated Damages for Failure to Achieve the Availability Benchmark) and Section 2.6(d) (Payment of Liquidated Damages for Failure to Achieve the GPR Benchmark) of this Agreement, make payment on such invoice, or provide to Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. Notwithstanding the foregoing, the Day by which the Company shall make payment to Seller hereunder shall be increased by one (1) day for each Day that Seller is delinquent in providing to the Company either: (i) the Monthly Report for the calendar month in question pursuant to Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement; or (ii) the information required under Section 2.10 (Seller's Preparation of the Monthly Invoice) of this Agreement. However, if Company is not timely in providing data required in Section 2.9 (Company's Obligation to Provide Certain Data) and this directly causes Seller to be unable to deliver its invoice in accordance with the time frame set forth in Section 2.10 (Seller's Preparation of the Monthly Invoice), then Company shall still meet the twentieth (20th) Business Day payment date. If Seller is unable to provide a complete invoice for the reasons set forth in the preceding sentence, an estimated payment, subject to reconciliation with the complete invoice, may be made by Company as an interim provision until a complete invoice can be prepared by Seller and received by Company.
- 2.12 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.5 (c) (ii) and Section 2.6(d) (ii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in that month), or following the due date for such payment if extended pursuant to Section 2.11 (Payment Procedures), at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due until the invoiced amounts (or amounts due to Seller if determined to be less than the invoiced amounts) are paid in

full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

- 2.13 Adjustments to Invoices After Payment. In the event adjustments are required to correct inaccuracies in an invoice after payment, the Party requesting adjustment shall recompute and include in the Party's request the principal amounts due during the period of the inaccuracy together with the amount of interest from the date that such invoice was payable until the date that such recomputed amount is paid at the average daily Prime Rate for the period. The difference between the amount paid and that recomputed for the invoice, along with the allowable amount of interest, shall either be (i) paid to Seller or set-off by Company, as appropriate, in the next invoice payment to Seller, or (ii) objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request. If the Party responsible for such payment objects to the request, then the Parties shall work together in good faith to resolve the objection. If the Parties are unable to resolve the objection, the matter shall, except to the extent otherwise provided in Section 28.3 (Exclusions), be resolved pursuant to Article 28 (Dispute Resolution). All claims for adjustments shall be waived for any amounts that were paid or should have been payable more than thirty-six (36) months preceding the date of receipt of any such request.
- 2.14 Company's Billing Records. Seller, after giving reasonable advance written notice to Company, shall have the right to review all billing, metering and related records necessary to verify the accuracy of the data provided by Company pursuant to Section 2.9 (Company's Obligation to Provide Certain Data) and payments relating to the Facility during Company's normal working hours on Business Days. Company shall maintain such records for a period of not less than thirty-six (36) months.

ARTICLE 3

FACILITY OWNED AND/OR OPERATED BY SELLER

- 3.1 The Facility. Seller agrees to furnish, install, operate, and maintain the Facility in accordance with the provisions of this Agreement, including, without limitation, the operating procedures and performance standards as more fully described in Attachment B (Facility Owned by Seller) and Attachment C (Methods and Formulas for Measuring Performance

Standards). After the Commercial Operations Date, Seller agrees that no changes or additions to the Facility shall be made without prior written approval by Company and amendment to the Agreement unless such changes or additions to the Facility could not reasonably be expected to have a material effect on the assumptions used in performing the IRS.

- 3.2 Allowed Capacity. The net instantaneous MW output from Facility may not exceed the Allowed Capacity. Company may take appropriate action to limit the Actual Output pursuant to, but not limited to, Article 8 (Company Dispatch) Article 9 (Personnel and System Safety), Article 25 (Good Engineering and Operating Practices), and Attachment B (Facility Owned by Seller).
- 3.3 Point of Interconnection. The Point of Interconnection is shown on Attachment E (Single-Line Drawing and Interface Block Diagram), as provided in Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller). The Point of Interconnection will be at the voltage level of the Company System. If it is necessary to step up the voltage at which Seller's electric energy is delivered to Company System, the Point of Interconnection will be on the high voltage side of the step-up transformer.
- 3.4 Renewable Portfolio Standards.
- (a) Renewable Portfolio Standards. If, as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as "renewable electrical energy," Seller shall, at the request of Company, develop and recommend to Company within a reasonable period of time following Company's request, but in no event more than 90 Days after Seller's receipt of such request (or such other period of time as Company and Seller may agree in writing) reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" ("Seller's RPS Modifications Proposal").
- (b) Seller's RPS Modifications Proposal. Upon receipt of Seller's RPS Modifications Proposal, Company will evaluate Seller's RPS Modifications Proposal. Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such

additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).

- (c) RPS Modifications Document. If, following Company's evaluation of Seller's RPS Modifications Proposal, Company desires to consider the implementation by Seller of the changes recommended in Seller's RPS Modifications Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of Seller's RPS Modifications Proposal, and Company and Seller shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Contract Pricing pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS Modifications Document as to the effective date for the RPS Modifications shall be measured from the date the PUC Order with respect to such RPS Modifications becomes non-appealable as provided in Section 3.4(e) (PUC RPS Order).
- (d) Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a RPS Modifications Document within 180 Days of Company's written notice to Seller pursuant to Section 3.4(c) (RPS Modifications Document), Company shall have the option of declaring the failure to reach agreement on and execute such Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 3.4(h) (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a RPS Modifications Document as described in Section 3.4(c) (RPS Modifications Document).
- (e) PUC RPS Order. No RPS Modifications Document shall constitute an amendment to the Agreement unless and

until a PUC RPS Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such RPS Modifications Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 3.4(e) (PUC RPS Order), such PUC RPS Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

- (f) Company's Rights. The rights granted to Company under Section 3.4(C) (RPS Modifications Document) and Section 3.4(D) (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a RPS Modifications Document or to initiate dispute resolution under Section 3.4(H) (Dispute), as a result of a failure to agree upon and execute any RPS Modifications Document.
- (g) Limited Purpose. This Section 3.4 (Renewable Portfolio Standards) is intended to specifically address the implementation of reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under any RPS Amendment and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to this Agreement in accordance with the provisions of this Section 3.4 (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default.

(h) Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a RPS Modifications Document pursuant to Section 3.4(D) (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.

- (1) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:
- (a) The reasonable measures required to be taken by Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question;
 - (b) How Seller would implement such measures;
 - (c) Reasonably expected net costs and/or lost revenues associated with such measures so the energy delivered by the Facility complies with such revised definition of "renewable electrical energy" under the RPS Amendment in question;
 - (d) The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and

- (e) Contractual consequences for non-performance that are commercially reasonable under the circumstances.
- (2) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (3) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.
- (4) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question, the Independent Evaluator shall determine that the Agreement shall not be amended to comply with such changes in RPS (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Seller to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under RPS, the Independent Evaluator shall incorporate such required changes into a RPS Modifications Document including (aa) Seller's RPS Modifications, (bb) pricing terms that incorporate the RPS Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to the

RPS Modifications. In addition to the RPS Modifications Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

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

ARTICLE 4
COMPANY-OWNED INTERCONNECTION FACILITIES

The terms and conditions related to the Company-Owned Interconnection Facilities are set forth in Attachment G (Company-Owned Interconnection Facilities) of this Agreement. In accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities), on the Transfer Date, Seller shall convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller by executing a Bill of Sale and Assignment document substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). In addition, in accordance with Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) on the Transfer Date, Seller shall deliver to Company any and all executed documents required to assign all leases with respect to the Company-Owned Interconnection Facilities to Company, which documents shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption).

ARTICLE 5
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Seller's Logs. Seller shall maintain, at least daily, a log in which it shall record all pertinent data that

will indicate whether the Facility is being operated in accordance with Good Engineering and Operating Practices. These data logs shall include, but not be limited to, all maintenance and inspection work performed at the Facility, circuit breaker trip operations, relay operations including target indications, megavar and megawatt recording charts (and/or equivalent computer records), all unusual conditions experienced or observed and any reduced capability and the reasons therefor and duration thereof. For each inverter generator, the data reported shall include planned derated hours, unplanned derated hours, average derated kW during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line.

- (b) Company Access to Seller's Logs. Seller shall provide Company access to Seller's records which identify the priority, as internally assigned by Seller, of specific preventive or corrective maintenance activities. These records shall include items for which Seller has deferred the inspection or corrective action to a future scheduled plant outage. In addition, Seller shall provide copies of all written correspondence between Seller and the Facility Lender and Seller and the insurance underwriters for the Facility equipment pertaining to maintenance practices, procedures and scheduling (including deferral) of maintenance at the Facility.
- (c) Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the fueling, operation and maintenance of the Facility shall be maintained by Seller for a period of not less than six (6) years. Company shall have the right to review and copy any such items upon request.

5.2 Maintenance Records.

- (a) Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit to Company for inspection at the Site, a summary in a format similar to the example provided in Attachment V (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of all

maintenance and inspection work performed in the prior calendar year, and of all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement. The summary shall present the requested data in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format with sufficient software so that Company can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item. Such summary shall also include Seller's proposals for correcting or preventing recurrences of identified equipment problems and for performing such other maintenance and inspection work as is required by Good Engineering and Operating Practices.

- (b) Company's Written Recommendations. Within sixty (60) Days of receiving such summary, and after any reasonable inspection desired by Company of the Facility and consultation with Seller, Company may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Company's making or failing to make recommendations with respect to operation and maintenance of the Facility shall not be construed as endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Company right. If Seller agrees with Company, Seller shall, within a reasonable time after Company makes such recommendations, not to exceed ninety (90) Days, implement Company's recommendations. If Seller disagrees with Company, it shall within ten (10) days inform Company of alternatives it will take to accomplish the same intent, or provide Company with a reasonable explanation as to why no action is required by Good Engineering and Operating Practices. If Company disagrees with Seller's position, and if, for each of the three preceding Contract Years, the Availability Factor was less than **94%** and/or the MPR was less than the Tier 1 Bandwidth for such Contract Year, then the parties shall commission a study by a

Qualified Independent Consultant chosen from the Qualified Independent Consultant List set forth in Attachment U (Consultant List) to this Agreement and the Qualified Independent Consultant will make a recommendation to remedy the situation. Seller shall abide by the Qualified Independent Consultant's recommendation contained in such study. Both Parties shall equally share in the cost for the Qualified Independent Consultant. However, Seller shall pay all costs associated with implementing the recommendation contained in the Independent Consultant's report.

- 5.3 Seller's Quarterly Maintenance Schedule: By each March 1st, June 1st, September 1st and December 1st (as applicable, subsequent to the Commercial Operations Date), Seller shall provide to Company in writing a projection of maintenance outages and reductions in capacity for the next calendar quarter, including the estimated MW that is anticipated to be off-line for each projected maintenance event. Seller shall provide Company with prompt written notice of any deviation from its quarterly maintenance schedule but in any case Seller shall provide such written notice not less than one week prior to commencing any such re-scheduled maintenance event. During any scheduled or re-scheduled maintenance event, Seller will provide an update each Day to Company's operating personnel regarding the status of such maintenance.
- 5.4 Seller's Annual Maintenance Schedule: In addition, Seller shall submit to Company a written schedule of maintenance outages which will reduce the capacity of the Facility by **[five (5) MW] [more than 25% of the Allowed Capacity]** or more for the next two-year period, beginning with January of the following year, in writing to Company each year by June 30. The schedule shall state the proposed dates and durations of scheduled maintenance, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility and the estimated MW that is anticipated to be off-line for each projected maintenance event. Company shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Company's concurrence or requested revisions; provided, however, that Seller shall not be required to agree to any proposed revisions that, in Seller's judgment, will void or violate any warranties of equipment that is part of, or used in connection with, the Facility or violate any long-term service agreement with

respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question. With respect to such agreed upon revisions, Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by Company.

- 5.5 Seller's Notification Obligations. When Seller learns that any of its equipment will be removed from or returned to service, and any such removal or return may affect the ability of the Facility to deliver electric energy to Company, Seller shall notify Company as soon as practicable. This requirement to notify shall include, but not be limited to, notice to Company of Seller's intention to shut down any solar photovoltaic generator plus inverter unit. Any unit shut-down shall be coordinated with Company in advance to the extent practicable to allow a reasonable amount of time for Company to make generation adjustments required by the loss of availability from a unit shut-down.
- 5.6 [Reserved]
- 5.7 Operating and Maintenance Manuals. Not later than the Commercial Operation Date, Seller shall provide Company with (i) any and all manufacturer's equipment manuals and recommendations for maintenance and with any updates or supplements thereto within three (3) Business Days after Seller's receipt of same and (ii) a copy of the operating and maintenance manual and shall thereafter provide Company with any amendments thereto within three (3) Business Days after such amendment is adopted.

ARTICLE 6
FORECASTING

- 6.1 Data for Calculation of Availability Factor and Measured Performance Ratio and for Company Forecasts and Monitoring of Compliance. Seller shall provide to Company the meteorological and production data and the Site description information required by Company in order for Company to (i) calculate the Availability Factor and the Measured

Performance Ratio as provided in this Agreement, (ii) produce a real-time forecast for operations as well as a Day-ahead forecast and hourly forecasts for all variable generation facilities on the Company System and (iii) monitor Seller's compliance with the Performance Standards set forth in Section 3 (Performance Standards) of the Attachment B (Facility Owned by Seller).

6.2 Monitoring and Communication Equipment. Seller shall install and maintain appropriate equipment (the "Monitoring and Communication Equipment") for the purposes of (i) measuring the meteorological and production data required under Section 6.1 (Data for Calculation of Availability Factor and Measured Performance Ratio and for Company Forecasts and Monitoring of Compliance) with an accuracy of not less than that specified for each such data parameter in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller) [**and, if the monitoring equipment is part of the Company-Owned Interconnection Facilities, Section ___ of Attachment G (Company-Owned Interconnection Facilities)**] and (ii) recording and transferring such data to Company in real time. Seller shall maintain at the Site sufficient replacement parts to avoid or otherwise minimize any shutdown of the Facility pursuant to Section 6.4 (Shutdown for Lack of Reliable Real Time Data) of this Agreement while any of the Monitoring and Communication Equipment is being repaired, replaced or re-calibrated.

6.3 Calibrations, Maintenance and Repairs.

(a) Documentation Requirement. Seller shall provide to Company (i) the manufacturer's recommended schedule for the calibration and maintenance of each component of the Monitoring and Communication Equipment and (ii), subject to the limitation set forth in Section 1(a)(ii) of Attachment B (Facility Owned by Seller) of this Agreement, documentation of the performance of all such calibration and maintenance per manufacturer specifications. Although Company is to receive from Seller the aforesaid recommended schedules for calibration and maintenance, as well documentation of the performance of all such calibration and maintenance, Company shall have no responsibility to monitor Seller's compliance with such calibration and maintenance schedules. Accordingly, any failure by Company to bring Seller's attention any apparent failure by Seller to perform such recommended calibration and maintenance

shall neither relieve Seller of its obligations under this Agreement to perform such calibration and maintenance nor constitute a waiver of Company's rights under this Agreement with respect to such failure in performance by Seller.

- (b) Corrective Measures. In the event of a pattern of material inconsistencies in the data stream provided by the Monitoring and Communication Equipment, Seller shall perform, at Seller's expense, such corrective measures as Company may reasonably require, such as the recalibration of all field measurement device components of the Monitoring and Communication Equipment.
 - (c) Repairs. In the event of any failure in the Monitoring and Communication Equipment, Seller shall repair or replace such equipment within 15 Days of such failure or within such other time as agreed to by the Company in writing.
- 6.4 Shutdown For Lack of Reliable Real Time Data. Because the availability of reliable real time meteorological and production information is necessary in order for Company to effectively exercise its right to dispatch the Facility, Company shall have the right to direct Seller to shutdown the Facility due to the unavailability of reliable real time meteorological and/or production data and the duration of such shutdown shall be included in DownTime for purposes of calculating the Availability Factor under Section 2.5(a) (Calculation of Availability Factor) of this Agreement. In addition, in the event of the performance of corrective measures (including recalibration) and/or repairs to any Monitoring and Communication Equipment pursuant to Section 6.3(b) (Corrective Measures) or Section 6.3(c) (Repairs), Company shall have the right to direct Seller to shutdown the Facility and the Facility shall remain shutdown and shall be included in Downtime for purposes of calculating the Availability Factor under Section 2.5(a) (Calculation of Availability Factor) of this Agreement until such time as the successful completion of such corrective measures and/or repairs has been demonstrated to Company's reasonable satisfaction.
- 6.5 Seller Day-Ahead Forecasts of Actual Output.

- (a) Forecasts. To support validation of the Company forecasts referenced in Section 6.1 (Data for Calculation of Availability Factor and Measured

Performance Ratio and for Company Forecasts and Monitoring of Compliance), each Day during the Term commencing on the Commercial Operations Date, Seller shall submit to Company Seller's Day-ahead hourly forecasts of the Facility's Actual Output produced by a commercially available forecasting service or by the Seller's documented methodology (*i.e.*, climatology, persistence forecasting) for providing a forecast for the Facility's Actual Output for the next 24 hour period. Hourly Day-ahead forecasts shall be submitted to Company by 1200 Hawai'i Standard Time on each Day immediately preceding a Day on which electric energy from the Facility is to be delivered. Seller shall provide Company with an hourly forecast of Actual Output for each hour of the next Day. Seller shall update such forecast and provide unit availability updates any time information becomes available indicating a change in the forecast of Actual Output from the Facility. The forecasts called for by this Agreement shall be substantially in the form reasonably requested by Company.

- (b) Accuracy of Forecasts. Company acknowledges that the Seller's Day-ahead forecasts are based on forecast estimates and not guarantees. Such limitation notwithstanding, Seller shall exercise commercially reasonable efforts to ensure the accuracy of the Day-ahead forecasts required hereunder for validation purposes and to support Company's forecasts. This includes a detailed description of the methodology used by Seller for forecasting. For example, Seller shall prepare such forecasts and updates by utilizing a solar power forecast or other service that is (i) commercially available or proprietary to Seller, (ii) comparable in accuracy to models or services commonly used in the solar energy industry and that reflect equipment availability, and (iii) is satisfactory to Company in the exercise of its reasonable discretion.
- (c) Company's Forecasting System. Company currently subscribes to a forecasting service. Company uses such forecasting service to set Company's dispatch schedules for all facilities. Seller, may if it chooses, subscribe to Company's forecasting service, at Seller's cost. If Seller so chooses to subscribe to Company's forecasting service and elects to use such service in lieu of creating its own forecast, Seller shall not be

required to provide Day-ahead forecasts pursuant to this Section 6.5 (Seller Day-Ahead Forecasts of Actual Output).

- 6.6 Reports, Studies and Assessment. Prior to the Execution Date, Seller has provided Company with (1) Seller's explanation of the methodology and underlying information used to derive the NEP RFP Projection, including the preliminary design of the Facility and the typical meteorological year file used to estimate the Renewable Resource Baseline, and (2) a written report confirming the reasonableness of NEP RFP Projection, taking into account the Renewable Resource Baseline, the preliminary design of the Facility, the provisions of this Agreement, and any other relevant factors, which report was prepared by an independent consultant experienced in utility scale photovoltaic energy generation and retained by Seller at its expense. The independent consultant was selected from among the entities listed in Section 4(h) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. Throughout the Term, Seller shall, for purposes of facilitating Company's forecasting, deliver to Company, promptly upon Seller's receipt of same, any reports, studies or assessments prepared for the benefit of the Seller by an independent engineer of (i) the electric energy producing potential of the Site or (ii) the Facility.

ARTICLE 7
SELLER PAYMENTS

Seller shall pay to Company (i) all amounts pursuant to Attachment G (Company-Owned Interconnection Facilities), (ii) all amounts pursuant to Section 10.1 (Meters) and Section 10.2 (Meter Testing), (iii) a monthly metering charge of \$25.00 per month, which is in addition to any charges due Company pursuant to the applicable rate schedule pursuant to Section 2.8 (Sales of Electric Energy By Company to Seller) of this Agreement and (iv) such other costs to be incurred by Company and reimbursed by Seller as set forth in this Agreement.

ARTICLE 8
COMPANY DISPATCH

- 8.1 General. Company shall have the right to dispatch real and reactive power delivered from the Facility to the Company System and to start up and shut down Seller's generating units, as it deems appropriate in its reasonable discretion,

subject only to and consistent with Good Engineering and Operating Practices, the requirements set forth in Attachment B (Facility Owned by Seller), Section 3 (Performance Standards) of this Agreement and Seller's maintenance schedule determined in accordance with Article 5 (Maintenance Records and Scheduling). Company shall not pay for reactive power.

- 8.2 Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall prepare and provide to Company a Monthly Report by the fifth (5th) Business Day of the following month in accordance with Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) of this Agreement. Beginning with the Monthly Report for the last calendar month of the initial Contract Year, Seller shall include calculations of the Availability Factor for the LD Period and the Measured Performance Ratio for the LD Period, as well as the calculation of any liquidated damages to be assessed, as set forth in the form of Monthly Report set forth in Section 1 (Monthly Report) of said Attachment T. The rights and obligations of the Parties with respect to each Monthly Report and any disagreements arising out of any Monthly Report are set forth in Section 1 (Monthly Report) and Section 2 (Disagreements Concerning Availability Factor, GPR Benchmark and Measured Performance Ratio) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

ARTICLE 9
PERSONNEL AND SYSTEM SAFETY

Notwithstanding any other provisions of this Agreement, if at any time Company reasonably determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to disconnect the Facility from the Company System, as determined in the sole discretion of the Company System Operator. The Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain disconnected, until such time as Company is satisfied that the condition(s) referred to above have been corrected, and the period during which the Facility is disconnected pursuant to this Article 9 shall constitute a Seller-Attributable Non-Generation. If Company disconnects the Facility

from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Seller by telephone, and thereafter confirm in writing, the reasons for the disconnection.

ARTICLE 10
METERING

10.1 Meters. Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of electric energy from the Facility sold to Company in kilowatts and kilowatt-hours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovar-hours. The metering point shall be as close as possible to the Point of Interconnection as allowed by Company. Seller shall make available a mutually agreeable location for the Revenue Metering Package. Seller shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval, as further described in Section 1(e) (Other Equipment) of Attachment B (Facility Owned by Seller). The Seller shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) of the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test such revenue meter prior to installation and shall test such revenue meter every fifth year. Seller shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Revenue Metering Package.

10.2 Meter Testing. Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the revenue meters or metering equipment. Seller shall have the right to have a representative present during each such test. Seller may request, and Company shall perform, if requested, tests in addition to the every fifth-year test and Seller shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to the fifth year test and Company shall pay the cost of such tests. If any of the revenue meters or

metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section 10.2 (Meter Testing), Company shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as an estimate for correct meter readings, shall be determined in accordance with Section 10.3 (Corrections).

- 10.3 Corrections. If any test of revenue meters or metering equipment conducted by Company indicates that the revenue meter readings are in error by one percent (1%) or more, the revenue meters or meter readings shall be corrected as follows: (i) determine the error by testing the revenue meter at approximately ten percent (10%) of the rated current (test amperes) specified for such revenue meter; (ii) determine the error by testing the revenue meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the revenue meter; (iii) the average meter error shall then be computed as the sum of (aa) one-fifth (1/5) of the error determined in the foregoing clause "(i)" and (bb) four-fifths (4/5) of the error determined in the foregoing clause "(ii)". The average meter error shall be used to adjust the invoices in accordance with Section 2.13 (Adjustment to Invoices After Payment) for the amount of electric energy supplied to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11
GOVERNMENT APPROVALS,
LAND RIGHTS AND COMPLIANCE WITH LAWS

- 11.1 Governmental Approvals for Facility. Seller shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System.
- 11.2 Land Rights for Facility. Seller shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Seller shall provide to Company, no later than the Execution Date, copies of the documents, recorded, if required by Company (including but not limited to any agreements with landowners) (i) establishing the right of Seller to construct, own, operate and maintain the Facility

on the Site and (ii) any other Land Rights required for such construction, ownership, operation and maintenance.

- 11.3 Company-Owned Interconnection Facilities. Seller shall, prior to commencement of construction of Company-Owned Interconnection Facilities (whether to be built by Seller or by Company), provide the necessary Governmental Approvals and Land Rights for the interconnection of the Facility to the Company System, including the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities.
- 11.4 Compliance With Laws. Seller shall at all times comply with all applicable Laws and shall be responsible for all costs and expenses associated therewith.

ARTICLE 12
TERM OF AGREEMENT AND COMPANY'S
OPTION TO PURCHASE AT END OF TERM

- 12.1 Term. Subject to Section 12.2 (Effectiveness of Obligations) of this Agreement, the initial term of this Agreement shall commence upon the Execution Date of this Agreement and shall remain in effect for **[twenty (20) Contract Years]** following the Commercial Operations Date (the "Initial Term") unless terminated sooner as provided in this Agreement. Upon expiration of the Initial Term, this Agreement shall automatically continue in effect thereafter until terminated by either Party as provided for herein (the "Extended Term"). Either Company or Seller may terminate this Agreement at any time after the end of the Initial Term upon not less than ninety (90) Days' advance written notice to the other Party. The Contract Pricing in effect at the end of the Initial Term shall remain in effect thereafter until this Agreement is terminated as provided in the previous sentence.
- 12.2 Effectiveness of Obligations. Only Article 3 (Facility Owned and/or Operated by Seller), Article 12 (Term of Agreement and Company's Option to Purchase at End of Term), Article 14 (Credit Assurance and Security) as it relates to Development Period Security, Article 17 (Indemnification), Article 19 (Transfers, Assignments and Facility Debt), Article 22 (Warranties and Representations), Article 24 (Financial Compliance), Article 28 (Dispute Resolution), Article 29 (Miscellaneous), Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of Attachment G (Company-Owned

Interconnection Facilities) and the Definitions of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.

12.3 PUC Approval.

- (a) This Agreement is subject to approval by the PUC in the form of a satisfactory PUC Approval Order and the Parties' respective obligations hereunder are conditioned upon receipt of such approval, except as specifically provided otherwise herein. Upon the Execution Date of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of Section 29.20(a) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurances that a PUC Approval will ultimately be obtained. Seller will provide reasonable cooperation to expedite obtaining a PUC Approval Order including timely providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether or not a PUC Approval Order will be issued and each Party hereby assumes any and all risks arising from, or relating in any way to, the inability to obtain a satisfactory PUC Approval Order and hereby releases the other Party from any and all claims relating thereto.
- (b) Seller shall seek participation without intervention in the PUC docket for approval of this Agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of

this Agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives any right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

12.4 Interconnection Requirements Study. If this Agreement is executed prior to completion of the Interconnection Requirements Study, then following the completion of the IRS:

- (a) The Parties shall, no later than the PPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawings and Interface Block Diagram), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), and Attachment L (Reporting Milestones) (the "Interconnection Requirements Amendment") to reflect the results of the IRS. If the Interconnection Requirements Amendment is not executed by the PPA Amendment Deadline, either Party may, by written notice delivered to the other Party, declare the Agreement null and void; or
- (b) If Seller is dissatisfied with the results of the IRS, Seller shall have the option, by written notice delivered to Company no later than the Termination Deadline, to declare this Agreement null and void. Failure of Seller to declare this Agreement null and void pursuant to the preceding sentence shall not obligate Seller to execute the Interconnection Requirements Amendment.

12.5 Prior to Effective Date. Company may, by written notice delivered prior to the Effective Date, declare the Agreement null and void if any one or more of the following conditions applies:

- (a) Company reasonably determines that the description of the Facility in the Agreement and the IRS no longer represents the Facility Seller is capable of constructing because of changes in the type of, performance specifications of, or availability of equipment.
- (b) Seller is in breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) requiring Seller to have obtained by the Execution Date all Land Rights necessary for the construction, ownership, operation and maintenance of the Facility for the Initial Term and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amount specified in said Section 3(b)(ii) within the time period provided in said Section 3(b)(ii).
- (c) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (d) Seller has notified Company in writing that it desires to modify (i) the Agreement and/or (ii) the Facility as described in the Agreement and the IRS.
- (e) Seller fails to cause the Facility Lender to make available to Company an IE Energy Assessment report with an NEP IE Estimate that is consistent with the requirements of this Agreement, as more fully provided in Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

12.6 Time Periods for PUC Submittal Date and PUC Approval.

- (a) Time Period for PUC Submittal Date. If the PUC Submittal Date has not occurred within 120 Days of the Execution Date, or such longer period as Company and Seller may agree to by a subsequent written agreement, Company may, by written notice delivered within 30 Days of the expiration of such period, declare the Agreement null and void if the reason the application has not been filed is (i) any one or more of the conditions set forth in Section 12.5 (Prior to Effective Date) or (ii) Seller's failure to provide in a timely manner information reasonably requested by Company to support such application.
- (b) Time Period for PUC Approval. If the Commission issues an Unfavorable PUC Order or if the satisfactory PUC Approval Order is not obtained within twelve (12) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a written agreement ("PUC Approval Time Period"), Company or Seller may, by written notice delivered within one hundred and eighty (180) Days of the Unfavorable PUC Order or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void. In the event the PUC Approval Order is obtained within the PUC Approval Time Period but that Order is appealed, and a Non-appealable PUC Approval Order is not obtained within PUC Approval Time Period, or within such longer period as Company and Seller may agree to by a subsequent written agreement, Company or Seller may, by written notice delivered within ninety (90) Days of the expiration of the PUC Approval Time Period, declare this Agreement null and void.

12.7 Agreement Null and Void. If the Agreement is declared null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U, the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this Section 12.7 (Agreement Null and Void) and Section 14.3 (Return of Development Period Security), and shall pursue no further remedies against one another;

provided, however, that if in response to Seller's request and Seller's offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-appealable PUC Approval Order Date or completion of the IRS, Seller shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any reasonable costs incurred thereafter and Company shall refund to Seller any amounts advanced by Seller in excess of such costs. A declaration that this Agreement is null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U, shall not affect the following provisions, which shall remain in full force and effect: Section 12.2 (Effectiveness of Obligations), this Section 12.7 (Agreement Null and Void), Article 28 (Dispute Resolution), Section 29.3 (Notices), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.14 (Settlement of Disputes), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), and Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities).

- 12.8 Termination Rights. Notwithstanding any of the foregoing, Company or Seller may terminate the Agreement at any time upon the occurrence of any condition described in Article 15 (Events of Default).
- 12.9 Option to Purchase Facility and Right of First Negotiation. Company shall have the right of first negotiation prior to the end of the Term and option to purchase the Facility at the end of the Term, as provided in Attachment P (Sale of Facility by Seller) to this Agreement.

ARTICLE 13
CONSTRUCTION MILESTONES INCLUDING
THE GUARANTEED SUBSTANTIAL COMMITMENT DATES
AND THE GUARANTEED COMMERCIAL OPERATIONS DATE

[HECO TO DECIDE, FOLLOWING COMPLETION OF IRS, IF ANY GUARANTEED PROJECT MILESTONES ARE NECESSARY IN ADDITION TO THE GUARANTEED

SUBSTANTIAL COMMITMENT DATES AND THE GCOD (INCLUDING WHETHER ANY REPORTING MILESTONES SHOULD BECOME GUARANTEED PROJECT MILESTONES) AND, IF SO, WHAT ARE THE CONSEQUENCES OF MISSING SUCH OTHER GUARANTEED PROJECT MILESTONES.]

13.1 Time is of the Essence. Time is of the essence of this Agreement, and Seller's ability to achieve the Construction Milestones is critically important.

13.2 Failure to Meet Certain Reporting Milestones. If Seller does not meet any of the Permit Application Filing Date Milestone, the Construction Financing Closing Milestone or the Construction Start Date Milestone, in each case as set forth in Attachment L (Reporting Milestones), Seller shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (i) the missed Reporting Milestone date within ninety (90) Days of the missed Reporting Milestone and (ii) all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.

13.3 Guaranteed Project Milestone Dates. Seller shall achieve each Guaranteed Project Milestone Date, subject (to the extent applicable) to the following grace periods:

- (a) if the failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date is the result of the PUC Approval Order Date occurring more than one hundred eighty (180) Days after the Execution Date, Seller shall be entitled to a grace period following the Guaranteed Commercial Operation Date equal to the lesser of (i) the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date, or (ii) the number of Days following the Guaranteed Commercial Operations Date that are reasonably necessary for Seller, using reasonable diligence to achieve the Commercial Operations Date in the shortest period of time; **[THIS PARAGRAPH SHOULD BE DELETED IF THE GCOD IS A PERIOD OF DAYS MEASURED FROM THE EFFECTIVE DATE RATHER THAN A DATE CERTAIN. NOTE THAT THE "PUC APPROVAL ORDER DATE" IS THE DATE THE ORDER IS ISSUED AND NOT THAT IT BECOMES NON-APPEALABLE.]** or

- (b) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of Force Majeure (which, for purposes of this Section 13.3(b) excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 13.3(a) above) **[PRECEDING PARENTHETICAL SHOULD BE DELETED IF SECTION 13.3(a) IS DELETED]**, and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, Seller shall be entitled to a grace period following such Guaranteed Project Milestone Date equal to the lesser of three hundred sixty-five (365) Days or the duration of the Force Majeure.
- (c) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of any failure by Company in the timely performance of its obligations under this Agreement, Seller shall be entitled to a grace period following such Guaranteed Project Milestone Date equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such grace period on the terms described above shall be Seller's sole remedy for any such failure by Company. For purposes of this Section 13.3(c), Company's performance will be deemed to be "timely" if it is accomplished within the time period specified in this Agreement with respect to such performance or, if no time period is specified, within a reasonable period of time. If the performance in question is Company's review of plans, the determination of what is a "reasonable period of time" will take into account Company's past practices in reviewing and commenting on plans for similar facilities.

13.4 Damages and Termination.

- (a) Daily Delay Damages. If the Commercial Operations Date has not been achieved by the later of the Guaranteed Commercial Operations Date or the expiration of any applicable grace period provided in Section 13.3 (Guaranteed Project Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of [REDACTED] for each Day ("Daily Delay Damages") following the Guaranteed Commercial Operations Date or (if applicable) the expiration of

such grace period that Seller fails to achieve the Commercial Operations Date, provided that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages shall not exceed one hundred eighty (180) Days. **[Note: Contract Capacity x \$50/kW ÷ 180 Days = Daily Delay Damages.]**

- (b) Termination and Termination Damages for Failure to Achieve Guaranteed Commercial Operations Date. If, upon the expiration of the aforesaid 180-Day period (the "COD Delay LD Period"), Seller has not achieved the Commercial Operations Date, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Seller, and not earlier than the first to occur of the Day such notice is deemed to be received by Seller or the Day following the expiration of the COD Delay LD Period. Without limiting the generality of the preceding sentence, the earliest Day upon which a termination of this Agreement can be effective as a result of a failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date would be the Day following expiration of the COD Delay LD Period. If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect liquidated damages ("Termination Damages"), which shall be calculated in accordance with Article 16 (Damages in the Event of Termination By Company) of this Agreement.
- (c) Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date. If Seller has not achieved a Substantial Commitment Milestone by the applicable Guaranteed Substantial Commitment Date, as extended by any grace period that may be applicable under Section 13.3 (Guaranteed Project Milestone Dates), Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination

is to be effective. For purposes of this Section 13.4(c) (Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date), a written request by Seller that the Company stop or otherwise delay the performance of engineering design, procurement and construction work that is the responsibility of Company under Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of Attachment G (Company-Owned Interconnection Facilities) shall be deemed a failure for Seller to achieve a Substantial Commitment Date. The effective date of any termination pursuant to this Section 13.4(c) (Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date) shall be not later than the date that is thirty (30) Days after the aforementioned termination notice is deemed to be received by Seller, and not earlier than the first to occur of the Day such notice is deemed to be received by Seller. If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect liquidated damages ("Termination Damages"), which shall be calculated in accordance with Article 16 (Damages in the Event of Termination By Company) of this Agreement.

- 13.5 Payment of Daily Delay Damages. Company shall draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Seller during the preceding calendar month. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Company is then entitled, Seller shall pay any such deficiency to Company promptly upon demand.
- 13.6 Liquidated Damages Appropriate. Seller's inability to achieve Commercial Operations by the Guaranteed Commercial Operations Date may cause Company to not meet applicable RPS requirements and require Company to devote substantial additional resources for administration and oversight activities. As such, Company may incur financial consequences for failure to meet such requirements. Consequently, each Party agrees and acknowledges that (i) the damages that Company would incur due to delay in achieving Commercial Operations by the Guaranteed Commercial Operations Date (subject to the grace periods provided in Section 13.3 (Guaranteed Project Milestone Dates)) would be

difficult or impossible to calculate with certainty, (ii) the Daily Delay Damages set forth in Section 13.4 (Damages and Termination) are an appropriate approximation of such damages and (iii) the Daily Delay Damages are the sole and exclusive remedies for Seller's failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date.

- 13.7 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Seller shall submit to Company, on the first Day of each calendar month until the Commercial Operations Date is achieved, progress reports in a form set forth on Attachment S (Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each Construction Milestone. Seller shall include in such report a list of all letters, notices, applications, filings and Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents as may be reasonably requested by Company. In addition, Seller shall advise Company as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Seller shall provide Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 21.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 13.7 (Monthly Progress Reports).

ARTICLE 14
CREDIT ASSURANCE AND SECURITY

- 14.1 General. Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 14 (Credit Assurance and Security).
- 14.2 Development Period Security. To guarantee undertaking the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operations Date (including but not limited to Seller's obligation to meet the Guaranteed Commercial Operations Date), Seller shall provide Development Period Security to Company within ten (10) Days of Execution Date of the Agreement.

- 14.3 Return of Development Period Security. The Development Period Security shall be returned to Seller, subject to Company's right to draw from the Development Period Security as set forth in Section 14.7 (Company's Right to Draw from Security Funds), in the following circumstances: (i) this Agreement is declared null and void pursuant to any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U ; (ii) the PUC issues an order denying approval for an application for a PUC Approval Order; (iii) the PUC issues an order that is not a complete approval and which is not satisfactory to Company; or (iv) following Company's receipt of the Operating Period Security, unless the Development Period Security is converted to Operating Period Security pursuant to Section 14.4 (Operating Period Security) of this Agreement.
- 14.4 Operating Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operations Date to the expiration or termination of this Agreement, Seller shall provide operating period security to Company in the amount of \$75/kW based on the Contract Capacity (the "Operating Period Security"). When the Commercial Operations Date has been achieved, the Development Period Security minus an amount that is due and owing to Company but not previously paid by Seller (including but not limited to Daily Delay Damages), shall be converted to Operating Period Security unless the Parties otherwise agree. Any additional amount necessary to fully fund the Operating Period Security shall be due within five (5) Days of the Commercial Operations Date.
- 14.5 Form of Security. Seller shall supply the Development Period and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank or other financial institution located in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poor's) of the bank or financial institution issuing the standby letter of credit

falls below A-, Company may require Seller to replace the standby letter of credit with a standby letter of credit from another bank or financial institution located in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

14.6 Security Funds. The Development Period Security and Operating Period Security (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Article 14 (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Company as provided in Section 14.7 (Company's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason.

14.7 Company's Right to Draw from Security Funds. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts due Company from any of the Security Funds to the extent available pursuant to this

Article 14 (Credit Assurance and Security), and from all such forms, and in any sequence Company may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

- 14.8 Failure to Renew or Extend Letter of Credit. If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 14.9 (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).
- 14.9 L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 14.8 (Failure to Renew or Extend Letter of Credit), Company shall, in order to avoid comingling the L/C Proceeds, have the right but not the obligation to place the L/C Proceeds in an escrow account as provided in this Section 14.9 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon full satisfaction of Seller's obligations under this Agreement, including recovery by Company of amounts owed to it under this Agreement, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Company may, in its sole discretion, draw on such accounts

in any sequence Company may select. Any failure to draw upon the L/C Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

- 14.10 Release of Security Funds. Promptly following the end of the Term, and the complete performance of all of Seller's obligations under this Agreement, including but not limited to the obligation to pay any and all amounts owed by Seller to Company under this Agreement, Company shall release the Security Funds to Seller.

ARTICLE 15
EVENTS OF DEFAULT

- 15.1 Events of Default by Seller. The occurrence of any of the following shall constitute an Event of Default by Seller:

- (a) if at any time during the Term, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement electric energy that was not generated by the Facility;
- (b) if at any time subsequent to the Commercial Operations Date, the Facility Availability Factor is less than **84%** for each of three consecutive Contract Years;
- (c) if at any time subsequent to the Commercial Operations Date, the Measured Performance Ratio for each of three consecutive Contract Years falls below the Tier 2 Bandwidth for such Contract Year⁴⁵;
- (d) if at any time subsequent to the Commercial Operations Date, the Facility is unavailable to provide electric energy in response to Company's dispatch for a period of three hundred sixty-five (365) or more consecutive Days;
- (e) if at any time during the Term, Seller fails to satisfy the Credit Assurance and Security requirements agreed to pursuant to Article 14 (Credit Assurance and Security) of this Agreement;
- (f) if at any time during the Term, Seller fails to comply with the requirements of Section 19.1 (Sale of Facility) and Attachment P (Sale of Facility by Seller);

- (g) if at any time during the Term, the Facility Lender declares a default under the Financing Documents; or
- (h) if at any time subsequent to the Commercial Operations Date, Seller fails to install, operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure is not cured within thirty (30) Days after written notice of such failure from Company unless such failure cannot be cured within said thirty (30) Day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of one hundred eighty (180) Days after Company's written notice of such failure.

15.2 Events of Default by a Party. The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action or breach in question:

- (a) The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment;
- (b) Any representation or warranty made by such Party herein is false and misleading in any material respect when made;
- (c) Such Party becomes insolvent, or makes an assignment for the benefit of creditors or fails generally to pay its debts as they become due; or such Party shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or shall file any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or

liquidation; or within ninety (90) days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed; or within ninety (90) days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession shall not have been vacated or terminated; or;

- (d) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable) without having obtained such consent;
- (e) Such Party fails to comply with either (i) decision under Article 28 (Dispute Resolution), (ii) or an Independent Evaluator's decision under Article 23 (Process for Addressing Revisions to Performance Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with Article 28 (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under Article 23 (Process for Addressing Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continue such commercially reasonable efforts until compliance is attained; or
- (f) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, other than the provisions specified in Section 15.1 (Events of Default by Seller) and Section 15.2(a) through Section 15.2(e), if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if it is objectively impossible to cure the breach or default in question within said thirty (30) Day period (i.e., if the breach or default in question is one

that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure within said thirty (30) Day period), then, for so long as the Non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure, the Non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure or (ii) a period of three hundred sixty five (365) Days beginning on the date of written notice of such breach or default.

15.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) are subject to the following cure/grace periods:

- (a) If the occurrence is not the result of Force Majeure, the Non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the applicable provision of Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party); or
- (b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, the Non-performing Party shall be entitled to a grace period as provided in Section 21.6 (Events of Default), which shall apply in lieu of any cure periods provided in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party).

15.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the Defaulting Party ("Non-defaulting Party") shall have the right (i) to terminate this Agreement by sending written notice to the Defaulting Party as provided in this Section 15.4 (Rights of the Non-defaulting

Party; Forward Contract); (ii) to withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement pursuant to this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall designate the Day such termination is to be effective which Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) to cure the default in question. If the Agreement is terminated by Company because of one or more of the Events of Default by Seller, Company shall have the right, in addition to the rights set forth above in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract), to collect liquidated damages ("Termination Damages"), in accordance with Article 16 (Damages in the Event of Termination by the Company). Without limitation to the generality of the foregoing provisions of this Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. §362(b)(6), this Agreement is a "forward contract" and the Company is a "forward contract merchant" such that upon the occurrence of an Event of Default by Seller under Section 5.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

- 15.5 Force Majeure. To the extent a Non-performing Party is entitled to defer certain liabilities pursuant to Article 21 (Force Majeure) of the Agreement, the permitted period of deferral shall be governed by Section 21.6 (Events of Default) in lieu of this Article 15 (Events of Default).
- 15.6 Guaranteed Substantial Commitment Dates and Guaranteed Commercial Operations Date. Notwithstanding any other provision of this Article 15 (Events of Default) to the contrary, any failure of Seller to achieve any of the Substantial Commitment Milestones by the applicable Guaranteed Substantial Commitment Date and/or the Commercial Operations Date by the Guaranteed Commercial Operations Date shall be governed by Article 13 (Construction Milestones

Including the Guaranteed Substantial Commitment Dates and the Guaranteed Commercial Operations Date) in lieu of this Article 15 (Events of Default).

- 15.7 Equitable Remedies. Seller acknowledges that Company is a public utility and is relying upon Seller's performance of its obligations under this Agreement, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Seller to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract). Accordingly, the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Seller's failure to perform any of its obligations under this Agreement, irrespective of whether such failure constitutes an Event of Default.

ARTICLE 16

DAMAGES IN THE EVENT OF TERMINATION BY COMPANY

- 16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW.
- 16.2 Termination Due to an Event of Default. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Seller is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$75/kW.
- 16.3 Liquidated Damages Appropriate. Each Party agrees and acknowledges that (i) the damages that Company would incur due to early termination of the Agreement pursuant to either Section 13.4 (Damages and Termination) or Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) would be difficult or impossible to calculate with certainty, (ii) the Termination Damages are an appropriate approximation of such damages, and (iii) payment of Termination Damages does not relieve Seller of liability for costs and balances incurred prior to the effective date of such termination. The Termination Damages are the sole and

exclusive remedy for Company's losses arising out of the termination of this Agreement. The Termination Damages are not intended to limit Company's rights or remedies, or Seller's liabilities or duties, with respect to losses arising independent of the termination of this Agreement, including, without limitation, Company's right to recover under Section 17.1 (Indemnification of Company).

- 16.4 Consequential Damages. Neither Party shall be liable for damages incurred by the other Party for any loss of profit or revenues, loss of product, loss of use of products or services or associated equipment, interruption of business, cost of capital, downtime costs, increased operating costs, or for any special, consequential, incidental, indirect or punitive damages; provided, however, that nothing in this Section 16.4 (Consequential Damages) shall limit any of (i) the indemnification obligations of either Party under Article 17 (Indemnification) of this Agreement, (ii) the liability of either Party for liquidated damages as set forth in this Agreement, (iii) the liability of either Party for direct damages for breach of this Agreement as and to the extent such damages have not been liquidated as set forth in this Agreement or (iv) the liability of either Party for gross negligence or intentional misconduct.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification of Company.

- (a) Indemnification Against Third Party Claims. Seller shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Facility or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller

Party, except as and to the extent that such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Company Party.

- (b) Compliance with Laws. Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller or an Indemnified Seller Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold harmless each Indemnified Company Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Seller to comply with any Laws.
- (c) Notice. If Seller shall obtain knowledge of any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.
- (d) Indemnification Procedures.
 - (1) In case any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims) or Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld.
 - (2) Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or

otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim to the extent permitted by this Section 17.1(d)(2). An Indemnified Company Party shall not enter into any settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

- (3) Upon payment of any Losses by Seller, pursuant to this Section 17.1 (Indemnification of Company) or other similar indemnity provisions contained herein, to or on behalf of Company, Seller, without any further action, shall be subrogated to any and all claims that an Indemnified Company Party may have relating thereto.
- (4) Company shall fully cooperate and cause all Company Indemnified Parties to fully cooperate, in the defense of or response to, any Claim subject to Section 17.1 (Indemnification of Company).

17.2 Indemnification of Seller.

- (a) Indemnification Against Third Party Claims. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim by a third party not controlled by or under common ownership and/or control with Seller (whether or not well founded, meritorious or unmeritorious) relating to any actual or alleged personal injury or death or damage

to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Seller Party.

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

(C) Indemnification Procedures.

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

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

requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section 17.2(c)(2). An Indemnified Seller Party shall not enter into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.

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

ARTICLE 18
INSURANCE

- 18.1 Required Coverage. Seller, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Seller and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements. Any deductible shall be the responsibility of Seller.
- 18.2 Waiver of Subrogation. Seller, and anyone acting under its direction or control or on its behalf, shall cause its insurers to waive all rights of subrogation which Seller or its insurers may have against Company, Company's agents, or Company's employees.
- 18.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance) and Section 3 (Automobile Liability Insurance) of Attachment R (Required

Insurance) shall name Company as an additional insured, as its interests may appear, with respect to any and all third party bodily injury and/or property damage claims, including completed operations, arising from Seller's performance of this Agreement, and Seller shall submit to Company a copy of such additional insured endorsement with evidence of insurance as required herein. The insurance policies specified in Section 4 (Builders All Risk Insurance) and Section 5 (All Risk Property/Comprehensive Boiler and Machinery Insurance (Upon Completion of Construction)) of Attachment R (Required Insurance) shall include Company as loss payee, as its interest may appear with respect to any Property or Boiler and Machinery losses. Seller shall immediately provide written notice to Company should any of the insurance policies required under this Agreement be cancelled, materially modified, or not renewed upon expiration. Company acknowledges that the Facility Lender shall be entitled to receive and distribute any and all loss proceeds as stipulated by any Financing Documents related to any policy described in this Article 18 (Insurance) and Attachment R (Required Insurance).

- 18.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 18 (Insurance) shall be provided to Company within thirty (30) Days after the Effective Date or prior to the start of construction, whichever shall first occur. Within 30 Days of any change of any policy and upon renewal of any policy, Seller shall provide certificates of insurance to Company. During the Term, Seller, upon Company's reasonable request, shall make available to Company for its inspection at Seller's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Seller's obligations to fulfill the requirements.
- 18.5 Deductibles. Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions, the amounts of which will be reviewed for acceptance by Company. Acceptance will not be unreasonably withheld.
- 18.6 Application of Proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the

insurance proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance to be applied to repair of the Facility.

- 18.7 Annual Review by Company. The coverage limits shall be reviewed annually by Company and if, in Company's discretion, Company determines that the coverage limits should be increased, Company shall so notify Seller. Seller shall, within thirty (30) Days of notice from Company, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Seller.
- 18.8 No Representation of Coverage Adequacy. By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to Company in this Agreement.
- 18.9 General Insurance Requirements.
- (a) Each policy shall be specifically endorsed by blanket or otherwise to provide that Seller's insurance is primary. Any other insurance carried by Company will be excess only and not contribute with this insurance.
 - (b) Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" or better.
 - (c) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Seller shall immediately, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 19
TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT

- 19.1 Sale of the Facility. Seller shall comply with the requirements of Attachment P (Sale of Facility by Seller) before (i) Seller's right, title or interest in the Facility, in whole or in part, may be disposed of, or (ii) any Ownership Interest is disposed of, or any change in Ownership Control occurs. Any attempt by Seller to make any

such disposition or change in control without fulfilling the requirements of Attachment P (Sale of Facility by Seller) shall be deemed null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

- 19.2 Assignment by Seller. Seller may not assign, pledge, mortgage, grant a security interest in or collaterally assign this Agreement, the Facility or any interest in the Facility (including any Ownership Interest or Ownership Control) without the prior consent of Company (such consent not to be unreasonably withheld, conditioned or delayed).
- 19.3 Company's Acknowledgment. In connection with any assignment relating to the Facility Debt to which Company consents pursuant to Section 19.2 (Assignment by Seller), Company shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller: (i) execute such Hawai'i-law-governed documents as may be reasonably requested by the Facility Lender to acknowledge such assignment and/or pledge/mortgage and the right of the Facility Lender to (aa) receive copies of notices of Events of Default where the Seller is the Defaulting Party and (bb) have reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement; and (ii) provide a legal opinion as to the due authorization of such Company acknowledgment.
- 19.4 Financing Document Requirements. In connection with any Facility Debt to which Company consents pursuant to Section 19.2 (Assignment by Seller), Seller shall use commercially reasonable efforts to obtain Financing Documents in a form reasonably satisfactory to Company which contain the following provisions for Company's benefit:
- (a) Each Facility Lender shall make a binding commitment to Company, in a manner legally enforceable by Company, that so long as this Agreement is in effect and there shall not exist and remain continuing any Event of Default by Company, such Facility Lender will take no action (except pursuant to rights granted to Seller under this Agreement) to disturb, affect or impair Company's rights under this Agreement, including without limitation its rights to dispatch the Facility, nor to terminate or otherwise adversely affect this Agreement, by means of (i) the exercise of any of its rights and remedies of foreclosure or sale afforded by the terms of the Financing Documents or by

law in respect of the Facility; or (ii) any other suit, action or proceeding upon the Financing Documents or the exercise of any other rights of such Facility Lender pursuant to any other documents or as a matter of law.

(b) Each Facility Lender shall agree: (i) to give written notice to Company of any event of default by Seller and any event known to such Facility Lender which, with notice or the passage of time or both, would constitute an event of default by Seller, under any Financing Documents; and (ii) to afford Company the right to cure any such event of default within sixty (60) Days after notice to Company of such event of default, and to forbear from exercising any right or remedy available to such Facility Lender in respect of such event of default during such cure period.

(c) Each Facility Lender shall agree that in the event of default by Seller under any Financing Documents, Company shall have the option in Company's sole discretion to (i) cure Seller's default without assuming Seller's obligations under the Financing Documents; (ii) cure Seller's default and directly or by an affiliate assume Seller's obligations under the Financing Documents; or (iii) directly or by an affiliate acquire all of the Facility Lender's interest under the Financing Documents.

19.5 Grant of Security Interest. In the event that the Facility Debt requires the grant of a security interest (including a mortgage) in this Agreement and/or the Facility, Seller shall provide Company with summaries of the material terms of the Financing Documents, amendments or modifications thereto, and copies of the Financing Documents. Such summaries and documents shall be provided to Company prior to Seller consummating the financing or refinancing to allow for a reasonable amount of time for Company to review such summaries and documents. The terms and conditions of such financing and refinancing shall be subject to Company's review and consent, which shall not be unreasonably withheld or delayed.

19.6 Reimbursement of Company Costs. Seller shall reimburse Company for costs and expenses incurred by Company (including reasonable attorneys' fees of outside counsel) in responding to Facility Lender's requests or as a result of any event of default by Seller under the Financing

Documents, including but not limited to any attempt to cure such event of default undertaken by Company as provided in Section 19.4(b) and Section 19.4(c) or any assumption of Seller's obligations under Section 19.4(c).

19.7 Assignment By Company. This Agreement shall not be assigned by Company without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company shall have the right, without the consent of Seller, to assign its interest in this Agreement to any affiliated company owned in whole or in part by Hawaiian Electric Industries, Inc.; provided, further, that such assignment does not impair the ability of Seller to continue to receive the payments it is entitled to under this Agreement.

19.8 Consequences for Failure to Comply. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable), without fulfilling the requirements of this Article 19 (Transfers, Assignments, and Facility Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

ARTICLE 20
SALE OF ENERGY TO THIRD PARTIES

Seller shall not sell energy from the Facility to any Third Party.

ARTICLE 21
FORCE MAJEURE

21.1 Definition of Force Majeure. The term "Force Majeure", as used in this Agreement, means any occurrence that:

- (a) In whole or in part delays or prevents a Party's performance under this Agreement;
- (b) Is not the direct or indirect result of the fault or negligence of that Party;
- (c) Is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and

(d) The Party has been unable to overcome by the exercise of due diligence.

21.2 Events That Could Qualify as Force Majeure. Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:

- (a) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
- (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or
- (c) except as set forth in Section 21.3(j) (Exclusions from Force Majeure), strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

21.3 Exclusions From Force Majeure. Force Majeure does not include:

- (a) any acts or omissions of any Third Party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;
- (b) any full or partial reduction in the electric output of Facility that is caused by or arises from (i) a mechanical or equipment breakdown or (ii) other mishap or events or conditions attributable to normal wear and tear or defects, unless such mishap is caused by Force Majeure;
- (c) changes in market conditions that affect the cost of Seller's supplies, or that affect demand or price for any of Seller's products, or that otherwise render this Agreement uneconomic or unprofitable for Seller;
- (d) Seller's inability to obtain Governmental Approvals or Land Rights for the construction, ownership, operation and maintenance of Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any

such Governmental Approvals or Land Rights once obtained;

- (e) the lack of wind, sun or any other resource of an inherently intermittent nature;
- (f) Seller's inability to obtain sufficient fuel, power or materials to operate its Facility, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;
- (g) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company pursuant to this Agreement;
- (h) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (i) litigation or administrative or judicial action pertaining to the Agreement, the Site, the Facility, the Land Rights, the acquisition, maintenance or renewal of financing or any Governmental Approvals, or the design, construction, ownership, operation or maintenance of the Facility, the Company-Owned Interconnection Facilities or the Company System;
- (j) a strike, work stoppage or labor dispute limited only to any one or more of the Indemnified Seller Parties or any other third party employed by Seller to work on the Project; or
- (k) any full or partial reduction in the availability of the Facility to produce and deliver to the Point of Interconnection electric energy in response to Company's dispatch which is caused by any Third Party including, without limitation, any vendor or supplier of Seller or Company, except to the extent due to Force Majeure.

21.4 Satisfaction of Certain Conditions. Section 21.5 (Guaranteed Substantial Commitment Dates and Guaranteed Commercial Operations Date), Section 21.6 (Events of Default) and Section 21.7 (Effect of Force Majeure) defer or limit certain liabilities of a Party for delay and/or failure in performance to the extent such delay or failure is the result of conditions or events of Force Majeure;

provided, however, that a Non-performing Party is only entitled to such limitations or deferrals of liabilities as and to the extent the following conditions are satisfied:

- (a) the Non-performing Party gives the other Party, within 48 hours after the Force Majeure condition or event begins, written notice stating that the Non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event;
- (b) the Non-performing Party gives the other Party, within 14 Days after the Force Majeure condition or event begins, a written explanation of the Force Majeure condition or event and its effect on the Non-performing Party's performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;
- (d) the Non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
- (e) when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

21.5 Guaranteed Substantial Commitment Dates and Guaranteed Commercial Operations Date. A condition or event of Force Majeure affecting the achievement of a Guaranteed Substantial Commitment Date or the Guaranteed Commercial Operations Date, if and for so long as the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied, shall have the following effect: i) Company shall have the right to collect and Seller shall have the obligation to pay Daily Delay Damages as and to the extent set forth in Section 13.4(a) (Daily Delay Damages); (ii) Company shall have the right to terminate this Agreement as and to the extent set forth in Section 13.4(b) (Termination

and Termination Damages for Failure to Achieve Guaranteed Commercial Operations Date) and Section 13.4(c) (Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date); and (iii) notwithstanding any provision herein to the contrary, upon Company's termination of this Agreement pursuant to Section 13.4(b) (Termination and Termination Damages for Failure to Achieve Guaranteed Commercial Operations Date) or Section 13.4(c) (Termination and Termination Damages for Failure to Achieve a Guaranteed Substantial Commitment Date) neither Party shall be liable for any damages (including Termination Damages) nor have any obligations to the other, except as provided in Section 29.24 (Survival of Obligations), other than as provided in Section 29.24(b).

- 21.6 Events of Default. If Force Majeure delays or prevents a Party's performance for more than three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as noticed pursuant to Section 21.4(a), and such delay or failure of performance constitutes an Event of Default under Article 15 (Event of Default), the other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by the Party whose performance has been delayed or prevented. In the event of termination pursuant to this Section 21.6 (Events of Default), neither Party shall be liable for any damages or have any obligations to the other, except as provided in Section 29.25 (Survival of Obligations) other than as provided in Section 29.25(b).
- 21.7 Effect of Force Majeure. Other than as provided in Section 21.5 (Guaranteed Substantial Commitment Dates and Guaranteed Commercial Operations Date) and Section 21.6 (Events of Default), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent (i) such delays or failures are substantially caused by conditions or events of Force Majeure, and (ii) the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied.
- 21.8 No Relief of Other Obligations. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the

extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

- 21.9 No Extension of the Term. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

ARTICLE 22
WARRANTIES AND REPRESENTATIONS

- 22.1 By the Parties. Both Company and Seller represent, warrant, and covenant, as of the Execution Date and for the extent of the Term, respectively, that:

- (a) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Agreement
- (b) The execution, delivery and performance of this Agreement by each respective Party will not result in a violation of any Laws, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such Party is also a party or by which it is bound. No consent of any person or entity not a Party to this Agreement, including any Governmental Authority (other than the PUC and other agencies whose approval is necessary for construction of Company-Owned Interconnection Facilities), is required for such execution, delivery and performance by either Party.

- 22.2 By Seller. Seller represents, warrants, and covenants, as of the Execution Date and for the extent of the Term, that:

- (a) It is an entity in good standing with the Hawai'i Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date.
- (b) **[DRAFTING NOTE: ADD STATEMENT OF SELLER'S EXPERIENCE CONSISTENT WITH STATEMENTS MADE IN SELLER'S PROPOSAL IF APPLICABLE.]**
- (c) As of the Execution Date, Seller has obtained all Land Rights necessary for the construction, ownership, operation and maintenance of the Facility during the Initial Term, and Seller shall maintain such Land Rights in effect throughout the Term.

- (d) As of the commencement of construction, Seller shall have obtained (i) all Land Rights and Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities and (ii) all Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility.
- (e) As of the Commercial Operations Date, the Facility will be a qualified renewable resource under RPS in effect as of the Effective Date.

ARTICLE 23
PROCESS FOR ADDRESSING
REVISIONS TO PERFORMANCE STANDARDS

- 23.1 Revisions to Performance Standards. The Parties acknowledge that, during the Term, certain Performance Standards may be revised or added to facilitate necessary improvements in integrating intermittent renewable energy resources into the Company System and operations. In particular, the following Performance Standards in Attachment B (Facility Owned by Seller) to this Agreement may be revised: Section 3(c) (Ramp Rates); and Section 3(m) (Frequency Response). Such revisions or additions may be attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company System, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in Laws (e.g., new environmental constraints, which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law).
- 23.2 Performance Standards Information Request. If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Performance Standards Information Request with respect to such Performance Standards Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Performance Standards Information Request, but in no event more than 90 Days after Seller's receipt of such Request (or

such other period of time as Company and Seller may agree in writing), submit to Company a Performance Standards Proposal responsive to the Performance Standards Revision proposed in such Performance Standards Information Request.

- 23.3 Performance Standards Proposal. Upon receipt of a Performance Standards Proposal submitted in response to a Performance Standards Information Request, Company will evaluate such Performance Standards Proposal and Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request). Company shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller's own initiative.
- 23.4 Performance Standards Revision Document. If, following Company's evaluation of a Performance Standards Proposal, Company desires to consider implementing the Performance Standards Revision addressed in such Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Performance Standards Proposal, and Company and Seller shall proceed to negotiate in good faith a Performance Standards Revision Document setting forth the specific changes to the Agreement that are necessary to implement such Performance Standards Revision. A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's Performance Standards Proposal for the Performance Standards Revision in question, including but not limited to the Performance Standards Modifications and the Performance Standards Pricing Impact. Any adjustment to the Contract Pricing pursuant to such Performance Standards Revision Document shall be limited to the Performance Standards Pricing Impact (other than with respect to the financial consequences of non-performance as to a Performance Standards Revision). The time periods set forth in such Performance Standards Revision Document as to the effective date for the Performance Standards Revision shall be measured from the date the PUC Performance Standards Revision Order becomes non-appealable as provided in Section 23.6 (PUC Performance Standards Revision Order).
- 23.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Performance Standards Revision Document within 180 Days of Company's written

notice to Seller pursuant to Section 23.4 (Performance Standards Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Performance Standards Revision Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 23.10 (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a Performance Standards Revision Document as described in Section 23.4 (Performance Standards Revision Document).

23.6 PUC Performance Standards Revision Order. No Performance Standards Revision Document shall constitute an amendment to the Agreement unless and until a PUC Performance Standards Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Performance Standards Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

23.7 Company's Rights. The rights granted to Company under Section 23.4 (Performance Standards Revision Document) and Section 23.5 (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

- 23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Revisions to Performance Standards) to the contrary, Seller shall have no obligation to respond to more than one Performance Standards Information Request during any 12-month period.
- 23.9 Limited Purpose. This Article 23 (Process for Addressing Revisions to Performance Standards) is intended to specifically address necessary revisions to the Performance Standards to enhance integration of intermittent resources onto Company System, or to comply with future Laws which may be driven in part by higher integration of intermittent resources, and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Performance Standards in accordance with the provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.
- 23.10 Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Performance Standards Revision Document pursuant to Section 23.5 (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Performance Standards Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.
- (a) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:

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

it is technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision into a Performance Standards Revision Document including (aa) Seller's Performance Standards Modifications, (bb) pricing terms that incorporate the Performance Standards Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.

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

23.11 HERA Law. The provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are without limitation to the obligations of the Parties under the HERA Law and the reliability standards and interconnection requirements developed and adopted by the PUC pursuant to the HERA Law.

ARTICLE 24
FINANCIAL COMPLIANCE

24.1 Financial Compliance. Seller shall provide or cause to be provided to Company on a timely basis, as reasonably determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by Company for purposes of permitting Company and its parent company, HEI, to comply with the requirements (initial and on-going) of (i) the accounting principles of Financial

Accounting Standards Board ("FASB") Accounting Standards Codification 810, Consolidation ("FASB ASC 810"), (ii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), (iii) FASB ASC 840 Leases ("FASB ASC 840"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404 and FASB ASC 840, issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Seller shall allow Company or its independent auditor to audit, to the extent reasonably required, Seller's financial records, including its system of internal controls over financial reporting; provided, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Seller's reasonable internal costs. Company shall limit access to such Information to persons involved with such compliance matters and restrict persons involved in Company's monitoring, dispatch or scheduling of Seller and/or Facility, or the administration of this Agreement, from having access to such Information (unless approved in writing in advance by Seller).

24.2 Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Article 24 (Financial Compliance). Company may share the Information on a confidential basis with HEI and the independent auditors and attorneys for HEI. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Article 24 (Financial Compliance) as "Recipient".) If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this Agreement is necessary, Company and HEI each shall have the right to disclose such of the Information as Company or HEI, as applicable, reasonably determines is necessary to satisfy applicable disclosure and reporting or other requirements and give Seller prompt written notice thereof (in advance to the extent practicable under the circumstances). If Company or HEI disclose Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai'i ("Consumer Advocate") in connection with

the PUC's rate making activities for Company and other HEI affiliated entities, provided that, if the scope or content of the Information to be disclosed to the PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Information. Neither Company nor HEI shall use the Information for any purpose other than as permitted under this Article 24 (Financial Compliance).

- 24.3 Required Disclosure. In circumstances other than those addressed in Section 24.2 (Confidentiality), if any Recipient becomes legally compelled under applicable Laws or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Information, such Recipient shall undertake reasonable efforts to provide Seller with prompt notice of such legal requirement prior to disclosure so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Article 24 (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions at this Article 24 (Financial Compliance), Recipient shall furnish only that portion of the Information which it is legally required to so furnish and to use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.
- 24.4 Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient under this Article 24 (Financial Compliance) shall not extend to any portion(s) of the Information which (i) was known to such Recipient prior to receipt, or (ii) without the fault of such Recipient is available or becomes available to the general public, or (iii) is received by such Recipient from a Third Party not bound by an obligation or duty of confidentiality.
- 24.5 Consolidation and Lease. Company does not want to be subject to consolidation and capital lease treatment as set forth in FASB ASC 810 and 840, respectively, as issued and amended from time to time by FASB. Company also does not want to be subject to lease treatment as set forth in FASB Accounting Standards Codification 842, Leases, effective January 1, 2019 ("FASB ASC 842").

- (a) Consolidation. If for any reason, at any time during the Term, Company determines, in its sole but, nonarbitrary, discretion, that it is required to consolidate Seller into its financial statements in accordance with FASB ASC 810, then Seller shall immediately provide audited financial statements (including footnotes) in accordance with U.S. generally accepted accounting principles (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial statements within the reporting deadlines of the Securities and Exchange Commission. Notwithstanding the foregoing requirement that Seller provide audited financial statements to Company, the Parties will take all commercially reasonable steps, including modification of this Agreement, to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties.
- (b) Capital Lease. If there is a change in circumstances during the Term that would trigger capital lease treatment and such capital lease treatment is not attributable to Company's fault, then the Parties will take all commercially reasonable steps, including modification of the Agreement, to eliminate the capital lease treatment, while preserving the economic "benefit of the bargain" to both Parties.
- (c) Lease. Under FASB ASC 842, finance and operating leases will be reflected on the Company's balance sheet. If there is a change in circumstances during the Term that would trigger lease treatment, and such lease treatment is not attributable to Company's fault, then the Parties will take all commercially reasonable steps, including modification of the Agreement, to eliminate the lease treatment, while preserving the economic "benefit of the bargain" to both Parties.
- (d) Purchase Option. Without limitation to the obligation of the Parties to take commercially reasonable steps to eliminate such consolidation treatment, capital lease treatment or lease treatment, Seller shall, if requested by Company, take commercially reasonable steps to effectuate a sale of the Facility to Company as provided in Section 6 (Company's Option to Purchase Pursuant to Section 24.5(d)) of Attachment P (Sale of Facility by Seller).

ARTICLE 25
GOOD ENGINEERING AND OPERATING PRACTICES

- 25.1 General. Each Party agrees to install, operate and maintain its respective equipment and facility and to perform all obligations required to be performed by such Party under this Agreement in accordance with Good Engineering and Operating Practices and applicable Laws.
- 25.2 Specifications, Determinations and Approvals. Wherever in this Agreement Company has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with Company's standard practices, policies and procedures and shall not be unreasonably withheld.
- 25.3 No Endorsement, Warranty or Waiver. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.
- 25.4 Consultants List. Prior to the Commercial Operations Date, the Parties shall agree on a list of names of engineering firms to be attached as Attachment D (Consultants List) in accordance with Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned By Seller).

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

- 26.1 Equal Employment Opportunity. (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Seller is aware of and is fully informed of Seller's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the applicable provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.
- 26.2 Equal Opportunity For Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans. Applicable to (i) contracts of \$25,000 or more entered into before December 31, 2003 (41 CFR 60-250.4) or (ii) each federal government contract of \$100,000 or more, entered into or modified on or after December 31, 2003 (41 CFR 60-300.4) for the purchase, sale or use of personal

property or nonpersonal services (including construction).) If applicable to Seller under this Agreement, Seller agrees that is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

ARTICLE 27
SET OFF

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

ARTICLE 28
DISPUTE RESOLUTION

- 28.1 Good Faith Negotiations. Except as otherwise expressly set forth in this Agreement, before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the Dispute Resolution Procedures set forth in Section 28.2 (Dispute Resolution Procedures, Mediation), the presidents, vice presidents, or authorized delegates from both Seller and Company having full authority to settle the Dispute(s), shall personally meet in Hawai'i and attempt in good faith to resolve the Dispute(s) (the "Management Meeting").
- 28.2 Dispute Resolutions Procedures, Mediation. Except as otherwise expressly set forth in this Agreement and subject to Section 28.1 (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement, (i) which remain unresolved for a period of 20 Days after the Management Meeting takes place or (ii) for which the Parties fail to hold a Management Meeting within 60 Days of the date that a Management Meeting was requested by a Party, may upon the agreement of the Parties, first be submitted to confidential mediation in Honolulu, Hawai'i pursuant to the administration by, and in accordance with the Mediation Rules, Procedures and Protocols of, Dispute Prevention & Resolution, Inc. (or its successor) or, in their absence,

the American Arbitration Association ("DPR") then in effect. If the Parties agree to submit the dispute to confidential mediation, the parties shall each pay 50% of the cost of the mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own mediation costs and attorneys' fees. If settlement of the Dispute(s) is not reached within 60 Days after commencement of the mediation, either Party may initiate legal proceedings in a court of competent jurisdiction in the State of Hawai'i.

- 28.3 Exclusions. The provisions of this Article 28 (Dispute Resolution) shall not apply to any disputes within the authority of any of (i) an Independent Evaluator under Article 23 (Process for Addressing Revisions to Performance Standards), (ii) an Independent AF Evaluator under Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) or (iii) an OEPR Evaluator under Attachment U (Calculation and Adjustment of Net Energy Potential).

ARTICLE 29
MISCELLANEOUS

- 29.1 Amendments. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed via manual signature by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via manual signature by the Party against whom waiver is asserted. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller in writing, such as changes to settings shown in the Single-Line Drawing and Interface Block Diagram (Attachment E) and the Relay List and Trip Scheme (Attachment F) and changes to numerical values of Performance Standards in Section 3 (Performance Standards) of Attachment B (Facility Owned by Company) shall not be considered amendments to this Agreement requiring PUC approval.
- 29.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.
- 29.3 Notices.

- (a) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been

duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a Party may designate by notice to the other Party):

Company:

By Mail:

Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai'i 96840
Attn: Director Energy Procurement

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, Suite 2100
Honolulu, Hawai'i 96813
Attn: Director Energy Procurement

By facsimile-mail:

Hawaiian Electric Company, Inc.
Attn: Director Energy Procurement
Email: ppanotices@hawaiianelectric.com

With a copy to:

By Mail:

Hawaiian Electric Company, Inc.
Legal Department
P.O. Box 2750
Honolulu, Hawai'i 96840

By E-mail:

Hawaiian Electric Company, Inc.
Legal Department
Email: legalnotices@hawaiianelectric.com

Seller: The contact information listed in Attachment A (Description of Generation and Conversion Facility) hereto.

- (b) Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth Day after the date of mailing, whichever is earlier. Any Party hereto may change its address for written notice by giving written notice of such change to the other Party hereto.
- (c) Any notice delivered by E-mail shall request a receipt thereof confirmed by E-mail or in writing by the recipient and followed by personal or mail delivery of such correspondence any attachments as may be requested by the recipient, and the effective date of such notice shall be the date of receipt, provided such receipt has been confirmed by the recipient.
- (d) The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.

29.4 Effect of Section and Attachment Headings. The Table of Contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.

29.5 Non-Waiver. Except as otherwise provided in this Agreement, no delay or forbearance of Company or Seller in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.

29.6 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Seller does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.

29.7 Entire Agreement. This Agreement (together with any confidentiality or non-disclosure agreements entered into by

the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.

- 29.8 Governing Law, Jurisdiction and Venue. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Hawai'i, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Seller submits itself to the personal jurisdiction of the courts of the State of Hawai'i and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawai'i.
- 29.9 Limitations. Nothing in this Agreement shall limit Company's ability to exercise its rights as specified in Company's Tariff as filed with the PUC, or as specified in General Order No. 7 of the PUC's Standards for Electric Utility Service in the State of Hawai'i, as either may be amended from time to time.
- 29.10 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.
- 29.11 Electronic Signatures and Counterparts. The parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable between the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by facsimile, E-mail, or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement. This Agreement may be executed

in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

- 29.12 Definitions. Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Definitions Section.
- 29.13 Severability. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both Parties notwithstanding any such aforesaid invalidity or unenforceability.
- 29.14 Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in Article 28 (Dispute Resolution) of this Agreement.
- 29.15 Environmental Credits and RPS. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the electric energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line". Seller shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.

- 29.16 Schedule of Defined Terms and Attachments. The Schedule of Defined Terms and each Attachment to this Agreement constitutes an essential and necessary part of this Agreement.
- 29.17 Proprietary Rights. Seller agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("Proprietary Rights"). Seller agrees to indemnify, defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of Third Party Proprietary Rights arising out of Seller's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.
- 29.18 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 29.19 Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the Day of the act, event or default from which the designated period of time begins to run shall not be included. If the last Day of the period so computed is not a Business Day, then the period shall run until the end of the next Day which is a Business Day.
- 29.20 PUC Approval.
- (a) PUC Approval Order. The term "PUC Approval Order" means an order from the PUC that does not contain terms and conditions deemed to be unacceptable by Company, and is in a form deemed to be reasonable by Company, in its sole, but nonarbitrary, discretion, ordering that:
- (1) this Agreement is approved;

- (2) Company is authorized to include the purchased energy costs (and related revenue taxes) that Company incurs under this Agreement in Company's Energy Cost Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;
 - (3) Company is authorized to include the Lump Sum Payment that Company incurs under this Agreement in Company's Purchase Power Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;
 - (4) the purchased energy costs and the Lump Sum Payment to be incurred by Company as a result of this Agreement are reasonable; and
 - (5) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase energy and Renewable Dispatchable Generation from Seller, are prudent and in the public interest.
- (b) Non-appealable PUC Approval Order. The term "Non-appealable PUC Approval Order" means a PUC Approval Order (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal (the "Appeal Period") has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.
- (c) Company's Written Statement. Not later than thirty (30) Days after the issuance of a PUC order approving this Agreement, Company shall provide Seller with a copy of such order together with a written statement as to whether the conditions set forth in Section 29.20(a) (PUC Approval Order) have been met and the order constitutes a PUC Approval Order. If Company's

written statement declares that the conditions set forth in Section 29.20(a) (PUC Approval Order) have been satisfied, the date of the issuance of the PUC Approval Order shall be the "PUC Approval Order Date".

- (d) Non-appealable PUC Approval Order Date. If Company provides the written statement referred to in Section 29.20 (c) (Company's Written Statement) to the effect that the conditions referred to in Section 29.20(a) (PUC Approval Order) have been satisfied, the term "Non-appealable PUC Approval Order Date" shall be defined as follows:
- (1) If a PUC Approval Order is issued and is not made subject to a motion for reconsideration filed with the PUC or an appeal, the Non-appealable PUC Approval Order Date shall be the date one Day after the expiration of Appeal Period following the issuance of the PUC Approval Order;
 - (2) If the PUC Approval Order became subject to a motion for reconsideration, and the motion for reconsideration is denied or the PUC Approval Order is affirmed after reconsideration, and such order is not made subject to an appeal, the Non-appealable PUC Approval Order Date shall be deemed to be the date one Day after the expiration of the Appeal Period following the order denying reconsideration of or affirming the PUC Approval Order; or
 - (3) If the PUC Approval Order, or an order denying reconsideration of the PUC Approval Order or affirming approval of the PUC Approval Order after reconsideration, becomes subject to an appeal, then the Non-appealable PUC Approval Order Date shall be the date upon which the PUC Approval Order becomes a non-appealable order within the meaning of the definition of a Non-Appealable PUC Approval Order in Section 29.20(b) (Non-appealable PUC Approval Order).
- (e) Unfavorable PUC Order. The term "Unfavorable PUC Order" means an order from the PUC concerning this Agreement that: (i) dismisses Company's application; (ii) denies Company's application; or (iii) approves Company's application but contains terms and conditions deemed unacceptable by Company in its sole

discretion and therefore does not meet the definition of a PUC Approval Order as set forth in Section 29.20(a) (PUC Approval Order).

29.21 Community Outreach Plan. Seller has initiated, or has plans to initiate, discussions and/or informational sessions with community and neighborhood groups in and around the vicinity of the Facility to inform the neighboring public and community about the Facility and to gather information regarding neighboring public and community concerns regarding the Facility. Seller shall formulate and implement a community outreach plan no later than the PUC Submittal Date and provide a copy of such plan to Company upon its finalization and before implementation. The purpose and scope of such plan shall be in Seller's discretion, provided, however, that any such plan shall, at a minimum, include provisions to inform the neighboring community, allay concerns, and implement, where commercially reasonable and possible, requests from the community to garner support for the Facility from the neighboring community.

29.22 Change in Standard System or Organization.

(a) Consistent With Original Intent. If, during the Term, any standard, system or organization referenced in this Agreement should be modified or replaced in the normal course of events, such modification or replacement shall from that point in time be used in this Agreement in place of the original standard, system or organization, but only to the extent such modification or replacement is generally consistent with the original spirit and intent of this Agreement.

(b) Eliminated or Inconsistent With Original Intent. If, during the Term, any standard system or organization referenced in this Agreement should be eliminated or cease to exist, or is modified or replaced and such modification or replacement is inconsistent with the original spirit and intent of this Agreement, then in such event the Parties will negotiate in good faith to amend this Agreement to a standard, system or organization that would be consistent with the original spirit and intent of this Agreement.

29.23 No Third Party Beneficiaries. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Parties any legal or equitable right,

remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.

29.24 Hawai'i General Excise Tax. Seller shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawai'i general excise tax on gross income and all other similar taxes imposed on Company by any Governmental Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this Section 29.24 (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the 4.5% Hawai'i general excise tax on O'ahu would include an additional 4.712% so that the underlying payment will be net of such tax liability.

29.25 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

- (a) The obligation to pay Daily Delay Damages under Section 13.4 (Damages and Termination);
- (b) The obligation to pay Termination Damages under Article 16 (Damages in the Event of Termination by Company);
- (c) The indemnity obligations under Article 17 (Indemnification) and Section 29.17 (Proprietary Rights);
- (d) The dispute resolution provisions of Article 28 (Dispute Resolution);
- (e) Section 29.3 (Notices), Section 29.5 (Non-Waiver), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.9 (Limitations), Section 29.13

(Severability), Section 29.14 (Settlement of Disputes), Section 29.15 (Environmental Credits and RPS), Section 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), Section 29.25 (Survival of Obligations), Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities) and Section 1(d) (Right of First Refusal) and Section 2(d) (Right of First Refusal) of Attachment P (Sale of Facility by Seller); and

- (f) Seller's obligations under Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of Attachment G (Company-Owned Interconnection Facilities) to pay interconnection costs and Section 4 (Ongoing Operation and Maintenance Charges) of Attachment G (Company-Owned Interconnection Facilities) to pay operation and maintenance costs incurred up to the date of termination of the Agreement.

29.26 Certain Rules of Construction. For purposes of this Agreement:

- (a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.
- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.
- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no

way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

- (f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.
- (g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

**[Signatures for PPA for Renewable Dispatchable Generation
appear on the following page]**

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

By _____
Name:
Its:

By _____
Name:
Its:

("Company")

By _____
Name:
Its:

By _____
Name:
Its:

("Seller")

SCHEDULE OF DEFINED TERMS

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

"Acceptance Test": A test conducted by Seller and witnessed by Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria and test procedures determined by Company and Seller as set forth in Section 2(f) (Acceptance Test Procedure) of Attachment G (Company-Owned Interconnection Facilities), to determine conformance with Article 3 (Facility Owned and/or Operated by Seller) and Attachment G (Company-Owned Interconnection Facilities) and Good Engineering and Operating Practices. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. Successful completion of the Acceptance Test shall be a condition precedent for the performance of the Control System Acceptance Test and the Commercial Operations Date.

"Active Power Control Interface": Shall have the meaning set forth in Section 1(g) (Active Power Control Interface) of Attachment B (Facility Owned by Seller) of this Agreement.

"Actual Output": The total quantity of electric energy (measured in kilowatt hours) produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter. "Actual Output" is the equivalent of "Net Energy."

"AF Disagreement": Shall have the meaning set forth in Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"AF LD Assessment Date": For the last month of each LD Period, the Day following the expiration of the 10-Business Day period provided for Company to submit a written notice of MPR Disagreement pursuant to Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Agreement": Shall have the meaning set forth in the preamble to this Agreement.

"Allowed Capacity": Shall have the meaning set forth in Section 5(e) of Attachment A (Description of Generation and Conversion

Facility) to this Agreement.

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

"Applicable Period Lump Sum Payment": For each applicable period, the total amount of Lump Sum Payment payable during such period, as such amount may be calculated and adjusted from time to time as set forth in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement, including but not limited to any downward adjustment made pursuant to Section 3.iv of said Attachment J, but excluding any off-set of liquidated damages under Section 2.5(c) (Payment of Liquidated Damages for Failure to Achieve the Availability Benchmark) and Section 2.6(d) (Payment of Liquidated Damages for Failure to Achieve the GPR Benchmark) of this Agreement. For purposes of calculating liquidated damages under Section 2.5(b) (Availability Benchmark and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payment payable for the last calendar month of the LD Period in question. For purposes of calculating liquidated damages under Section 2.6(c) (GPR Benchmark and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payment payable for the last calendar month of the LD Period in question.

"Applicable NEP Verification Date": For the Initial OEPR, the Initial NEP Verification Date. For any Subsequent OEPR, the first day of the calendar month following the calendar month during which there occurs the first anniversary of the event (e.g., completion of equipment replacement) which occasioned the preparation of such Subsequent OEPR.

"Availability Benchmark": An Availability Factor of not less than 99%.

"Availability Factor": For each LD Period, the availability factor for the Facility calculated as provided in Section 2.5(a) (Calculation of Availability Factor) of this Agreement.

"Bill of Material": A list of equipment to be installed at the Facility including, but not necessarily limited to, items such as relays, breakers, and switches.

"Business Day": Any calendar day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.

"Claim": Any claim, suit, action, demand or proceeding.

"Claiming Entity": Shall mean Seller and any direct or indirect owner of a membership interest in Seller which is eligible to claim a Refundable Tax Credit or Non-Refundable Tax Credit in a given year.

"COD Delay LD Period": Shall have the meaning set forth in Section 13.4(b) (Termination and Termination Damages for Failure to Achieve Guaranteed Commercial Operations Date).

"Commercial Operations": Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operations on the Day specified in Seller's written notice described below: (i) the Acceptance Test has been passed, (ii) all generating units have passed Control System Acceptance Tests, (iii) the Transfer Date has occurred, (iv) Seller has (1) provided to Company the Required Models (as defined in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller)) in the form of Source Code, (2) placed the current version of the Source Code for the Required Models with the Source Code Escrow Agent as required in Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller), or (3) if Seller is unable to arrange for the placement of the appropriate Source Code into the Source Code Escrow account, placed the required funds with the Monetary Escrow Agent as required in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Seller), and (v) Seller provides Company with written notice that (aa) Seller is ready to declare the Commercial Operations Date and (bb) the Commercial Operations Date will occur within 24 hours (i.e., the next Day).

"Commercial Operations Date" (or "COD"): The date on which Facility first achieves Commercial Operations.

"Company": Shall have the meaning set forth in the preamble to this Agreement.

"Company-Designated NEP Estimate": The estimated Net Energy Potential of the Facility as designated by Company pursuant to Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net energy Potential) this Agreement.

"Company-Owned Interconnection Facilities": Shall have the meaning set forth in Section 1(a) (Description of Company-Owned

Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities).

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

"Company System Operator": The authorized representative of Company who is responsible for carrying out Company dispatch and curtailment of electric energy generation interconnected to the Company System.

"Competitive Bidding Framework": The Framework for Competitive Bidding contained in Decision and Order No. 23121 issued by the Public Utilities Commission on December 8, 2006, and any subsequent orders providing for modifications from those set forth in Order No. 23121 issued December 8, 2006.

"Construction Financing Closing Milestone": Shall have the meaning set forth in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones).

"Construction Milestones": The Reporting Milestones set forth in Attachment L (Reporting Milestones) and the Guaranteed Project Milestones set forth in Attachment K (Guaranteed Project Milestones).

"Construction Start Date Milestone": The date by which continuous construction of permanent structures shall begin at the Site in accordance with Attachment L (Reporting Milestones). **[FOR WIND FACILITIES ADD: The Construction Start Date occurs when Seller begins pouring the foundation for the first Wind Turbine. FOR PV FACILITIES ADD: The Construction Start Date occurs when Seller begins installation of the mounting and racking components.]**

"Consumer Advocate": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Consumer Price Index": The Consumer Price Index for All Urban Consumers (CPI-U).

"Contract Capacity": Shall have the meaning set forth in Section 5(b) (Design and Capacity) of (Attachment A (Description of Generation and Conversion Facility) to this Agreement.

"Contract Pricing": The total of the Energy Payment and the Lump Sum Payment.

"Contract Year": A twelve (12) calendar month period commencing on either: (i) the Commercial Operations Date (if the Commercial Operations Date occurs on the first Day of a calendar month) and thereafter on each anniversary of the Commercial Operations Date; or (ii) the first Day of the calendar month following the month during which the Commercial Operations Date occurs, and thereafter on each anniversary of the first Day of such month; provided, however, that, in the latter case, the initial Contract Year shall also include the Days from the Commercial Operations Date to the first Day of the succeeding calendar month.

"Control System Acceptance Test(s)": A test or tests performed on the centralized and collective control systems and Active Power Control Interface of the Facility in accordance with procedures set forth in Section 1(h) (Control System Acceptance Test Procedures) of Attachment B (Facility Owned by Seller). Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test.

"Daily Delay Damages": Shall have the meaning set forth in Section 13.4(a) (Daily Delay Damages) of this Agreement.

"Day": A calendar day.

"Defaulting Party": The Party whose failure, action or breach of its obligations under this Agreement results in an Event of Default under Article 15 (Events of Default) of this Agreement.

"Development Period Security": An amount equal to \$50/kW of the Contract Capacity.

"Dispute": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"DownTime": Shall have the meaning set forth in Section 2.5(a) (Calculation of the Availability Factor) of this Agreement.

"DPR": Shall have the meaning set forth in Section 28.2 (Dispute Resolution Procedures, Mediation).

"Effective Date": Shall mean the last to occur of (i) the Non-appealable PUC Approval Order Date and (ii) the date that the Interconnection Requirements Amendment (if required pursuant to

Section 12.4(A) (Interconnection Requirements Study) of this Agreement) is executed and delivered as such date is set forth in the Interconnection Requirements Amendment.

"Eligible Period": Shall have the meaning set forth in Section 1(b)(ii)(H)(i) of Attachment B (Facility Owned by Seller) to this Agreement.

"Energy Cost Adjustment Clause": The provision in Company's rate schedules that allows Company to pass through to its customers Company's costs of fuel and purchased power.

"Energy Payment": The amount that Company will pay Seller for electric energy delivered to Company in accordance with the terms and conditions of this Agreement on a monthly basis as set forth in Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.

"Engineering and Design Work": Shall have the meaning set forth in Section 3(a) of Attachment G (Company-Owned Interconnection Facilities).

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the fact that the Facility is a non-fossil fuel facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

"Escrow Agent": Shall have the meaning set forth in Section 14.9 (L/C Proceeds Escrow).

"Evaluation Period": Shall have the meaning set forth in Section 1(b)(ii)(H)(i) of Attachment B (Facility Owned by Seller) to this Agreement.

"Event of Default": Shall have the meaning set forth in Article 15 (Events of Default) of this Agreement.

"Excess Energy Conditions": An operating condition on the Company System that may occur when Company has more energy available than is required to meet the load on the Company System at any point in time and the generating assets interconnected with the Company System are operating at or near their minimum levels, taking into consideration factors such as the need to maintain system reliability and stability under changing system conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for base-loaded firm capacity or scheduled energy, and the normal minimum loading levels of such units.

"ExcludedTime": Shall have the meaning set forth in Section 2.5(a) (Calculation of the Availability Factor) of this Agreement.

"Execution Date": The date designated as such on the first page of this Agreement or, if no date is so designated, the date the Parties exchanged executed signature pages to this Agreement.

"Extended Term": Shall have the meaning set forth in Section 12.1 (Term) of this Agreement.

"Facility": Seller's renewable electric energy facility that is the subject of this Agreement, including all Seller-Owned Interconnection Facilities and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery or furnishing of electric energy by Seller to Company and required to interconnect with the Company System.

"Facility Debt": The obligations of Seller to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Lender": Any lender(s) providing any Facility Debt and any successor(s) or assigns thereto, collectively.

"FASB": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"FASB ASC 810": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"FASB ASC 842": Shall have the meaning set forth in Section 24.5 (Consolidation and Lease).

"Financing Documents": The loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, tax equity financing or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

"First Benchmark Period": The period commencing on the Commercial Operations Date and ending on the last Day of the calendar month during which an OEPR Evaluator issues the Initial OEPR. During the First Benchmark Period, the First NEP Benchmark shall be the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment as provided in Section 3.i (Lump Sum Payment During First Benchmark Period) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.

"First NEP Benchmark": The estimate of Net Energy Potential that is used to calculate the Lump Sum Payment during the First Benchmark Period as provided in Section 3.i (Lump Sum Payment During First Benchmark Period) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement. The "First NEP Benchmark" shall consist of whichever of the following is applicable as of the Commercial Operation Date, as more fully provided in Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) and Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement: (i) NEP RFP Projection, (ii) NEP IE Estimate, (iii) Company-Designated NEP Estimate or (iv) such other amount as the Parties may agree in writing.

"Force Majeure": An event that satisfies the definitional requirements and other conditions set forth in Article 21 (Force Majeure) of this Agreement.

"Forced Outage": An unplanned unit shutdown caused by factors such as automatic or programmed protective trips and trips due to equipment malfunction, and which terminates when Company determines according to Good Engineering and Operating Practices that it is safe to bring the Facility back onto the Company System.

"Full Dispatch": A time period during which all inverters are available and the Facility's set point is not less than the Allowed Capacity.

"Good Engineering and Operating Practices": The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry for similarly situated U.S. facilities, considering Company's isolated island setting, that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability for an island system, safety, environmental protection, economy and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

- (h) Adequate materials, resources and supplies, including fuel, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.
- (i) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.
- (j) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.
- (k) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.

- (1) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as steam pressure, temperature, moisture content, chemical content, quality of make-up water, operating voltage, current, frequency, rotational speed, polarity, synchronization, control system limits, etc.

"Governmental Approvals": All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required for the construction, ownership, operation and maintenance of the Facility and the Company-Owned Interconnection Facilities, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Governmental Authority": Any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"GPR Benchmark": The minimum Measured Performance Ratio that the Facility is required to achieve in order to avoid assessment of liquidated damages under Section 2.6(c) (GPR Benchmark and Liquidated Damages) of this Agreement. The GPR Benchmark shall be determined and, from time to time, redetermined as provided in Section 2.6(b) (Determination of GPR Benchmark) of this Agreement.

"GPR Benchmark Disagreement": Shall have the meaning set forth in Section 2(b) (Notice of Disagreement With GPR Benchmark Determination) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Guaranteed Commercial Operations Date": The date specified as such in Attachment K (Guaranteed Project Milestones) of this Agreement, by which Seller guarantees that it will achieve the Commercial Operations Date.

"Guaranteed 180-Day Milestone Date": The date that is 180 Days following the Effective Date, as specified in Attachment K (Guaranteed Project Milestones).

"Guaranteed Procurement Payment Date": The earlier of (i) date that is 30 Days following the Effective Date or (ii) **[INSERT CALENDAR DATE BY WHICH EQUIPMENT MUST BE ORDERED TO MEET CONSTRUCTION SCHEDULE]**.

"Guaranteed Project Milestone": Each of (i) the Procurement Payment Milestone, (ii) the 180-Day Milestone, (iii) Commercial Operations and (iv) any other of the milestone events identified as a "Guaranteed Project Milestone" in Attachment K (Guaranteed Project Milestones) of this Agreement.

"Guaranteed Project Milestone Date": Each of (i) the Guaranteed Procurement Payment Date, (ii) the Guaranteed 180-Day Milestone Date, (iii) the Guaranteed Commercial Operations Date, and (iv) any other milestone dates identified as a "Guaranteed Project Milestone Date" in Attachment K (Guaranteed Project Milestones) of this Agreement.

"Guaranteed Substantial Commitment Dates": Each of (i) the Guaranteed Procurement Payment Date, (ii) the Guaranteed 180-Day Milestone Date, and (iii) any other milestone dates associated with a milestone event identified as a "Substantial Commitment Milestone" in Attachment K (Guaranteed Project Milestones) of this Agreement. Each Guaranteed Substantial Commitment Date is also a Guaranteed Project Milestone Date.

"Hawai'i Investment Tax Credit": Shall mean a credit against Hawai'i source income for which Seller is eligible on the Commercial Operations Date or thereafter because of investment in renewable energy technologies incorporated into the Facility.

"Hawai'i Production Tax Credit": Shall mean a credit against Hawai'i source income for which Seller is eligible on the Commercial Operations Date or thereafter because of the energy produced by the Facility.

"HEI": Hawaiian Electric Industries, Inc.

"HERA": The Hawai'i Electricity Reliability Administrator.

"HERA Law": Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawai'i Legislature in the form of S.B. No. 2787, S.D. 2, H.D.2, C.D.1 on May 2, 2012 and signed by the Governor on June 27, 2012. The effective date for the law is July 1, 2012. The HERA Law authorizes (i) the PUC to develop, adopt, and enforce reliability standards and interconnection requirements, (ii) the PUC to contract for the performance of related duties with a party that

will serve as the HERA, and (iii) the collection of a Hawai'i electricity reliability surcharge to be collected by Hawai'i's electric utilities and used by the HERA. Reliability standards and interconnection requirements adopted by the PUC pursuant to the HERA Law will apply to any electric utility and any user, owner, or operator of the Hawai'i electric system. The PUC also is provided with the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner or operator of the Hawai'i electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawai'i electric system, or for administering the process for interconnection to the Hawai'i electric system.

"IE Energy Assessment Report": The bankable energy assessment report (including but not limited to an assessment of the Facility's Net Energy Potential) prepared for the Facility Lender by an independent engineer as part of the Facility Lender's due diligence leading up to the Facility Lender's legally binding commitment to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing Documents.

"Indemnified Company Party": Shall have the meaning set forth in Section 17.1(a) (Indemnification Against Third Party Claims) of this Agreement.

"Indemnified Seller Party": Shall have the meaning set forth in Section 17.2(a) (Indemnification Against Third Party Claims) of this Agreement.

"Independent AF Evaluator": A person empowered, pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to resolve disagreements due to failure of the Parties to resolve a Monthly Report Disagreement or a GPR Benchmark Disagreement.

"Independent Evaluator": A person empowered, pursuant to Section 23.5 (Failure to Reach Agreement) and Section 23.10 (Dispute) of this Agreement, to resolve disputes due to failure of the Parties to agree on a Performance Standards Revision Document.

"Information": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Initial NEP OEPR Estimate": The NEP OEPR Estimate set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Initial NEP Verification Date": The first Day of the calendar month following the calendar month during which there occurs the first anniversary of the Commercial Operations Date.

"Initial OEPR": The OEPR to be prepared pursuant in Section 2 (Initial OEPR) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Initial Term": Shall have the meaning set forth in Section 12.1 (Term).

"Interconnection Facilities": The equipment and devices required to permit the Facility to operate in parallel with, and deliver electric energy to, the Company System and provide reliable and safe operation of, and power quality on, the Company System (in accordance with applicable provisions of the PUC's General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

"Interconnection Requirements Amendment": Shall have the meaning set forth in Section 12.4 (Interconnection Requirements Study) of this Agreement.

"Interconnection Requirements Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreement to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"Interconnection Requirements Study Letter Agreement" or "IRS Letter Agreement": The letter agreement and any written, signed amendments thereto, between Company and Seller that describes the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"kV": Kilovolt.

"kW": Kilowatt.

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

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

"L/C Proceeds": Shall have the meaning set forth in Section 14.8 (Failure to Renew or Extend Letter of Credit).

"LD Period": A rolling period of twelve (12) calendar months each. At the end of each calendar month, the LD Period rolls forward to include the next calendar month. The initial "LD Period" shall consist of the 12 full calendar months of the initial Contract Year.

"Losses": Any and all direct, indirect or consequential damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, expenses (including reasonable attorneys' fees and court costs) and disbursements.

"Lump Sum Payment": The payment to be made by Company to Seller in exchange for Seller making the Net Energy Potential of the Facility available for dispatch by Company. When necessary to account for the availability of some but not all inverters, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each inverter and shall be calculated and adjusted as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.

"Malware": means computer software, code or instructions that: (a) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) without functional purpose, self-replicate without manual intervention; (c) purport to perform a useful function but which actually performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to

third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

"Management Meeting": Shall have the meaning set forth in Section 28.1 (Good Faith Negotiations).

"Measured Performance Ratio": Shall have the meaning set forth in Section 2.6(a) (Calculation of Measured Performance Ratio ("MPR")) of this Agreement.

"Measured Wind Speed": The arithmetic mean, over any given period of time, of the wind speed readings from each of the Facility's MMS anemometers, taken or sampled every two (2) seconds by the Facility's monitoring equipment, in miles per hour (mph).

"MMS": Meteorological monitoring station.

"Monetary Authorized Use": Shall have the meaning set forth in Section 6(b)(ii)(h) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

"Monetary Escrow Agent": Shall mean [] or such other escrow agent approved by Company.

"Monetary Escrow Agreement": Shall mean a three party escrow agreement between Seller, Company and the Monetary Escrow Agent naming Company as beneficiary thereunder, which agreement shall be acceptable in form and substance to Company.

"Monitoring and Communication Equipment": Shall have the meaning set forth in Section 6.2 (Monitoring and Communication Equipment) of this Agreement.

"Monthly Progress Report": Shall have the meaning set forth in Section 13.7 (Monthly Progress Report).

"Monthly Report": The report of the data (both for the calendar month and the LD Period ending with such calendar month) necessary for the calculation of the Availability Factor and the Measured Performance Ratio to be provided by Seller to Company as set forth in Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Monthly Report Disagreement": Any disagreement (e.g., an AF Disagreement and/or a MPR Disagreement) arising out of the same Monthly Report.

"Most Recent Prior NEP Benchmark": In the event a Subsequent OEPR is prepared for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year, the "Most Recent Prior NEP Benchmark" shall be (i) for the first such Subsequent OEPR, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last month of the Second Benchmark Period pursuant to Section 3.iii.a of Attachment J (Company Payments for Energy Dispatchability) to this Agreement and (ii) for all Subsequent OEPRs prepared after the aforementioned first Subsequent OEPR, the NEP OEPR Estimate obtained from the immediately preceding Subsequent OEPR.

"MPR Disagreement": Shall have the meaning set forth in Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"MPR LD Assessment Date": For the last month of each LD Period, the Day following the expiration of the 10-Business Day period provided for Company to submit a written notice of MPR Disagreement pursuant to Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"MW": Megawatt.

"NEP IE Estimate": The estimated Net Energy Potential of the Facility to which the IE Energy Assessment Report assigns a P-Value of 95 for a ten-year period.

"NEP OEPR Estimate": For each OEPR, the estimated Net Energy Potential of the Facility to which such OEPR assigns a P-Value of 95 for a ten-year period.

"NEP RFP Projection": The Net Energy Potential of the Facility to which the Seller in Seller's [Response to RFP] assigns a P-Value of 95 for a ten-year period.

"Net Energy": The total quantity of electric energy (measured in kilowatt hours) produced by the Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter. "Net Energy" the equivalent of "Actual Output."

"Net Energy Potential": The estimated single number with a P-Value of 95 for the annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a ten-year period. The Net Energy Potential is subject to adjustment as provided in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, but in no circumstances shall the Net Energy Potential exceed the NEP RFP Projection.

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

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

"Non-defaulting Party": Shall have the meaning set forth in Section 15.4 (Rights of Non-Defaulting Party; Forward Contract) of this Agreement.

"Non-performing Party": The Party who is in breach of, or is otherwise failing to perform, its obligations under this Agreement.

"Non-Refundable Tax Credit": Shall mean any U.S. federal tax credit and State of Hawai'i tax credit (including both a Hawai'i Investment Tax Credit and a Hawai'i Production Tax Credit) for which the federal government or State of Hawai'i is not required to refund any tax credit which exceeds the tax payments due to the federal government or State of Hawai'i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Notice of AF Disagreement": The written notice of an AF Disagreement submitted by Company within the 10-Day period set forth in Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

"Notice of Disagreement": Any of a Notice of AF Disagreement, a Notice of GPR Benchmark Disagreement and a Notice of MPR Disagreement.

"Notice of GPR Benchmark Disagreement": The written notice of GPR Benchmark Disagreement submitted by Seller within the 30-Day period set forth in Section 2(b) (Notice of Disagreement With GPR

Benchmark Determination) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Notice of MPR Disagreement": The written notice of MPR Disagreement submitted by Company within the 10-Business Day period set forth in Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"180-Day Milestone": All of the events identified as constituting the "180-Day Milestone" in Attachment K (Guaranteed Project Milestones).

"OEPR": An Operational Energy Production Report, including the Initial OEPR and each Subsequent OEPR.

"OEPR Consultants List": The engineering firms listed in Section 4(h) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, as such list may be expanded or contracted by the Parties as provided in Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of said Attachment U or Section 2(f) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"OEPR Evaluator": Shall have the meaning set forth in Section 4(a) (Selection of OEPR Evaluator) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement.

"OEPR Period of Record": For each OEPR, the twelve-month period preceding the Applicable NEP Verification Date for such OEPR.

"Operating Period Security": Shall have the meaning set forth in Section 14.4 (Operating Period Security).

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

"Ownership Interest": Shall have the meaning set forth in Section 1(b)(i) of Attachment P (Sale of Facility by Seller) to this Agreement.

"P-Value": The probability of exceedance.

"Parties": Seller and Company, collectively.

"Party": Each of Seller or Company.

"Performance Standards": The various performance standards for the operation of the Facility and the delivery of electric energy from the Facility to Company specified in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller), as such standards may be revised from time to time pursuant to Article 23 (Process for Addressing Revisions to Performance Standards) of this Agreement.

"Performance Standards Information Request": A written notice from Company to Seller proposing revisions to one or more of the Performance Standards then in effect and requesting information from Seller concerning such proposed revision(s).

"Performance Standards Modifications": For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

"Performance Standards Pricing Impact": Any adjustment in Contract Pricing necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the Performance Standards Revision is made effective following a PUC Performance Standards Revision Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of electric energy to Company under this Agreement, which shall consist of (yy) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (zz) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of production tax credits (pursuant to Section 45 of the Internal Revenue Code) calculated on an after-tax basis.

"Performance Standards Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (ii) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (iii) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in electric energy delivered to Company; (iv) the Performance Standards Pricing Impact of such costs and/or lost revenues; (v) information regarding the effectiveness of such technical improvements or operational modifications; (vi) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller's own initiative.

"Performance Standards Revision": A revision, as specified in a Performance Standards Information Request or a Seller-initiated Performance Standards Proposal, to the Performance Standards in effect as of the date of such Request or Proposal.

"Performance Standards Revision Document": A document specifying one or more Performance Standards Revisions and setting forth the changes to the Agreement necessary to implement such Performance Standards Revision(s). A Performance Standards Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to Section 23.10 (Dispute) of this Agreement, in the absence of such written agreement.

"Permit Application Filing Date Milestone": The date by which Seller shall file all applications for Government Approvals required for the ownership, construction, operation and maintenance of the Facility as set forth in Attachment K (Guaranteed Project Milestones).

"Point of Interconnection": The point of delivery of electric energy and/or capacity supplied by Seller to Company, where the Facility owned by the Seller interconnects with the Company System. The Seller shall own and maintain the facilities from the

Facility to the Point of Interconnection, excluding any Company-Owned Interconnection Facilities located on the Site. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's system. The Point of Interconnection will be identified in the IRS and set forth on the Single-Line Drawing and Interface Block Diagram in Attachment E (Single Line Drawing and Interface Block Diagram).

"Power Possible": For purposes of the Power Possible value signaled under Section 1(b)(iii)(E)(v) of Attachment B (Facility Owned by Seller) to this Agreement, Power Possible is the calculated power production of the Facility reported every two seconds in kilowatts ("kW") at the Point of Interconnection taking into account (i) equipment availability during the period (for example, self-curtailed units, derated units and units that are otherwise unavailable to produce electric energy), (ii) electric energy consumed by the Facility and electric losses from the solar panels to the Point of Interconnection and (iii) meteorological conditions. For purposes of performing the evaluations under Section 1(b)(iii)(H) of Attachment B (Facility Owned by Seller), Power Possible is the 15-minute average of the Power Possible values signaled as aforesaid.

"Power Possible Discrepancy Period": Any Evaluation Period that satisfies the conditions of a Power Possible Discrepancy Period under Section 1(b)(iii)(H)(ii) of Attachment B (Facility Owned by Seller) to this Agreement.

"PPA Amendment Deadline": The 60th Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by written agreement.

"Prime Rate": The "prime rate" of interest, as published from time to time by The Wall Street Journal in the "Money Rates" section of its Western Edition Newspaper (or the average prime rate if a high and a low prime rate are therein reported). The Prime Rate shall change without notice with each change in the prime rate reported by The Wall Street Journal, as of the date such change is reported. Any such rate is a general reference rate of interest, may not be related to any other rate, may not be the lowest or best rate actually charged by any lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by lenders or market rates in general.

"Procurement Payment Milestone": The payment in full by Seller to Company of the amount required under Section 3(b)(iii) (Balance of

Company-owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).

"Project": The Facility as described in Attachment A (Description of Generation and Conversion Facility).

"Project Documents": This Agreement, any ground lease or other agreement or instrument in respect of the Site and/or the Land Rights, all construction contracts to which Seller is or becomes a party thereto, operation and maintenance agreements, and all other agreements, documents and instruments to which Seller is or becomes a party thereto in respect of the Facility, other than the Financing Documents, as the same may be modified or amended from time to time in accordance with the terms thereof.

"Proprietary Rights": Shall have the meaning set forth in Section 29.17 (Proprietary Rights) of this Agreement.

"PUC": Shall have the meaning set forth in the Recitals.

"PUC Approval Order": Shall have the meaning set forth in Section 29.20(a) (PUC Approval Order) of this Agreement.

"PUC Approval Order Date": Shall have the meaning set forth in Section 29.20(c) (Company's Written Statement) of this Agreement.

"PUC Approval Time Period": Shall have the meaning set forth in Section 12.6(b) (Time Period for PUC Approval).

"PUC Performance Standards Revision Order": The decision and order of the PUC approving the application or motion by the Parties seeking (i) approval of the Performance Standards Revision in question and the associated Performance Standards Revision Document, (ii) finding that the impact of the changes to the Contract Pricing on Company's revenue requirements is reasonable, and (iii) approval to include the costs arising out of pricing changes in Company's Energy Cost Adjustment Clause (or equivalent).

"PUC Submittal Date": The date of the submittal of Company's complete application or motion for a satisfactory PUC Approval Order pursuant to Section 12.3 (PUC Approval) of this Agreement.

"PUC's Standards": Standards for Small Power Production and Cogeneration in the State of Hawai'i, issued by the Public Utilities Commission of the State of Hawai'i, Chapter 74 of Title

6, Hawai'i Administrative Rules, currently in effect and as may be amended from time to time.

"PURPA": Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) as amended from time to time and as applied in Hawai'i by the Public Utilities Commission.

"Qualifying Facility": As defined in the Public Utility Regulatory Policies Act of 1978 and the regulations issued thereunder.

"Recipient": Shall have the meaning set forth in Section 24.2 (Confidentiality).

"Refundable Tax Credit": Shall mean any U.S. federal tax credit or State of Hawai'i tax credit (including both a Hawai'i Investment Tax Credit and a Hawai'i Production Tax Credit) for which the federal government or State of Hawai'i is required to refund any tax credit which exceeds the tax payments due to the federal government or State of Hawai'i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Renewable Portfolio Standards" or "RPS": The Hawai'i law that mandates that Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawai'i are currently codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95.

"Renewable Resource Baseline": The estimated renewable resource potential of the Site for a typical meteorological year. For avoidance of doubt, the purpose of this term is to provide a short-hand characterization of the nature of the renewable resource risk assumed by the Seller under this Agreement in making its Site selection.

"Renewable Resource Variability": The variations, above and below the Renewable Resource Baseline, of the renewable resource actually available at the Site on a moment-to-moment basis. For avoidance of doubt, the purpose of this term is to provide a short-hand characterization of the nature of the renewable resource risk assumed by the Company under this Agreement in agreeing to make fixed payments in an amount calculated on the basis of the Facility's capability to deliver the Net Energy Potential regardless of whether or not sufficient renewable resource is in fact available at any particular moment.

"Required Model" or "Required Models": Shall have the meaning set forth in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller) of this Agreement.

"Reporting Milestones": Each of the milestones identified as such in Attachment L (Reporting Milestones).

"Revenue Metering Package": The revenue meter, revenue metering PTs and CTs, and secondary wiring

"RPS Amendment": Any amendment to the RPS subsequent to Effective Date that revises the definition of "renewable electric energy" under the RPS such that the electric energy delivered from the Facility no longer comes within such revised definition.

"RPS Modifications": Any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" resulting from a RPS Amendment.

"RPS Modifications Document": Shall have the meaning set forth in Section 3.4(c) (RPS Modifications Document).

"RPS Pricing Impact": Any adjustment in Contract Pricing necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any RPS Modification, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the RPS Modification is made effective following a PUC RPS Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of electric energy to Company under this Agreement, which shall consist of (aa) an increase in payments necessary to compensate Seller for expected reduced electric energy payments under this Agreement; and (bb) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of production tax credits (pursuant to Section 45 of the Internal Revenue Code) calculated on an after-tax basis.

"Second Benchmark Period": The period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues the Initial OEPR and ending with the expiration of the third (3rd) Contract Year. For avoidance of doubt, the effect of the foregoing definition is that the Second Benchmark Period will follow immediately upon the expiration of the First Benchmark Period.

"Second NEP Benchmark": For each calendar month during the Second Benchmark Period, the estimate of Net Energy Potential to be used during such calendar month to calculate the Lump Sum Payment pursuant to Section 3.ii.a of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement. For avoidance of doubt, the Second NEP Benchmark may vary during the Second Benchmark Period as and to the extent provided in said Section 3.ii.a.

"Security Funds": Shall have the meaning set forth in Section 14.6 (Security Funds).

"Seller": Shall have the meaning set forth in the preamble to this Agreement.

"Seller-Attributable Non-Generation": Periods during which the Facility set point is set to zero or the Facility is disconnected or is otherwise not dispatched because of any of the following:

- The Facility's failure to comply with any of Good Engineering and Operating Practices, applicable Laws or Seller's other obligations under this Agreement;
- Seller-Attributable Systems Conditions;
- A disconnection initiated by the Company pursuant to Article 9 (Personnel and System Safety) of this Agreement).
- Conditions at or on either side of the Point of Interconnection arising from the acts or omissions of Seller or any vendor, materialmen, customer or supplier of Seller, unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement; or

- The Company's ability to effectively exercise its right to dispatch the Facility is materially impaired by any of (i) the unavailability of reliable real time meteorological and/or production data from the Facility; (ii) the occurrence four consecutive Power Possible Discrepancy Periods as provided in Section 1(b)(iii)(H)(iii) of Attachment B (Facility Owned by Seller); or (iii) the need to redo all or any portion of the Control System Acceptance Test as provided in Section 7(a) (Testing Requirements) of Attachment B (Facility Owned by Seller). **[DRAFTING NOTE: LAST BULLET POINT IS SUBJECT TO REVISIONS DEPENDING ON RESOLUTION OF POWER POSSIBLE ISSUE.]**

"Seller-Attributable System Conditions": Conditions on the Company System:

- (i) that result from either (aa) the Facility's generation and delivery of electric power to the Company System or (bb) any condition arising from the acts or omissions of Seller or any vendor, materialmen, customer or supplier or Seller, unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement; and
- (ii) that Company reasonably determines to either (xx) be inconsistent with Good Engineering and Operating Practices on the Company System or (yy) jeopardize the safety, reliability or stability of the Company System.

For avoidance of doubt, the Company's inability to dispatch the Facility due to the existence of Excess Energy Conditions on the Company System shall not constitute Seller-Attributable System Conditions.

"Seller-Owned Interconnection Facilities": The Interconnection Facilities constructed and owned by Seller.

"Seller's RPS Modifications Proposal": Shall have the meaning set forth in Section 3.4(a) (Renewable Portfolio Standards).

"Site": The parcel of real property on which the Facility will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility. The Site is identified in Attachment A (Description of Generation and Conversion Facility) to this Agreement.

"Source Code": Shall mean the human readable source code of the Required Models which: (i) will be narrated documentation related to the compilation, linking, packaging and platform requirements and any other materials or software sufficient to enable a reasonably skilled programmer to build, modify and use the code within a commercially reasonable period of time for the purposes of a Source Code Authorized Use; and (ii) can reasonably be compiled by a computer for execution.

"Source Code Authorized Use": Shall have the meaning set forth in Section 6(b)(i)(E) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

"Source Code Escrow": Shall mean the escrow established with the Source Code Escrow Agent under the terms of the Source Code Escrow Agreement under which Source Code shall be confidentially deposited by a Source Code Owner for safekeeping and, upon the satisfaction of certain conditions, release to the Company.

"Source Code Escrow Agent": Shall mean Iron Mountain Intellectual Property Management, Inc. or such other similar escrow agent approved by Company.

"Source Code Escrow Agreement": Shall mean a multi-party escrow agreement between Company, Source Code Escrow Agent and any and all Source Code Owners depositing Source Code into the Source Code Escrow which, among other matters, names Company as beneficiary thereunder, and is otherwise acceptable in form and substance to Company.

"Source Code Owner": Shall mean the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

"SOX 404": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Submission Notice": The notice issued pursuant to Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) or Section 2(d) (Submission of GPR Benchmark Disagreement to Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Subsequent NEP OEPR Estimate": For each Subsequent OEPR, the NEP OEPR Estimate derived from such Subsequent OEPR.

"Subsequent OEPR": Any OEPR prepared pursuant to Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Substantial Commitment Milestones": Each of (i) the Procurement Payment Milestone, (ii) the 180-Day Milestone and (iii) any other milestone event identified as a "Substantial Commitment Milestone" in Attachment K (Guaranteed Project Milestones) of this Agreement. Each Substantial Commitment Milestone is also a Guaranteed Project Milestone.

"Term": Shall mean, collectively, the Initial Term and the Extended Term (if any).

"Termination Damages": Shall have the meaning set forth in Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract) and shall be calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

"Termination Deadline": The 14th Day following the date the completed IRS is provided to Seller, or such later date as Company and Seller may agree to by a written agreement.

"Third Party": Any person or entity other than Company or Seller, and includes, but is not limited to, any subsidiary or affiliate of Seller.

"Tier 1 Bandwidth": Shall have the meaning set forth in Section 2.6(c) (GPR Benchmark and Liquidated Damages) of this Agreement.

"Tier 2 Bandwidth": Shall have the meaning set forth in Section 2.6(c) (GPR Benchmark and Liquidated Damages) of this Agreement.

"Total Actual Interconnection Cost": Actual costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in Attachment G (Company-Owned Interconnection Facilities).

"Total Actual Relocation Cost": Shall have the meaning set forth in Section 5(b) of Attachment G (Company-Owned Interconnection Facilities).

"Total Estimated Interconnection Cost": Estimated costs for the Interconnection Facilities, to be designed, engineered and

constructed by Company, as provided in Attachment G (Company-Owned Interconnection Facilities).

"Total Estimated Relocation Cost": Shall have the meaning set forth in Section 5(a) of Attachment G (Company-Owned Interconnection Facilities).

"Total Time": Shall have the meaning set forth in Section 2.5(a) (Calculation of the Availability Factor) of this Agreement.

"Transfer Date": The date, prior to the Commercial Operations Date, upon which Seller transfers to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent, if any, that such facilities were constructed by Seller and/or its contractors.

"Unfavorable PUC Order": Shall have the meaning set forth in Section 29.20(e) (Unfavorable PUC Order).

"Unit Price": \$ [REDACTED] per [REDACTED] kWh of Net Energy Potential annually.
[TO BE CALCULATED FROM RESPONSE TO RFP.]

ATTACHMENT A
DESCRIPTION OF GENERATION AND CONVERSION FACILITY

1. Name of Facility: _____
 - (a) Location: _____ (TMK No. _____)
 - (b) Telephone number (for system emergencies):
_____ - _____
 - (c) E-mail Address: _____
 - (d) Contact Information for notices pursuant to Section 29.3 (Notices) of the Agreement:
Mailing Address: _____
Address for Delivery by Hand or Overnight
Delivery: _____
E-Mail Address: _____

2. Owner (If different from Seller):

If Seller is not the owner, Seller shall provide Company with a certified copy of a certificate warranting that the owner is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).

3. Operator: _____

4. Name of person to whom payments are to be made:

 - (a) Mailing address: _____

 - (b) Hawai'i Gross Excise Tax License number: _____

5. Equipment:
 - (a) Type of facility and conversion equipment:

[For example: Small power production facility designated as a Qualifying Facility that produces electric energy using _____.]

(b) Design and capacity

Total Facility Capacity ("Contract Capacity"):
 _____ kW

Total Number of Generators:
[number and size of each generator. e.g. one (1) Brand X, 200 kW; one (1) Brand Y, 300 kW]

Description of Equipment:
[For example: Describe the type of energy conversion equipment, capacity, and any special features.]

Individual unit: **[if more than one generator, list information for each generator]**

	kW	kVAR Consumed	kVAR Produced
<u>Full load</u>			
<u>Startup</u>			

Generator:

Type _____

Rated Power _____ kW

Voltage _____ V, _____ phase

Frequency _____ HZ

Class of Protection _____

Number of Poles _____

Rated Speed _____ rpm

Rated Current _____ A

Rated Power Factor See Exhibit B-2

(c) Single or 3 phase: _____ phase

(d) Name of manufacturer:

- (e) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the Commercial Operations Date.
- (f) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Description of Generation and Conversion Facility) ("Section 5") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 5 shall change the type of Facility or conversion equipment deployed at the Facility from a solar energy conversion facility using photovoltaic equipment; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 5 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 5 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Seller's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the IRS and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and for modifying and paying for all costs and expenses of modification to the Facility, the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS. Any changes made to this Attachment A (Description of Generation and Conversion Facility) or the Agreement as a result of this Section 5(f) of Attachment A (Description of Generation and Conversion Facility) shall be reflected in a written amendment to the Agreement.

Seller understands and acknowledges that Company's review and approval of Seller's proposed revisions

to this Section 5 and any necessary re-studies or revisions to the IRS shall be subject to Company's then-existing time and personnel constraints. Company agrees to use commercially reasonable efforts, under such time and personnel constraints, to complete any necessary reviews, approvals and/or re-studies or revisions to the IRS.

Any delay in completing, or failure by Seller to meet, any subsequent Seller milestones under Article 13 (Construction Milestones Including the Guaranteed Substantial Commitment Dates and the Guaranteed Commercial Operations Date) as a result of any revision pursuant to this Section 5 by Seller (whether requiring a re-study or revision to the IRS or not) shall be borne entirely by Seller and Company shall not be responsible or liable for any delay or failure to meet any such milestones by Seller.

6. Insurance carrier(s): **[SELLER TO PROVIDE INFORMATION]**
7. If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the sale of electric energy from Facility no later than the Commercial Operations Date. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs no later than the Commercial Operations Date.
8. Seller shall provide a certified copy of a certificate warranting that Seller is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).
9. Seller, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit A-2 (Ownership Structure).
10. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within 30 Days

thereof, a certified copy of a new certificate and a revised ownership structure.

EXHIBIT A-1
GOOD STANDING CERTIFICATES

EXHIBIT A-2
OWNERSHIP STRUCTURE

**[ATTACHMENT B WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

(a) Drawings, Diagrams, Lists, Settings and As-Builts.

- (i) Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line drawing (including notes), interface block diagram, relay list, relay settings, and trip scheme of the Facility shall, after Seller has obtained prior written consent from Company, be attached to this Agreement on the Execution Date as Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme). A final single-line drawing (including notes), interface block diagram, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be labeled "Final" Single-Line Drawing, the "Final" Interface Block Diagram and "Final" Relay List and Trip Scheme and shall supersede Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) to this Agreement and shall be made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the "Final" Single-Line Drawing, the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme without the prior written consent of Seller and Company. The single-line drawing shall expressly identify the Point of Interconnection of Facility to Company System. The Interface Block Diagram is the visual representation of the signals between the Seller and the Company, including but not limited to, RTU points, digital fault recorder settings, telecommunications, protection signals, etc.

- (ii) As-Builts. Seller shall provide final as-built drawings of the Seller-Owned Interconnection Facilities within 30 Days of the successful completion of the Acceptance Test.
- (iii) No Material Changes. Seller agrees that no material changes or additions to Facility as reflected in the "Final" Single-Line Drawing (including notes), the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme, shall be made without Seller first having obtained prior written consent from Company. The foregoing are subject to changes and additions as part of any Performance Standards Modifications. If Company directs any changes in or additions to the Facility, records and operating procedures that are not part of any Performance Standards Modifications, Company shall specify such changes or additions to Seller in writing, and, except in the case of an emergency, Seller shall have the opportunity to review and comment upon any such changes or additions in advance.

(b) Certain Specifications for the Facility.

- (i) Seller shall furnish, install, operate and maintain the Facility including breakers, relays, switches, synchronizing equipment, monitoring equipment and control and protective devices approved by Company as suitable for parallel operation of the Facility with Company System. The Facility shall be accessible at all times to authorized Company personnel.
- (ii) The Facility shall include:

[LIST OF THE FACILITY

Examples may include, but not limited to:

- **Seller-Owned Interconnection Facilities**
- **Substation**
- **Control and monitoring facilities**
- **Transformers**
- **Generators (as described in Attachment A)**
- **"lockable" cabinets or housings suitable for the installation of the Company-Owned**

Interconnection Facilities located on the Site

- **relays and other protective devices**
- **leased telephone line and/or equipment to facilitate microwave communication]**

(iii) The Facility shall comply with the following [includes excerpts of language that may be requested by Company]:

- A. Seller shall install a ____ kV disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection shall be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker shall be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a structure shall be provided for metering transformers. From the high-voltage circuit breaker, another bus connection shall be made to another pole mounted disconnect switch, with surge protection.
- B. Seller shall provide within the Seller-Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller shall provide all conduits, structures and accessories necessary for Company to install the Revenue Metering Package. Seller shall also provide within such area, space for Company to install its communications, supervisory control and data acquisition ("SCADA") remote terminal unit ("RTU") and certain relaying if necessary for the interconnection. Seller shall also provide AC and DC source lines as specified later by Company. Seller shall provide a telephone line for Company-owned meters. Seller shall work with Company to determine an acceptable location and size of the fenced-in area.

Seller shall provide an acceptable demarcation cabinet on its side of the fence where Seller and Company wiring will connect/interface.

- C. Seller shall ensure that the Seller-Owned Interconnection Facilities has a lockable cabinet for switching station relaying equipment. Seller shall select and install relaying equipment acceptable to Company. At a minimum the relaying equipment will provide over and under frequency (81) negative phase sequence (46), under voltage (27), over voltage (59), ground over voltage (59G), over current functions (50/51) and direct transfer trip. Seller shall install protective relays that operate a lockout relay, which in turn will trip the main circuit breaker.
- D. Seller shall configure the relay protection system to provide overpower protection to enable Facility to comply with the Allowed Capacity limitation.
- E. Seller's equipment also shall provide at a minimum:
 - (i) Interface with Company's RTU to provide telemetry of electrical quantities such as total Facility net MW, MVar, and power factor, voltages, currents, and other quantities as identified by the Company;
 - (ii) Interface with Company's RTU to provide status for circuit breakers, reactive devices, switches, and other equipment as identified by the Company;
 - (iii) Interface with Company's RTU to provide control to incrementally raise and lower the voltage target **[DRAFTING NOTE: FOR MECO REPLACE "target"**

WITH "and power factor set points".] at the point of regulation operating in automatic voltage regulation control. If Company's RTU is unavailable, due to loss of communication link, RTU failure, or other event resulting in loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as directed by the Company System Operator;

- (iv) Interface with Company's RTU to provide active power control to incrementally limit Actual Output from the Facility and to incrementally remove the limit of the Actual Output of the Facility. The incremental size will be determined as part of the Interconnection Requirements Study taking into account the size of the Facility and the dynamic system frequency bias; and
- (v) For PV Facilities: Interface with Company's RTU to provide telemetry of meteorological and production data required under Section 8 (Data and Forecasting) of this Attachment B (Facility Owned by Seller) and the Facility's Power Possible.

F. If Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the

characteristics of the equipment and specifications used in the IRS, Seller shall be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller shall be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the revisions to the IRS.

G. Cyber Security.

(i) Documentation. Seller shall submit cyber-security documentation describing the approach, methodology and design to protect data, controls and remote system access to Company concurrently with its submittal of the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Materials, Relay Settings and Fuse Selection) of Attachment B (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the Acceptance Test.

- The design shall meet industry standards and best practices, including applicable NIST Cybersecurity Framework guidelines. Although the State of Hawaii is not currently under NERC jurisdiction and Company understands Seller cannot acknowledge the Facility to be CIP compliant, the system shall be designed with the criteria to meet applicable NERC CIP compliance requirements and identify areas that are not NERC CIP compliant. The cyber-security

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documentation shall include a block diagram of the control system with all external connections clearly described.

- Seller shall meet all current cyber and physical security compliance requirements in order to identify potential security risks associated with Seller's implementation of cyber and physical security system, Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.
 - Seller shall provide a mitigation plan which describes how Seller's equipment will be protected from an internal or external AURORA event as described in the NERC Alert dated October 13, 2010. Furthermore, Seller shall be responsible for maintaining compliance with all future Federal or State regulations and industry standards.
 - Company shall be notified in advance when changes are required that will impact security.
- (ii) Malware. Seller shall (consistent with the following sentence) ensure that no malware or similar items are coded or introduced into any aspect of the Facility, Interconnection Facilities, the Company Systems interfacing with the Facility and Interconnection Facilities, and

any of Seller's systems or processes used by Seller to provide energy, including the information, data and other materials delivered by or on behalf of Seller to Company, (collectively, the "Environment"). Seller will continue to review, analyze and implement improvements to and upgrades of its Malware prevention and correction programs and processes that are commercially reasonable and consistent with the then current technology industry's standards and, in any case, not less robust than the programs and processes implemented by Seller with respect to its own information systems. If Malware is found to have been introduced into the Environment, Seller will promptly notify Company and Seller shall take immediate action to eliminate and remediate the effects of the Malware, at Seller's expense. Seller shall not modify or otherwise take corrective action with respect to the Company Systems except at Company's request. Seller will promptly report to Company the nature and status of all Malware elimination and remediation efforts.

- (iii) Security Breach. In the event that Seller discovers or is notified of a breach or potential breach of security at Seller's Facility or of Seller's systems, Seller shall immediately (i) notify Company of such potential, suspected or

actual security breach, whether or not such breach has compromised any of Company's confidential information, (ii) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller, (iii) cooperate with Company with respect to any such breach or unauthorized access or use; (iv) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (v) to the extent such breach was caused by Seller, provide Company with reasonable assurances satisfactory to Company that such breach or potential breach shall not recur. Seller shall provide documentation to Company evidencing the length and impact of the breach. Any remediation of any such breach will be at Seller's sole expense.

- (iv) Monitoring and Audit. Seller's systems shall be monitored to detect abnormalities. The Seller's systems shall provide audit logs and product reports detailing user and administrator activities and security events. Seller shall provide Company a description of audit capabilities and associated report capabilities. Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1(b)(iii)G (Cyber Security) of this Attachment B (Facility Owned by Seller), provided that Company has provided reasonable notice to Seller and any such

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records of Seller's will be treated by Company as confidential.

H. Because a reliable Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller) is necessary throughout the Term in order for Company to realize the full benefit of its right to dispatch, subject to the Renewable Resource Availability, the Facility's Net Energy Potential, it is the expectation of the Parties that the model and data inputs used by the Seller to calculate Power Possible will be validated during the Evaluation Periods described below as more fully set forth below.

- (i) The relationship between the 15-minute averaged Power Possible value and the Facility's 15-minute averaged actual power production at the Point of Interconnection shall be evaluated in 15-minute intervals for periods described below. The periods eligible for such evaluation (each such period an "Eligible Period") are periods during which both of the following conditions continuously apply for a duration of not less than 60 consecutive minutes: (aa) the Facility is in unconstrained operations (i.e., the Facility's set point is not less than the Allowed Capacity); and (bb) the plane of array irradiance is not less than 600 W/m². For avoidance of doubt, the aforementioned 60-minute minimum is not a cap on the duration of an Eligible Period, which shall continue for as long as the two

conditions set forth in the preceding sentence continuously apply. The periods for which the relationship between the 15-minute averaged Power Possible value and the 15-minute averaged actual power production will be evaluated (each such period an "Evaluation Period") shall be periods that satisfy both of the following conditions: (i) if an Eligible Period commences because the plane of array irradiance equals or exceeds 600 W/m^2 (i.e., the Facility was already in unconstrained operations at the time the irradiance threshold is reached), such Evaluation Period shall consist of all of the consecutive 15-minute intervals that are encompassed within such Eligible Period; and (ii) if an Eligible Period commences because the Facility's set point is increased to not less than the Allowed Capacity, such Evaluation Period shall commence 15 minutes after such change in set point and shall consist of all of the consecutive 15-minute intervals that are encompassed within the balance of such Eligible Period;

- (ii) An Evaluation Period shall constitute a Power Possible Discrepancy Period if, for any one or more 15-minute intervals during such Evaluation Period, the 15-minute averaged Power Possible value for such interval is outside of a band of plus or minus 4% of the 15-

minute averaged actual power production at the Point of Interconnection for that same interval.

- (iii) Upon the occurrence of a Power Possible Discrepancy Period, Seller shall promptly investigate the reason why the bandwidth was exceeded, take such action as may be necessary to improve Seller's model and data inputs for calculating Power Possible with the objective of avoiding future Power Possible Discrepancy Periods, and provide to Company, within thirty (30) Days of the occurrence of the Power Possible Discrepancy Period in question, a written report of both the results of such investigation and the action taken by Seller.

- (iv) If, at any time during the Term, four consecutive Evaluation Periods each constitute a Power Possible Discrepancy Period, the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the OEPR Consultants List to evaluate the cause of the Power Possible Discrepancy Periods and to make recommendations with the objective of avoiding future Power Possible Discrepancy Periods ("Study"). Seller shall pay for the cost of the Study. The Study shall be completed within ninety (90) days from such fourth consecutive Power Possible Discrepancy Period, unless

otherwise agreed to in writing by Seller and Company. The Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the Study shall recommend (e.g., modifications to the model, modifications and/or additions to the data inputs used in the model, modifications to the procedures for maintaining and/or recalibrating the Monitoring and Communication Equipment used to provide data inputs, replacement of such Monitoring and Communication Equipment, modifications of procedures for Facility operations) with the objective of avoiding future Power Possible Discrepancy Periods. Such recommendations shall be implemented by Seller no later than forty-five (45) Days from the Day the completed Study is issued by the consultant, unless otherwise agreed to in writing by Company.

- I. Seller shall reserve space within the Site for possible future installation of Company-owned meteorological equipment (such as SODAR and irradiance monitors) and AC and DC source lines for such equipment. In the event Company decides to install such meteorological equipment:
 - (i) Seller shall work with Company to determine an acceptable location for such equipment and any associated wiring, interface or other components; and
 - (ii) Company shall pay for the needed equipment, and installation of such equipment, unless otherwise agreed to by the Parties. Company and Seller shall

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use commercially reasonable efforts to facilitate installation and minimize interference with the operation of the Facility.

J. The Facility shall, at a minimum, satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

- (c) Design Drawings, Bill of Materials, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings, fuse selection, and AC/DC Schematic Trip Scheme (part of design drawings) for the Facility to Company at least sixty (60) Days prior to the Acceptance Test. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.
- (d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.
- (e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along

with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval. **[COMPANY TO REVISE THIS SECTION 1(E) PRIOR TO EXECUTION FOR SPECIFICS OF THE PROJECT.]**

- (f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with the following maintenance plan:

Transmission line: [REDACTED]

[REDACTED] kV Facility switching station:
[REDACTED]

Relay protection equipment: [REDACTED]

Other equipment as identified: [REDACTED]

Seller shall furnish to Company a copy of records documenting such maintenance, within thirty (30) Days of completion of such maintenance work.

- (g) Active Power Control Interface.

- (i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Active Power Control Interface") necessary to interface the Facility active power controls with the Company System Operations Control Center for real power control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the maximum level of the Actual Output from the Facility when required under this Attachment B (Facility Owned by Seller). The implementation of the Active Power Control Interface will allow Company System Operator to initiate the active power limiting, vary the level of limiting, and remove the limiting remotely from Company System Operations Control Center through control signals from Company's SCADA and EMS systems.

- (ii) Company shall review and provide prior written approval of the design for the Active Power Control Interface to ensure compatibility with Company's SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval.
- (iii) The Active Power Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's RTU, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls. **[NOTE: MECO AND HELCO MAY REQUIRE A DIFFERENT TYPE OF CONTROL.]**
- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when active power limiting is in effect and the analog value of the MW limit(s). The Facility shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from the Company.
- (v) Seller shall provide an analog input to the RTU for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the real-power output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not export electric energy to Company, unless the Company, in its sole discretion, agrees to accept electric energy and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide such remote control

features (whether temporary or throughout the Term) and fails to discontinue exporting electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to curtail the entire Facility during those periods that such control features are not provided.

- If all local and remote active power controls become unavailable or fail, the Facility shall immediately disconnect from the Company's System.
- If the direct transfer trip is unavailable due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to trip the main circuit breaker

(vii) The rate at which the Facility changes Actual Output shall not exceed the ramp rate specified in Section 3(c) (Ramp Rate) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will control the rate at which electric energy is changed to achieve the active power limit. The Facility will respond to the active power control request immediately.
[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]

(viii) The Active Power Control Interface shall accept the following active power control(s) from the Company SCADA and EMS systems:

- **Maximum Power Limit:** The Facility is not allowed to exceed this setting under any circumstances. The frequency response control specified in Section 3(m) (Frequency Response) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility Actual Output above this limit. When the Maximum Power Limit is set to zero, the Facility

inverters must be shutdown. **[Applicability subject to Company review]**.

- Power Reference Limit: The Facility is not allowed to exceed this setting when system frequency is at 60 Hz. When system frequency is not 60 Hz, the Facility Actual Output is allowed to exceed this setting or be further reduced below this setting when commanded by the frequency response control specified in Section 3(m) of Attachment B (Facility Owned by Seller).
- (ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.
- (x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.
- (h) Control System Acceptance Test Procedures.
- (i) Conditions Precedent. The following conditions precedent must be satisfied prior to the conduct of the Control System Acceptance Test:
- Successful Completion of the Acceptance Test.
 - Facility has been successfully energized.
 - All of the Facility's generators have been fully commissioned.
 - The control system computer has been programmed for normal operations.
 - All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, energy storage device, statcom, etc.) shall have been commissioned and be operating within normal parameters.
- (ii) Facility Generators. Unless all of the Facility's generators are available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company

that the test results attained with less than all of the Facility's generators are consistent with the results that would have been attained if all of the Facility's generators had been available for the duration of the test.

- (iii) Procedures. The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule. No Control System Acceptance Test will be scheduled during the final 21 Days of a calendar year. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test(s) has been passed and, if so, the date upon which such Control System Acceptance Test(s) was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of Attachment A (Description of Generation and Conversion Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such Amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.
- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation

management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.

2. Operating Procedures. **[NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION 2 MAY VARY DEPENDING ON THE SPECIFIC PROJECT AND THE RESULTS OF THE PROJECT SPECIFIC INTERCONNECTION REQUIREMENT STUDY.]**
- (a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes Company deems necessary for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.
 - (b) Separation. Seller must separate from Company System whenever requested to do so by the Company System Operator pursuant to Article 8 (Company Dispatch) and Article 9 (Personnel and System Safety) of the Agreement.
 - (c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than six (6) years.
 - (d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator.
 - (e) Reserved.
 - (f) Reserved.
 - (g) Cyber-Security. Seller shall comply with the cyber-security requirements set forth in Section 1(b)(iii)G of this Attachment B (Facility Owned by Seller).

(h) Allowed Operations. Facility shall be allowed to export energy to the Company System only when the [_____] circuit is in normal operating configuration served by breaker [_____] at [_____] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Performance Standards.

(a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point, the point of regulation, between the Seller's generator terminal and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage **[DRAFTING NOTE: FOR MECO, ADD "or power factor".]** specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(b) (Reactive Amount) of this Attachment B (Facility Owned by Seller). **[FOR FACILITIES CONNECTED TO THE DISTRIBUTION SYSTEM, THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**

(b) Reactive Amount. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**

(i) Seller shall install sufficient equipment so that each [REDACTED] kVA **[inverter/wind turbine/generator]** online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the **[generator capability]** curve[s] attached to this Agreement as Exhibit B-2 (Generator Capability Curve(s)). **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**
[DRAFTING NOTE: For Hawai'i Electric Light and Maui Electric this should be at the Point of Interconnection not at the individual inverter/turbine/generator.]

(ii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will

be achieved within 1 second following a step change.

- (iii) If the Facility does not operate in accordance with Section 3(b)(i) of this Attachment B (Facility Owned by Seller), Company may disconnect all or a part of Facility from Company System until Seller corrects its operation (such as by installing capacitors at Seller's expense).

(c) Ramp Rates.

- (i) Seller shall ensure that the ramp rate of the Facility is less than the following limits for all conditions including start up, normal operations, Seller adjusting the Facility Actual Output, changes in the [**solar/wind**] resource, and shut down (including high wind speed shut down in the case of wind facilities) for the following periods as calculated in accordance with Attachment C (Methods and Formulas For Measuring Performance Standards).

- Maximum Ramp Rate Upward of [__] MW/minute for all periods.
- Maximum Ramp Rate Downward of 2 MW/minute for all periods other than periods for which such maximum is not operationally possible because of rapid loss of [**solar/wind**] resource. **[THE 2MW/MINUTE RATE IS FOR O'AHU. OTHER ISLANDS WILL VARY.]**

- (ii) Upon receiving a command from the Company active power limit control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility Actual Output at a ramp rate, as calculated in accordance with Attachment C (Methods and Formulas for Measuring Performance Standards), to be specified by the Company to the extent allowed by the [**solar/wind**] resource without exceeding such ramp rate and without intentional delay. Such ramp rate shall be in the range of __ MW/min to __ MW/min.

- (iii) The Facility is allowed to exceed the maximum ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) when Facility output is changed by the frequency

response control described in Section 3(m)
(Frequency Response) of this Attachment B (Facility
Owned by Seller).

- (d) Reserved.
- (e) Undervoltage Ride-Through. **[THE FOLLOWING REQUIREMENTS
ARE FOR O'AHU. MECO AND HELCO REQUIREMENTS MAY VARY.]**

The Facility, as a whole, will meet the following undervoltage ride-through requirements during low voltage affecting one or more of the three voltage phases ("V" is the voltage of any three voltage phases at the Point of Interconnection). **[THESE VALUES MAY CHANGED BY COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM.]**:

0.88 pu \leq V \leq 1.00 pu	The Facility remains connected to the Company System.
0.70 pu \leq V < 0.88 pu	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 20 seconds.
0.50 pu \leq V < 0.70 pu	The Facility may initiate disconnection from the Company System if the voltage remains in this range for more than 10 seconds.
0.00 pu \leq V < 0.50 pu	The Facility may disconnection from the Company System if voltage remains in this range for more than 600 milliseconds.

Seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through the following sequences or combinations thereof **[THE ACTUAL CLEARING TIMES WILL BE DETERMINED BY COMPANY IN CONNECTION WITH THE IRS]**:

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.
 - Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 23 cycles between the initial clearing time and the reclosing time.
- (f) Over Voltage Ride-Through. **[THE FOLLOWING REQUIREMENTS ARE FOR O'AHU. MECO AND HELCO REQUIREMENTS MAY VARY.]**

The overvoltage protection equipment at the Facility shall be set so that the Facility will meet the following overvoltage ride-through requirements during high voltage affecting one or more of the three voltage phases (as described below) ("V" is the voltage of any of the three voltage phases at the Point of Interconnection). **[THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. WITHOUT LIMITATION, FOR A DISTRIBUTION-CONNECTED FACILITY, UPON COMPLETION OF THE IRS THE COMPANY MAY SPECIFY REQUIREMENTS FOR A MANDATORY DISCONNECTION FROM THE COMPANY SYSTEM AT $V > 1.2$ pu.] RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEM WILL BE DETERMINED IN THE IRS.]:**

$1.00 \text{ pu} < V \leq 1.10 \text{ pu}$	The Facility remains connected to the Company System.
$1.10 \text{ pu} < V \leq 1.20 \text{ pu}$	The Facility may initiate disconnection from the Company System if voltage remains in this range for more 0.92 seconds.
$V > 1.2 \text{ pu}$	The Facility may initiate disconnection from the Company System immediately.

- (g) Transient Stability Ride-Through. [DELETE FOR WIND AND PV PROJECTS.]

The Facility shall be designed such that the transient stability of Company System is maintained for (1) three-phase fault located anywhere on the Company System and lasting up to [REDACTED] cycles; and (2) a single line to ground fault located anywhere on the Company System and lasting up to [REDACTED] cycles. [THESE VALUES MAY BE CHANGED BY THE COMPANY UPON COMPLETION OF THE IRS. RIDE-THROUGH REQUIREMENTS FOR OTHER SYSTEM WILL BE DETERMINED IN THE IRS.]

- (h) Fault Ride Through.

For fault-related voltage dips at the Point of Interconnection that stay within the limits of the under voltage ride-through requirements in Section 3(e) (Undervoltage Ride Through) of this Attachment B (Facility Owned by Seller), upon clearing of the fault, Seller shall within 1 second of restoration, provide at least 90% of the real power output at the Point of Interconnection immediately before the fault without regard to the ramp rate requirements of Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) to the extent allowed by the availability of the [solar/wind] resource. The fault ride through requirement does not apply if the Facility is operating at less than five percent (5%) of the Facility's nameplate capacity.

- (i) Underfrequency ride-through. [THE FOLLOWING REQUIREMENTS ARE FOR O'AHU. MECO AND HELCO REQUIREMENTS MAY VARY.]

The Facility shall meet the following underfrequency ride-through requirements during an underfrequency disturbance ("f" is the Company System frequency at the Point of Interconnection):

57.0 Hz \leq f \leq 60.0 Hz The Facility remains connected to the Company System.

56.0 Hz \leq f \leq 57.0 Hz The Facility may initiate disconnection from the Company System if frequency remains in

this range for more than 20 seconds.

$f < 56.0$ Hz

The Facility may initiate disconnection from the Company System immediately.

- (j) Overfrequency ride-through. [THE FOLLOWING REQUIREMENTS ARE FOR O'AHU. MECO AND HELCO REQUIREMENTS MAY VARY.]

The Facility will behave as specified below for overfrequency conditions ("f" is the Company System frequency at the Point of Interconnection):

$60.0 \text{ Hz} \leq f \leq 63.0 \text{ Hz}$

The Facility remains connected to the Company System.

$63.0 \text{ Hz} \leq f \leq 64.0 \text{ Hz}$

The Facility shall initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.

$f > 64.0$ Hz

The Facility shall initiate disconnection from the Company System immediately.

- (k) Voltage Flicker.

Any voltage flicker on the Company System caused by the Facility shall not exceed the limits stated in IEEE Standard 1453-2011, or latest version "Recommended Practice - Adoption of IEC 61000-4-15:2010, Electromagnetic compatibility (EMC) - Testing and measurement techniques - Flickermeter - Functional and design specifications".

- (l) Harmonics.

Harmonic distortion at the Point of Interconnection caused by the Facility shall not exceed the limits stated in IEEE Standard 519-1992, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems". Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage and current harmonics generated from the Facility to defined levels.

(m) Frequency Response.

Seller Facility shall provide a primary frequency response with a frequency droop characteristic reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions except to the extent such response is not operationally possible because of the level of available **[solar/wind]** resource.

- (i) The Facility frequency response control shall adjust, without intentional delay and regards to the ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller), the Facility Actual Output when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.
- (ii) The Facility frequency response control shall be allowed to increase the Actual Output above the Power Reference Limit set under Section 1(g) (viii) of this Attachment B (Facility Owned by Seller) or further decrease the Actual Output from the Power Reference Limit in its operations.
- (iii) The frequency deadband shall be settable in the range from +/-0.01 Hz to +/- 0.10 Hz and the frequency droop shall be settable in the range of 0.1% to 10%.
- (iv) The Facility frequency response control shall be in continuous operation when the Facility is exporting energy to the Company unless directed otherwise by the Company.

(n) Inertia Constant.

Synchronous Generator(s) must have an inertia constant (H) between 4 to 6 seconds. **[TO BE REVIEWED BY COMPANY FOLLOWING THE IRS]**

4. Maintenance of Seller-Owned Interconnection Facilities.

- (a) Seller must address any Disconnection (as defined below) according to the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities)

of Attachment B (Facility Owned by Seller). For this purpose, a Disconnection is a disconnection from Company System of at least [REDACTED] MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** from the Facility over a "rolling 120-second period", if such disconnection is due to a defect in or a failure of Seller-Owned Interconnection Facilities. A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period.

- (b) For every disconnection from the Company System of at least [REDACTED] MW **[TO BE DETERMINED BY THE COMPANY UPON COMPLETION OF THE IRS]** from Facility over a rolling 120-second period ("Disconnection Event"), Seller shall investigate the cause of the Disconnection Event, and determine if it is a Disconnection as defined in Section 4(a) of this Attachment B (Facility Owned by Seller). Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause of the Disconnection Event, and states whether the Seller believes the Disconnection Event is a Disconnection.
- (c) Within forty-five (45) Days of a Disconnection, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection ("Proposed Actions"). Company may assist Seller in determining the causes of and recommendations to remedy or prevent a Disconnection ("Company's Recommendations"). Seller shall implement such Proposed Actions (as modified to incorporate the Company's Recommendations, if any) and Company's Recommendations (if any) in accordance with the time period agreed to by the Parties.
- (d) In the event Seller and Company disagree as to (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) whether the Disconnection Event is a Disconnection, (iv) the Proposed Actions, (v) Company's Recommendations, and/or (vi) the time period to implement the Proposed Actions and/or Company's Recommendations, then the Parties shall follow

the procedure set forth in Section 5 (Expedited Dispute Resolution) of this Attachment B (Facility Owned by Seller).

- (e) Upon the fourth (4th) Disconnection (and each subsequent Disconnection) within any Contract Year, the Parties shall follow the procedures set forth in Section 4(a) and Section 4(d) of Attachment B (Facility Owned by Seller), to the extent applicable. If after following the procedures set forth in this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (1) the probable cause of the Disconnection, (2) the Proposed Actions, (3) the Company's Recommendations, and/or (4) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent Third-Party consultant ("Qualified Consultant") chosen from the Qualified Independent Third-Party Consultants List ("Consultants List") attached to the Agreement as Attachment D (Consultants List). Such study shall review the design of, review the operating and maintenance procedures dealing with, recommend modifications to, and determine the type of maintenance that should be performed on Seller-Owned Interconnection Facilities ("Study"). Seller and Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) Days from such fourth Disconnection (and each subsequent Disconnection) within any Contract Year, unless otherwise agreed to in writing by Seller and Company. The Qualified Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall change the design of, change the operating and maintenance procedures dealing with, implement modifications to, and/or perform the maintenance on Seller-Owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless otherwise agreed to in writing by Company. In the event the time requirement for the (i) commissioning of the Study, (ii) completion of the Study, or (iii) completion of the design change,

operating and maintenance procedure change, modifications, and/or maintenance recommended by the Study is not achieved, Company may limit the total Allowed Capacity to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices for the period that such requirement has not been achieved. Nothing in this provision shall affect Company's right to dispatch the Facility as provided for in this Agreement.

- (f) The Consultants List attached hereto as Attachment D (Consultants List) contains the names of engineering firms which both Parties agree are fully qualified to perform the Study. At any time, except when a Study is being conducted, either Party may remove a particular consultant from the Consultants List by giving written notice of such removal to the other Party. However, neither Party may remove a name or names from the Consultants List without approval of the other Party if such removal would leave the list without any names. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Consultants List without any names. Proposed additions to the Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day period. By mutual agreement between the Parties, a new name or names may be added to the Consultants List at any time.

5. Expedited Dispute Resolution.

If there is a disagreement between Company and Seller regarding (i) Seller's compliance with the standards set forth in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and/or (ii) Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of this Attachment B (Facility Owned by Seller) such as (aa) whether a Disconnection Event occurred, (bb) the sequence of events and/or probable cause of the Disconnection Event, (cc) whether the Disconnection Event is a Disconnection, (dd) the Proposed Actions, (ee) the Company's Recommendations, and (ff) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawai'i (or by telephone conference) and attempt in good faith to

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settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then either Party may pursue the dispute resolution procedure set forth in Article 28 (Dispute Resolution) of this Agreement.

6. Modeling.

(a) Seller's Obligation to Provide Models. Within 30 Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the inverters and any other equipment within the Facility identified in the IRS which utilizes Source Code (such as energy storage system, STATCOM or DVAR equipment), including, but not limited to, integrated and validated power flow and transient stability models (such as PSS/E models), a short circuit model (such as an ASPEN model), and an electro-magnetic transient model (such as a PSCAD model) of the inverters and any additional equipment identified in the IRS as set forth above, applied assumptions, and pertinent data sets (each a "Required Model" and collectively, the "Required Models"). Thereafter, during the Term, Seller shall provide working updates of any Required Model within 30 Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.

(b) Escrow Establishment. If, pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), the Required Models are provided to the Company in a form other than Source Code, Seller shall arrange for and ensure that the Source Code for the relevant Required Model is deposited into the Source Code Escrow as set forth below in Section 6(b)(i) (Source Code Escrow) no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) for delivery of the Required Models. Seller shall be responsible for all costs associated with establishing and maintaining the Source Code Escrow. If, however, Seller is unable to deposit the required Source Code into the Source Code Escrow within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models), Seller shall, no later than such time periods, instead establish a monetary escrow as set forth

below in Section 6(b)(ii) (Monetary Escrow) of this Attachment B (Facility Owned by Seller).

(i) Source Code Escrow.

(A) Establishment of Source Code Escrow. If the Required Models are not provided to the Company in the form of Source Code pursuant to Section 6(a) of this Attachment B (Facility Owned by Seller), Seller shall: (a) arrange for and ensure the deposit of a copy of the current version of the Source Code and relevant documentation for all Required Models with the Source Code Escrow Agent under the terms and conditions of the Source Code Escrow Agreement, and (b) arrange for and ensure the update of the deposited Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as soon as reasonably possible after they are made generally available.

(B) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

(i) A receiver, trustee, or similar officer is appointed, pursuant to federal, state or applicable foreign law, for the Source Code Owner;

(ii) Any voluntary or involuntary petition or proceeding is instituted, under (x) U.S. bankruptcy laws or (y) any other bankruptcy, insolvency or similar proceeding outside of the United States, by or against the Source Code Owner; or

(iii) Failure of the Source Code Owner to function as a going concern or operate in the ordinary course; or

(iv) Seller and the Source Code Owner fail to provide to Company the Required Models or updated Required Models within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller and the Source Code Owner, and Seller and Source Code Owner fail to remedy such breach within five (5) Days following receipt of such notice.

(C) Remedies. If Company has the right to obtain from the Source Code Escrow Agent one copy of the

escrowed Source Code for the Required Models pursuant to Section 6(b)(i)(B) (Release Conditions) of Attachment B (Facility Owned by Seller), and Company finds that Seller failed to arrange for and ensure the update the Source Code Escrow with the modified and/or updated Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as provided in Section 6(b)(i) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per day for each day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(F) (Events of Default by a Party) under the Agreement.

(D) Certification. The Source Code Escrow Agent shall release the Source Code of the Required Models to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and (ii) Hawaiian Electric is entitled to a copy of the Source Code of the Required Models Pursuant to Section 6(b)(i)(B) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(E) Authorized Use. If Company becomes entitled to a release of the Source Code of the Required Models from escrow, Company may thereafter correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's

Obligation to Provide Models) of this Attachment B (Facility Owned By Seller) (the "Source Code Authorized Use").

(F) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of the Required Models on behalf of Company to carry out their duties for the Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(ii) Monetary Escrow.

(A) Establishment of Monetary Escrow. If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to Section 6(a) (Seller's Obligations to Provide Models) of this Attachment B (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) then, no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank or other financial institution located in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit

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shall include a provision for at least thirty (30) Days advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

(B) Release Conditions. Company shall have the right to draw on the letter of credit the funds necessary to develop and recreate the Required Model or Required Models upon Company's request if Seller fails to provide the Company the Required Models or updated Required Models within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller, and Seller fails to remedy such breach within five (5) days following receipt of such notice.

(C) Extend Letter of Credit. If the letter of credit is not renewed or extended no later than thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "Proceeds"), at Seller's cost, in an escrow account in accordance with Section 6(b)(ii)(D) (Proceeds Escrow), until and unless Seller provides a substitute form of letter of credit meeting the requirements of this Section 6(b)(ii) (Monetary Escrow) of this Attachment B (Facility Owned by Seller).

(D) Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 6(b)(ii)(C) (Extend Letter of Credit) of this Attachment B (Facility Owned by Seller), Company shall, in order to avoid comingling the Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this Section 6 (Modeling) of this Attachment B (Facility Owned by Seller). To that

end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such documentation and shall have no rights to the Proceeds. Upon full satisfaction of Seller's obligations under Section 6 (Modeling) of this Attachment B (Facility Owned by Seller), Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the Proceeds the remaining balance (if any) of the Proceeds. If there is more than one escrow account with Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

(E) Seller's Obligation. If the letter of credit is not sufficient to cover Company's associated consultant fees, costs and expenses to develop and recreate the Required Models, Seller shall pay to Company the difference within ten (10) Days of Company's written notice to Seller.

(F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.

(G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been placed into a Proceeds Escrow, the Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and (ii) Hawaiian

Electric is entitled to \$ _____, pursuant to Section 6(b)(ii)(B) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric.

(H) Authorized Use. If Company becomes entitled to a release of funds from escrow, Company may thereafter use such funds to develop, recreate, correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) (the "Monetary Authorized Use").

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this Attachment B (Facility Owned By Seller), Section 6(b) (Escrow Establishment) and the Source Code Escrow Agreement and Monetary Escrow Agreement are "supplementary agreements" as contemplated in Section 365(n)(1)(B) of the Code. In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code or the funds in the monetary escrow, pursuant to Section 365(n)(1)(B) of the Code, under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under Section 365(n)(1)(A) of the Code.

7. Testing Requirements.

(a) Testing Requirements. Once the Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility Control, [**inverter control settings**] [**wind turbine controls**] and/or ancillary device controls, without prior written notice to Company. In the event of any such replacement and/or change, the relevant test(s) of the Control System Acceptance Test shall be redone and must be successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. In the event that Company reasonably determine that such replacement and/or change of controls makes it inadvisable for the Facility to continue in normal operations without a further Control

Systems Acceptance Test, the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the new relevant tests of the Control System Acceptance Test have been successfully passed.

- (b) Periodic Testing. Seller shall coordinate periodic testing of the Facility with Company to ensure that the Facility is meeting the performance standards specified under this Agreement.

8. Data and Forecasting.

Seller shall provide Site, meteorological and production data in accordance with the terms of Article 6 (Forecasting) of this Agreement and the following requirements:

- (i) Physical Site Data: Seller shall provide Company with an accurate description of the physical Site, including but not limited to the following, which may not be changed during the Term without Company's prior written consent:

- A. Location Facility Map showing the layout of the Facility (coverage area or footprint) and the coordinates (latitude and longitude), elevation (above ground), orientation angle and direction (north-east-south-west plane) of arrays/concentrators.
- B. Location (latitude and longitude) and elevation (above ground) of each MMS and each field measurement device located on such MMS.
- C. Inverter type, power rating, array configuration to inverters and DC rating of the Facility at the following standard test conditions: irradiance of 1000 W/m², air mass 1.5, and cell temperature 25° C.
- D. Solar generation technology employed at the Facility with temperature dependence, mounting and module type.

(ii) Meteorological and Production Data:

- A. Seller shall install and maintain a minimum of one MMS for facilities with a Contract

Capacity of less than 5 MW and a coverage area of not more than one square kilometer.

- B. Seller shall install and maintain a minimum of two MMS for facilities that have either (i) a DC rating of the Facility of 5 MW or greater or (ii) a coverage area greater than one square kilometer.
- C. Placement of each MMS should account for the microclimate of the area and Facility coverage area and shall be oriented with respect to the primary wind direction.
- D. For purposes of calculating the Measured Performance Ratio, the Seller shall provide (i) Plane of Array irradiance, (ii) back of panel temperature at array height, and (iii) the power production at the transducer on the Seller's side of the Point of Interconnection.
- E. Seller shall provide to Company, via SCADA communication and protocol acceptable to Company to support operations and forecasting needs at a continuous scan, all meteorological and production data required under this Agreement updated every 2 seconds.
- F. For facilities with a Contract Capacity greater than 1 MW, Seller shall arrange for a dedicated 12 kV line to provide separate service from Company, or for such other independent, backup power source as approved by Company in writing, to temporarily store and record the meteorological data from the field measuring devices at the MMSs. Any such backup power source must be capable of providing power for the field measurement devices for a reasonable period of time until primary power is restored. The same backup power source can serve multiple MMSs as needed by the Facility.

(iii) Units and Accuracy:

- A. The Table below shows minimum required solar irradiance measurement for various types of solar generation technology.

VALUES NEED TO BE INSERTED INTO TABLE.] This value may not be derived.

Solar Technology	Direct Normal Irradiance	Global Irradiance (GHI)	Plane of Array Irradiance (POA)
Flat Plate (fixed horizontal, fixed angle, tracking, roof mounted)		X	X
Flat Panel Solar Thermal (fixed angle, roof mounted, tracking)	X		X
Concentrated PV (flat, trough, tracking)	X	X	X

- B. Units and accuracy of measured parameters to be provided to Company in real time shall be as shown in the Table below. These represent the minimum required accuracies.

Table of Units and Accuracy of Meteorological and Production Data (PV)

Parameter	Measurement Device (typical)	Unit	Range	Accuracy
Global Horizontal Irradiance at MMS	Pyranometer or equivalent	W/m ²	0 to 1500 W/m ²	Secondary standard per ISO 9060 or <= 3% from 100 W/m ² to 1500 W/m ² if using a PV Reference Cell
Plane of Array Irradiance on same axis as array	Pyranometer or equivalent	W/m ²	0 to 1500 W/m ²	Secondary standard per ISO 9060 or <= 3% from 100 W/m ² to 1500 W/m ² if using a PV Reference Cell
Back of Panel temperature at array height	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air temperature at MMS	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air pressure at MMS	Piezoresistive transducer or equivalent	mbar	150 to 1150 mbar	+/-60 mbar (0 to +50°C)
Wind speed at MMS	Anemometer, sonic device or equivalent	mph	0 to 134 mph	+/-1 mph
Wind direction at MMS	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Set point for each inverter	Reported by Seller	MW	0 to inverter name plate	Not applicable
Power production	Measured at Facility's	MW	Up to Allowed	Per communication

Parameter	Measurement Device (typical)	Unit	Range	Accuracy
of Facility	analog transducer on Seller's side of POI		Capacity	/telemetry requirements or 2% of measurement
Facility power production ratio	Ratio of Facility's power production (MW)/Allowed Capacity (MW)	%	0 to 100%	+/-0.1 %
inverters Available	NA	NA	Up to the number installed inverters	
Facility inverter Availability	Ratio of inverters Online/Number of inverters	%	0 to 100%	

(iv) Status of Inverters for Purposes of Calculating Facility Availability:

For each inverter, Seller shall, unless agreed otherwise by Company and Seller in writing, provide to Company, via SCADA communication and protocol acceptable to Company at a continuous scan updated every 2 seconds, a signal as to whether such inverter is available or unavailable.

9. Technology Specific Requirements.

(a) Three-Phase Synchronous Generators.

The generating facility circuit breakers shall be 3-phase devices with electronic or electromechanical control. The Seller shall be responsible for properly synchronizing its generating facility with the Company System by means of either a manual or automatic synchronizing function. Automatic synchronizing is required for all synchronous generators which have an short circuit current rating ("SCCR") greater than 5%. For a generating facility whose SCCR exceeds 5%, the Facility shall provide protective equipment suitable for detecting loss of synchronism and automatically disconnecting the generating facility from the Company

System. Unless otherwise agreed to between the Company and Seller, synchronous generators shall automatically regulate power factor, not voltage, while operating in parallel with the Company System.

(b) Induction Generators.

- (i) Induction generators may be connected and brought up to synchronous speed (as an induction motor) if it can be demonstrated that the initial voltage drop measured at the Point of Interconnection is within the visible flicker limits as defined by IEEE 519-1992 (or latest version). The same requirements also apply to induction generation connected at or near synchronous speed because a similar voltage dip is present due to an inrush magnetizing current. The Facility shall submit number of starts per specific time period and maximum starting kVA draw data for the utility to verify that the voltage dip due to starting is within the visible flicker limits and does not degrade the normal voltage provided by the utility.
- (ii) Induction generators do not require separate synchronizing equipment. Starting or rapid load fluctuations on induction generators can adversely impact the Company System voltage. Corrective step-switched capacitors or other techniques may be necessary if the voltage fluctuations measured at the Point of Interconnection are not within the visible flicker limits as defined by IEEE 519-1992 (or latest version). These measures can, in turn, cause ferroresonance. If these measures (additional capacitors) are installed on Seller's side of the Point of Interconnection, the Company will review these measures and may require Seller to install additional protective relaying equipment. Company will determine whether additional equipment is required to protect the Company System.

(c) Inverter Systems.

- (i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of

IEEE Std 1547-2003 (or latest version), except as described in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller).

- (ii) Self-commutated inverters of the Company-interactive type shall synchronize to the Company System. Line-commutated, thyristor-based inverters are not recommended and will require additional technical study to determine harmonic and reactive power requirements. All interconnected inverter systems shall comply with the harmonic current limits of IEEE Std 519-1992 (or latest version).

EXHIBIT B-1
REQUIRED MODELS

PSS/E

ASPEN

PSCAD

EXHIBIT B-2
GENERATOR CAPABILITY CURVE(S)

**[ATTACHMENT C WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT C
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to limit the Actual Output of the Facility for purposes of maintaining power quality on Company System. Specific standards are defined for:
 - Ramp Rate (RR)
 - Instantaneous Power Fluctuation Rate
 - Sub-minute Power Fluctuation Rate

2. Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the Company's SCADA and EMS systems. These formulas are based on the periodicity at which analog data is retrieved from the RTU. This periodicity is called the "scan rate". Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The two-second scan rate, characteristics of transducers and RTU reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.

3. Ramp Rate Calculation:

$$MWRR^s = \frac{MW_s - MW_{s-30}}{30}$$

Where:

RR = Ramp Rate, may be calculated once every scan

MW_{s-30} = The instantaneous MW analog value 30 scans (60 seconds) prior the present scan

MW_s = The instantaneous MW analog value for the present scan

ATTACHMENT D
CONSULTANTS LIST

ATTACHMENT E
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

(To be attached as per Section 1(a) of Attachment B)

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

(To be attached as per Section 1(a) of Attachment B.)

**[ATTACHMENT G SHALL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT G
COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.
 - (a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at [REDACTED] volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").
 - (b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC) are required, Seller shall provide such sources, at no expense to Company.
 - (c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreement, and the results have been incorporated in Attachment B (Facility Owned by Seller) and this Attachment G (Company-Owned Interconnection Facilities) as appropriate.
 - (d) Seller's Payment Obligations. Company-Owned Interconnection Facilities, for which Seller has agreed to pay, whether designed, engineered and constructed by Seller or Company, include **[ADD LIST OF COMPANY-OWNED INTERCONNECTION FACILITIES THAT ARE REQUIRED PURSUANT TO THE RESULTS OF THE IRS. THE FOLLOWING IS AN EXAMPLE OF THE TYPES OF FACILITIES THAT COULD BE LISTED]**:
 - (i) **[Line extension];**
 - (ii) A manually operated, lockable, group operated switch located on a pole prior to the Facility

- switching station. Company will install a ___ kV drop into Seller-provided deadend structure.
- (iii) Substation additions and/or modifications of Company's existing structures as necessary. This would include but not be limited to protective relaying and setting changes;
 - (iv) Supervisory control and communications equipment (including but not limited to, SCADA/RTU, microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.);
 - (v) Revenue Metering Package as provided in Section 10.1 (Meters of the Agreement);
 - (vi) Any additional Interconnection Facilities needed to be installed as a result of final determination of Facility switching station site, final design of Facility to enable Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices.
 - (vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.
- (e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves a power purchase agreement for another non-Company owned electric generating facility ("Second NUG Contract") to supply electric energy to Company using the same line to which Facility is to be connected or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUG Contract, and the PUC, in approving this Agreement, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement.

(f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved within twelve (12) months of the Effective Date or thirty (30) months from the Execution Date, whichever is less, the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at the Seller's expense.

(g) Responsibility of Seller and Company. The general responsibilities of Seller and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company-Owned Interconnection Facilities is specified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]**

[DRAFTING NOTE: THE TYPICAL TIMEFRAMES ON O'AHU FOR COMPANY TO ENGINEER, PROCURE AND CONSTRUCT THE COMPANY-OWNED INTERCONNECTION FACILITIES, FOLLOWING THE COMPLETION OF: 1) THE IRS; 2) SELLER'S SINGLE LINE DIAGRAM; AND 3) COMPANY'S SINGLE LINE DIAGRAM ARE AS FOLLOWS:

(i) 36 MONTHS FOR 138 kV FACILITIES.

(ii) 30 MONTHS FOR 46 kV FACILITIES WITH MINOR INFRASTRUCTURE IMPROVEMENTS.] [DRAFTING NOTE: FOR OTHER ISLANDS.]

2. Construction and Support Services By Seller.

(a) Construction and Support Services By Seller.

(i) Seller (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense:

- A. The items identified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities) as being the responsibility of Seller to construct; and
- B. **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER].
[NOTE: SUBPARTS "A" AND "B" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE]**

All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

- (ii) Seller shall provide the necessary support for the Company's [REDACTED] kV overheadline extension work, which may include, but not limited to:
 - A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
 - B. Staking of Company proposed poles and anchors by surveyor.
 - C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
 - D. Graded level pads to provide vehicle working areas around all Company poles and anchors.
 - E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
 - F. Grubbing and clearing of vegetation within Company's easement area or as required.

- (b) Coordination of Construction. Prior to Seller engaging the Contractors, Seller shall obtain Company's written

approval, which approval shall not be unreasonably withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the "Plans"), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-Owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company's design/drawing layout and symbols standards, equipment specifications and construction specifications and standards. Company will provide the design and specifications information so Seller can incorporate such information in its bid documents.

- (c) Plans. No later than sixty (60) Days before Seller and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller shall provide Company with the Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "Standards").
- (d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the Plans for it to review and comment on the Plans, and verify in writing to Seller that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Seller to its comments and Seller shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans conform to the Standards or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards.

(e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors shall meet the Standards.

(f) Acceptance Test Procedures.

(i) The following conditions precedent must be satisfied prior to the conduct of the Acceptance Test:

- Final Single-Line Drawing, and notes, have received Company's written consent pursuant to Section 1(a)(i) (Single Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Relay List and Trip Scheme have received Company's written consent pursuant to Section 1(a)(i) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Interface Block Diagram has received Company consent pursuant to Section 1(a)(i) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final RTU points list has received Company consent.
- Final digital fault recorder settings have received Company consent.
- No later than 14 Days prior to commencement of the Acceptance Test:
 - Seller shall have certified to Company that Seller-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently

challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(ii) of this Attachment G (Company-Owned Interconnection Facilities).

- Seller shall have certified to Company that any Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(ii) of this Attachment G (Company-Owned Interconnection Facilities).
- Any Company-Owned Interconnection Facilities not built by or on behalf of Seller have been installed and commissioned.
- No later than 7 Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
- Redlined as-built drawings of the Seller-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) shall have been provided to Company.
- Continuous power is being supplied to Company's protection and SCADA equipment.
- Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high speed communication lines required under this Agreement have been commissioned and are ready for use.
- Not less than two (2) weeks prior to the commencement of the Acceptance Test, Seller and Company have participated in an on-Site Acceptance Test coordination meeting.

- (ii) Seller shall provide Company with at least fourteen (14) Days advance written notice of the commencement of the Acceptance Test. The Acceptance Test will be conducted on Business Days during normal business hours and may take a minimum of 30 Days to complete. No electric energy will be delivered from Seller to Company during the Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. At the time that Seller provides its 14-Day notice of the Acceptance Test to Company, Seller shall concurrently schedule a site walk-through of the Facility with Company to occur no later than seven (7) Days prior to the Acceptance Test. Seller's 14-Day notice to Company of the Acceptance Test shall constitute its certification that (i) the completion of the installation and commissioning of the Seller-Owned Interconnection Facilities and the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) and (ii) a walk-through by Company shall demonstrate, to Company's reasonable satisfaction, Seller's readiness to commence with the Acceptance Test. If, after the site walk-through, Company representatives reasonably determine that Seller is not ready to commence with the Acceptance Test, Seller shall remediate the deficiencies identified by Company and, upon completion, re-submit its 14-Day written notice of the Acceptance Test, and the process described in this Section 1(f) (Acceptance Test Procedures), shall commence again until Seller's readiness for the Acceptance Test is demonstrated to Company's reasonable satisfaction. Successful completion of the Acceptance Test requires successful completion of each of the individual tests that comprise the Acceptance Test. Retesting of any individual test constitutes as restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because

of a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

(iii) Company will be present when the Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (i) does not make any inspection or test, (ii) does not discover defective workmanship, materials or equipment, or (iii) accepts Company-Owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.

(g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Seller shall provide for Company review a set of the proposed as-built drawings for the Company-Owned Interconnection Facilities constructed by Seller (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Seller with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility.

(a) Seller Payment to Company.

(i) Seller shall pay the Total Estimated Interconnection Cost which is comprised of the estimated costs of (aa) acquiring, constructing and installing the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company, (bb) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (i) the application process for the PUC Approval Order, (ii) developing such Company-Owned Interconnection Facilities and (iii) reviewing and specifying those portions of Facility which allow interconnected operations as such are described in Attachment B(Facility Owned by Seller) (collectively, the "Engineering and Design Work"), and (cc) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (aa) through (cc)) are the "Total Interconnection Cost".

(ii) Summary List of Company-Owned Interconnection Facilities and Related Services to be designed, engineered and constructed by Company:

[THIS LIST SHOULD GENERALLY INCORPORATE A SUBSET OF THE LIST IN ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

(i) The following summarizes the Total Estimated Interconnection Cost of the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company:

[THIS LIST SHOULD INCLUDE ESTIMATED COSTS FOR THE ITEMS LISTED IN ATTACHMENT G, SECTION 3(a)(ii).]

The Total Estimated Interconnection Cost is \$.

(b) Total Estimated Interconnection Costs. The Total Estimated Interconnection Cost, which, except as otherwise provided herein, is non-refundable, shall be paid in accordance with the following schedule:

- (i) Initial Payment: Prior to the Execution Date, Seller has paid \$ [REDACTED],000.00 to Company;

- (ii) Company-Owned Interconnection Facilities Prepayment: Thirty (30) Days after the Execution Date, the total estimated costs related to the Engineering and Design Work are due and payable by Seller to Company;
 - A. Company shall not be obligated to perform any Engineering and Design Work or procure and construct Company-Owned Interconnection Facilities until Seller pays the amounts in Section 3(b)(i) and Section 3(b)(ii) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such engineering and design work.

- (iii) Balance of Company-owned Interconnection Facilities Prepayment: Upon the earlier of (aa) 30 Days after the Effective Date or (bb) [**INSERT CALENDAR DATE BY WHICH EQUIPMENT MUST BE ORDERED TO MEET CONSTRUCTION SCHEDULE**], the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to Company.
 - A. Company shall not be obligated to perform any Engineering and Design Work or procure and construct Company-Owned Interconnection Facilities until Seller pays the amount in this Section 3(b)(iii) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such procurement and construction work.

- (c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or

(iii) the date this Agreement is terminated, whichever occurs first. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Seller an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

- (d) Audit Rights. Seller shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis for the amount (if any) by which the Total Actual Interconnection Cost invoiced to Seller exceeds the Total Estimated Interconnection Cost, and (ii) to dispute the amount of any such excess. Seller shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawai'i. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overhead.
- (e) Ownership. All Company-Owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by Seller shall be the property of Company.

4. Ongoing Operation and Maintenance Charges.

- (a) Prior to the Transfer Date. Seller shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.

- (b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.
 - (c) Monthly Bill. Company shall bill Seller monthly for any costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after the billing date, reimburse Company for such monthly billed operation and maintenance charges.
5. Relocation of Company-Owned Interconnection Facilities.
- (a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.
 - (b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.
6. Guarantee for Interconnection Costs.

- (a) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in Section 3 (Seller Payment to Company for Company-Owned Interconnection Facilities and Review of Facility) of this Attachment G (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in Section 5 (Relocation of Company-Owned Interconnection Facilities), Seller shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("Standby Letter of Credit") in accordance with the requirements of Section 6(b) (Requirements of the Standby Letter of Credit) of this Attachment G (Company-Owned Interconnection Facilities), wherein Company shall receive payment from the bank upon request by Company.
- (b) Requirements of the Standby Letter of Credit. The Standby Letter of Credit shall be (i) in an amount not less than twenty-five percent (25%) of the Total Estimated Interconnection Cost or Total Estimated Relocation Cost, as applicable, and (ii) in substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank or other financial institution located in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poors) of the bank or financial institution issuing the Standby Letter of Credit falls below A-, Company may require Seller to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank or financial institution located in the United States with a credit rating of "A-" or better. In connection with the construction of the Company-Owned Interconnection Facilities, the Standby Letter of Credit shall be effective from the earlier of (aa) thirty (30) Days following the Effective Date, or (bb) the date that Seller requests Company to order equipment or commence construction on Company-Owned Interconnection Facilities. In connection with the relocation of the Company-Owned Interconnection Facilities, if applicable, the Standby Letter of Credit shall be effective within thirty (30) Days after Seller receives the invoice from

Company for the Total Estimated Relocation Cost as set forth in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities). The Standby Letter of Credit shall be in effect through the earlier of forty-five (45) Days after the final accounting or seventy-five (75) Days after the Agreement is terminated. Seller shall provide to Company within fourteen (14) Days of the date the Standby Letter of Credit is to be effective as aforesaid, a document from the bank which indicates that such a Standby Letter of Credit has been established.

- (c) Other Form of Security. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Company may, at its sole discretion, agree in writing to accept such other form of security as Company deems to provide Company with protection equivalent to a Standby Letter of Credit.

7. Land Restoration.

- (a) Definition of "Land". For the purposes of this Attachment G (Company-Owned Interconnection Facilities), "Land" means any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.
- (b) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), if requested by Company, Seller shall, at its sole cost and expense, remove (i) the Company-Owned Interconnection Facilities from the Land and (ii) the Seller-Owned Interconnection Facilities from the Land; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Seller shall reimburse Company for its costs to remove such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities. To the extent Seller is obligated to remove Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection

Facilities, Seller shall complete such removal within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or as otherwise agreed to by both Parties in writing.

- (c) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval)) and removal of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as the case may be, Seller shall, at its sole cost and expense, restore the Land to its condition prior to construction of such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as applicable. Land restoration shall be completed within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval)), or as otherwise agreed to by both Parties in writing.

8. Transfer of Ownership/Title.

- (a) Transfer of Ownership and Title. On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable and (ii) all Land Rights necessary to operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.
- (b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Seller and/or its

Contractors shall be free and clear of liens and encumbrances.

- (c) Form of Documents. The transfers to be made to Company pursuant to this Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller shall be substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities Constructed by Seller.

Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary to the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities or that such Governmental Approvals have otherwise have been closed with the issuing Governmental Authority.

10. Land Rights.

Seller shall obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities.

For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, including the commercial terms.

[MATRIX TO BE INSERTED]

ATTACHMENT H
BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale"), made as of the ____ day of _____, 20____, by _____ ("Transferor") and _____ ("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Power Purchase Agreement for Renewable Dispatchable Generation between Transferor and Transferee dated _____, 20__ ("PPA") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in Attachment G (Company-Owned Interconnection Facilities) to the PPA between [**Transferor and Transferee**] and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

**[Signatures for Bill of Sale and Assignment
Appear on the Following Page]**

IN WITNESS WHEREOF, Transferor and Transferee have executed this instrument on the day and year first above written.

a _____

By _____
Its _____

"Transferor"

a Hawai'i corporation

By _____
Its _____

By _____
Its _____

"Transferee"

SCHEDULE H-1

**DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES**

SCHEDULE H-2

DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Tax Map Key Nos.:

Total pages: _____

ATTACHMENT I
ASSIGNMENT OF LEASE AND ASSUMPTION

THIS ASSIGNMENT is made as of this _____ day of _____, 20____, by _____, a _____, whose principal place of business and post office address is _____, hereinafter called the "Assignor," and _____, a Hawai'i corporation, whose principal place of business and post office address is _____, Honolulu, HI 968____, hereinafter called the "Assignee,"

W I T N E S S E T H:

THAT the Assignor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it paid by the Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, delegate, transfer, set over and deliver unto the Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to the lease described in Schedule 1 (the "Lease"); together with

all interests thereto appertaining, and together with the personal property located on the land thereby demised.

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and enjoyed in connection with said Lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns, for and during the respective unexpired term of said Lease, and as to said personal property (if any) absolutely and forever.

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the herein described real property; that said Lease is in full force and effect and is not in default; that said real property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid; that the Assignor is the lawful owner of said personal property (if any) and that Assignor's title thereto is free and clear of and from all liens and encumbrances, that the Assignor has good right to sell and assign said real property and personal property (if any) as aforesaid; and, that the Assignor will WARRANT AND DEFEND the same unto the Assignee against the lawful claims and demands of all persons, except as aforesaid.

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with said Lessor, that the Assignee will, effective as of and from the date of the execution and delivery of this instrument and during the residue of the term of said Lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said Lease, and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor from and against the nonpayment of said rent and the nonobservance or nonperformance of said covenants and conditions and each of them.

The terms "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and

include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein. The term "Lease", as and when used herein, means the lease or sublease demising the leasehold estate described in Schedule 1, together with all recorded amendments thereof, if any, whether or not listed in Schedule 1. The term "rent", as and when used herein, means and includes all rents, taxes, assessments and any other sums charged pursuant to the Lease.

This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument binding on all the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart.

[Signatures for Assignment of Lease and Assumption are on following page.]

IN WITNESS WHEREOF, Company and Assignor have executed
this instrument as of the date first above written.

By _____
Name:
Title:

By _____
Name:
Title:

"Assignor"

By _____
Name:
Title:

By _____
Name:
Title:

"Assignee"

STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 200__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

Signature: _____
Print Name: _____
Notary Public, State of Hawai'i

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____

Doc. Date _____ No. of Pages: ____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

(Official Stamp or Seal)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

STATE OF HAWAI'I)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 200__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal) Signature: _____
Print Name: _____
Notary Public, State of Hawai'i
My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____

Doc. Date _____ No. of Pages: ____
Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary Date of Notarization and (Official Stamp or Seal)
Certification Statement

Printed Name of Notary

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
COMPANY PAYMENTS FOR ENERGY AND DISPATCHABILITY

1. Price for Purchase of Electric Energy. Commencing on the Commercial Operations Date, Company shall pay Seller for electric energy delivered to the Point of Interconnection in response to Company's dispatch in accordance with this Agreement at the rate of \$[]/kWh.
2. Lump Sum Payment for Purchase of Dispatchability. Commencing on the Commercial Operations Date, Company shall pay Seller for the availability of the Facility's Net Energy Potential, subject to the Renewable Resource Variability, to respond to Company's dispatch in accordance with this Agreement, a monthly Lump Sum Payment as calculated and adjusted as set forth in Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy and Dispatchability). The monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.
3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as follows:
 - i. Lump Sum Payment During First Benchmark Period. During the First Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the First NEP Benchmark.
 - ii. Lump Sum Payment During Second Benchmark Period.
 - a. One purpose of the Second Benchmark Period is to provide the Seller, in the event that the Initial NEP OEPR Estimate is less than NEP RFP Projection, with a limited period during which Seller will have an opportunity, by having a Subsequent OEPR prepared pursuant to Section 3(b) (Voluntary Subsequent OEPR) of Attachment U (Calculation Adjustment of Net Energy Potential) to this Agreement, to obtain an adjustment to the NEP OEPR Estimate

used to calculate the Lump Sum Payment, subject to (i) the cap on any upward adjustment imposed by the limitation that the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment shall not exceed the NEP RFP Projection and (ii) the risk that any Subsequent OEPR might result in a downward adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment. Accordingly, for each calendar month during the Second Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of the (w) the NEP RFP Projection or (x) the NEP OEPR Estimate of the OEPR that is most recent as of the first day of such calendar month. For avoidance of doubt:

1. On the first Day of the Second Benchmark Period, the most recent OEPR will be the Initial OEPR;
2. If no Subsequent OEPR is issued under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement for an OEPR Period of Record ending prior to the end of the third (3rd) Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;
3. If no Subsequent OEPR is issued under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement for an OEPR Period of Record ending prior to the end of the third (3rd) Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;

iii. Lump Sum Payment Following Second Benchmark Period.

- a. As of the first Day of the fourth (4th) Contract Year, the estimate of Net Energy Potential that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment until the end of the calendar month during which an OEPR Evaluator issues the first Subsequent OEPR for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year and, effective at the end of such calendar month, the Second NEP Benchmark that was in effect immediately prior to the issuance of such Subsequent OEPR shall constitute the "Most Recent Prior NEP Benchmark" under clause (i) of the definition of that term set forth in this Agreement. For avoidance of doubt, if no Subsequent OEPR is issued for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect for the balance of the Term as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment.
- b. In order to facilitate planning for the Company System, no increase in Net Energy Potential (and hence in the monthly Lump Sum Payment) shall be permitted under this Agreement as a consequence of any Subsequent OEPR that is prepared for an OEPR Period of Record ending on or after the expiration of the Second Benchmark Period. Accordingly, if any such Subsequent OEPR is prepared, the monthly Lump Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the

product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the Most Recent Prior NEP Benchmark. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next following Subsequent OEPR (if any) that is required or permitted under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. If any such next following Subsequent OEPR is issued, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the calendar month during which an OEPR Evaluator issues such Subsequent OEPR, be re-calculated and adjusted as provided in this Section 3.iii.b of this Attachment J (Company Payments for Energy and Dispatchability) and shall continue in effect for the period provided in the preceding sentence.

- iv. Under the Company's previous forms of as-available power purchase agreements for renewable energy, the independent power producer was compensated for the production and delivery of electrical energy and assumed the risk of non-payment for events such as Force Majeure that prevented such production and delivery. Although under this Agreement most of Seller's compensation will be in the form of a Lump Sum Payment rather than for the production and delivery of electrical energy, it is not the intent of the Parties that Seller should be entitled to unrestricted compensation in circumstances in which an independent power producer would not have been able to earn compensation under the Company's prior form of power purchase agreements (i.e., if the Facility or any portion thereof is unable to produce and deliver electric energy). Although the liquidated damages that are payable if the Availability Factor fails to achieve the Availability Benchmark addresses this issue when the Facility or a

portion thereof is unable to generate electric energy because it is included in the DownTime classification under Section 2.5(a) (Calculation of the Availability Factor) of this Agreement, the Availability Factor does not account for events of Force Majeure because such events are included in the ExcludedTime classification under Section 2.5(a) (Calculation of the Availability Factor) of this Agreement. Accordingly, and without limitation to the generality of the foregoing provisions of this Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy and Dispatchability), the monthly Lump Sum Payment shall be adjusted downward pro rata for each Day or portion thereof during the calendar month in question that the Facility or a portion thereof was not available to respond to Company's dispatch because of a Force Majeure condition (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Seller from making the Facility or a portion thereof available for dispatch. For example, if a Facility has ten inverter(s) and, during the month of May (which has 31 calendar days), one inverter is not available to respond to Company's dispatch for a period of 15 Days due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be calculated as follows:

$$\text{Monetary Amount of Downward Adjustment} = (\text{MLSP} \times 1/10) \times 15/31$$

where:

MLSP = The monthly Lump Sum Payment that would be payable but for the downward adjustment.

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by multiplying a monetary value by a fraction shall be rounded to the nearest cent.

4. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to Company during the Control System Acceptance Test but not during the

Acceptance Test), provided Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. Company shall not compensate Seller for test energy.

5. Tax Credits. Company acknowledges and agrees that the Refundable Tax Credit and Non-Refundable Tax Credit shall inure to the benefit of the Claiming Entity; provided, however, that Seller acknowledges and expressly agrees that the Refundable Tax Credit and Non-Refundable Tax Credit, with regard to Seller's Facility, have been calculated into the Contract Pricing based on the maximization of such credits. In the event that Seller's Facility does not gain the benefit of the Refundable Tax Credit and/or the Non-Refundable Tax Credit, Seller expressly acknowledges and agrees that it shall not seek to amend the Contract Pricing.

**[ATTACHMENT K WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
The earlier of (i) date that is 30 Days following the Effective Date or (ii) [INSERT DATE BY WHICH EQUIPMENT MUST BE ORDERED TO MEET CONSTRUCTION SCHEDULE] ("Guaranteed Procurement Payment Date")	<u>Procurement Payment Milestone</u> :* Seller shall make payment to Company of amount required under <u>Section 3(b)(iii)</u> (Balance of Company-Owned Interconnection Facilities Prepayment) of <u>Attachment G</u> (Company-Owned Interconnection Facilities).
180 Days following the Effective Date ("Guaranteed 180-Day Milestone Date")	<u>180-Day Milestone</u> :* Seller shall complete the following: <ol style="list-style-type: none">1. Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: [INSERT LIST OF GOVERNMENTAL APPROVALS]2. Provide Company with a copy of the executed Facility equipment, engineering, procurement and construction ("<u>EPC</u>"), or other general contractor, agreements.

* Both of these Guaranteed Project Milestones are "Substantial Commitment Milestones."

3. Provide Company with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s).
4. Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility or (ii) the financial capability to construct the Facility ("Construction Financing Closing Milestone").

**[SPECIFY DATE
CERTAIN]**

Guaranteed Commercial Operations Date.

**[ATTACHMENT L WILL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT L
REPORTING MILESTONES

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Permit Application Filing Date for the Governmental Approvals specified in <u>Attachment K</u> (Guaranteed Project Milestones).*
[Date]	Seller shall provide Company with a copy of the executed Facility equipment, engineering, procurement and construction (" <u>EPC</u> "), or other general contractor, agreements.*
[Date]	Seller shall provide Company with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s).*
[Date]	Seller shall provide Company with copies, as applicable, of executed Facility operating agreements, [electric transmission and/or interconnection agreements (?)].

* These events are "Reporting Milestones" for purposes of the "Reporting Milestone Date" specified in this Attachment L. These same events constitute the "180-Day Milestone" specified in Attachment K (Guaranteed Project Milestones). In order to allow HECO to monitor project progress, the "Reporting Milestone Date" for each of these events should be prior to the 180-Day period specified in Attachment K (Guaranteed Project Milestones). However, if the "Reporting Milestone Date" for one or more of these events is equivalent to the 180-Day period specified in Attachment K (Guaranteed Project Milestones), any such event should be deleted from Attachment L (Reporting Milestones) and appear only as Attachment K (Guaranteed Project Milestones).

- [Date] Seller shall provide Company with documentation reasonably satisfactory to Company evidencing (i) closing on financing for the Facility or (ii) proof of financial capability to construct the Facility ("Construction Financing Closing Milestone").*
- [Date] Construction Start Date (as defined in the Definitions section of the Agreement).
- [Date] Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
- [Date] The turbine(s)/inverter(s) shall have been installed at the Site.
- [Date] The step-up transformer shall have been installed at the Site.
- [Date] Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.
- [Date] The Acceptance Test of the Facility commences.

* See footnote on preceding page.

ATTACHMENT M
FORM OF LETTER OF CREDIT

Page 1 of 2

[Bank Letterhead]

[Date]

Beneficiary: **[Hawaiian Electric Company, HELCO or MECO, as appropriate]**

[Address]

[Bank's Name]

[Bank's Address]

Re: **[Irrevocable Standby Letter of Credit Number]**

Ladies and Gentlemen:

We hereby establish, in your favor, our irrevocable standby Letter of Credit Number _____ (this "Letter of Credit") for the account of **[Applicant's Name]** and **[Applicant's Address]** in the initial amount of \$ _____ **[dollar value]** and authorize you, Hawaiian Electric Company **[HELCO or MECO, as appropriate]** ("Beneficiary"), to draw at sight on **[Bank's Name]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Power Purchase Agreement dated as of _____ between **[Project Entity Name]** and Beneficiary.

This Letter of Credit is issued with respect to the following obligations:_____.

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

Partial draws of this Letter of Credit are permitted. This Letter of Credit is not transferable. Drafts on us at sight shall be accompanied by a Beneficiary's signed statement signed by a representative of Beneficiary substantially as follows:

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian

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Electric Company **[HELCO or MECO, as appropriate]**, and [(ii) the amount of the draft accompanying this certification is due and owing to Hawaiian Electric Company **[or HELCO or MECO, as appropriate]** under the terms of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric Company **[or HELCO or MECO, as appropriate]**][(ii) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under Section _____ of the Power Purchase Agreement⁴].

Such drafts must bear the clause "**Drawn under [Bank's Name and Letter of Credit Number _____ and date of Letter of Credit.]**"

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank. If presentation is made by facsimile transmission, you may contact us at **[Bank Phone Number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. If presented by facsimile, original documents are not required.

This letter of credit shall expire one year from the date hereof. Notwithstanding the foregoing, however, this letter of credit shall be automatically extended (without amendment of any other term and without the need for any action on the part of the undersigned or Beneficiary) for one year from the initial expiration date and each future expiration date unless we notify you in writing at least thirty (30) days prior to any such expiration date that this letter of credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to **[revise for HELCO or MECO, as appropriate]**:

Manager, Renewable Acquisition
Hawaiian Electric Company, Inc.
220 South King Street, 21st Floor
Honolulu, Hawai'i 96813

and to

SVP & Chief Financial Officer

⁴ For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

Hawaiian Electric Company, Inc.
900 Richards Street, 4th Floor
Honolulu, Hawai'i 96813

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of Hawai'i are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

[Bank's Name]:

By: _____
[Authorized Signature]

ATTACHMENT N
ACCEPTANCE TEST GENERAL CRITERIA

**[THIS ATTACHMENT WILL NEED TO BE MODIFIED
BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection:

- (a) Based on manufacturer's specification, test the local operation of the Facility's [REDACTED] kV breakers, which connect the Facility to Company System - must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System (EMS) is the same as the actual physical status in the field.
- (b) Remotely test the operation of the Facility's [REDACTED] kV breakers which connect the Facility to Company System - must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, Attachment E (Single-Line Drawing and Interface Block Diagram) for the Facility.

- (d) All [REDACTED] kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).
- (e) Switching Station inspections - The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed-to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.
- (f) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths to tie the Facility to Company's communications system.
- (g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's [REDACTED] kV breakers open as they are designed to open. (Back up relay testing)

2. Witness of Facility protection scheme testing:

- (a) Company may have a representative on-site when Seller performs any testing dealing with Seller's protection schemes such as any under/over voltage or under/over frequency protection schemes to ensure they meet the performance requirements of this Agreement and the IRS.

3. Telephone Communication:

- (a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

**[THIS ATTACHMENT WILL NEED TO BE MODIFIED
BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test in accordance with Good Engineering and Operating Practices and with the terms of this Agreement.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests:

1. SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility are working properly end-to-end.
2. Dispatch Test to verify if the Facility's active power limit controls and the Active Power Control Interface with the Company's EMS are working properly. The Test is generally conducted by setting different active power limit setpoints and observing the proper limiting of the Facility's real power output.
3. Control Test for Voltage Regulation to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of Sections 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of Attachment B (Facility Owned by Seller) to this Agreement.
[DRAFTING NOTE: NEEDS TO BE REVISED FOR MECO FOR TESTING POWER FACTOR.]
4. Frequency Regulation Control Test to verify the Facility provides a frequency droop response as defined in this Agreement. Test is generally conducted by making adjustments

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of the frequency reference setting and verifying by observation that the Facility responds per droop and deadband settings.

5. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-trip communication system. Test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.

Monitoring Test:

- a) The monitoring test requires the Facility to operate as it would in normal operations.
- b) To ensure useful and valid test data is collected, the monitoring test shall end when one of the following criteria is met:
 - A. The Facility's power production is greater than 85% of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.
 - B. The recorded renewable energy resource at the Facility is above **[600 W/m²] [a Measured Wind Speed of 9 meters per second]** for at least eight (8) hours in any continuous 48-hour CSAT period.
 - C. 14 Continuous days from the start of the CSAT.
- c) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the test.
- d) The performance of the Facility is evaluated for this evaluation period, e.g. examining voltage regulation, frequency regulation, dispatch control, and ramp rate performance to verify the performance meets the requirements of this Agreement. The Facility is considered to have complied with a requirement if the Facility was compliant with the requirement at least 99.0% of the time during the evaluation period and the Facility does not grossly violate the requirement when the Facility was in violation. The Parties understand and agree that these compliance conditions are limited only to determining whether the Facility successfully completes the CSAT monitoring test and are not for use in determining compliance during Commercial Operations, shall not be considered a waiver of any of the performance standards of Seller, all of which are hereby reserved, and shall not alleviate Seller from any of its obligations under the Agreement.

ATTACHMENT P
SALE OF FACILITY BY SELLER

1. Company's Right of First Negotiation Prior to End of the Term.
 - (a) Right of First Negotiation. Should Seller ever desire to dispose of its right, title, or interest in the Facility, in whole or in part, other than the sale and leaseback of the Facility to provide financing for the Facility, it shall first offer to sell such interest at the fair market value to Company. Seller shall not solicit any offers for the sale of the Facility with any other entity without first negotiating with Company for at least six (6) months. The Parties may agree in writing to extend this period for negotiations. (Such 6-month period, as extended as aforesaid, is referred to herein as the "Right of First Negotiation Period".) During the Right of First Negotiation Period, the Parties shall negotiate in good faith concerning a purchase by Company unless, during that period, Company gives written notice that such negotiations are terminated. If, at the conclusion of the Right of First Negotiation Period, the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, the fair market value of the Facility shall be determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller).
 - (b) Change in Ownership Interests and Control. Disposition of an interest in the Facility described in Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) shall include and be deemed to include and occur upon:
 - (i) The disposition, sale, assignment or transfer, directly or indirectly, by merger, consolidation, reorganization, operation of law, or otherwise, of (A) any interest in Seller, and (B) any interest in any entity which holds a legal, beneficial or other interest in Seller, whether directly or through one or more intermediary entities (collectively, an "Ownership Interest"); and
 - (ii) The creation or issuance of ownership interests (whether shares, partnership interests, membership

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interests, or other equity) which dilutes or reduces the existing ownership interests of any such entities, and (B) any change in the voting power or right to manage such entities (collectively, "Ownership Control"); provided, however, that Ownership Interest and Ownership Control shall not apply to an entity that is publicly traded on an established exchange.

Company's rights set forth in Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) shall apply if in a single transaction or a series of related or unrelated transactions there is or will occur (A) a change of 50% or more in the Ownership Interest, or (B) any change in Ownership Control.

- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company does exercise its right to purchase such interest in the Facility under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company (i) prior to the expiration of the Right of First Negotiation Period, or (ii) within thirty (30) Days of the determination of the Appraised Fair Market Value of the Facility as provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller), the provisions of this Section 1(d) (Right of First Refusal) shall apply if (aa) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or the Appraised Fair Market Value or (bb) an Ownership Interest that could result in a change of Ownership Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility or the Appraised Fair Market Value. (By way of example, if the final amount offered

by Company to purchase the Facility was \$100, and the Ownership Interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such Ownership Interest by less than \$75 would trigger this Section 1.1(d) (Right of First Refusal). Seller shall notify Company in writing of an offer that triggers this Section 1(d) (Right of First Refusal) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions; provided that Company shall have three (3) months in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an Ownership Interest that could result in a change in Ownership Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such Ownership Interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement). (By way of example, if a 75% Ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

- (e) Seller's Right to Transfer. In the event that Company does not exercise its right to purchase such interest in the Facility under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller), Seller shall have the right to transfer or sell such interest to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed. Company will consent to the assignment of this Agreement to the purchaser upon being reasonably satisfied that the assignee (i) has the qualifications or has contracted with an entity having the qualifications to operate the Facility in a manner consistent with the terms and conditions of this Agreement and (ii) has provided Company with evidence satisfactory to Company of its creditworthiness and

ability to perform its financial obligations hereunder (including such guarantees as Company deems appropriate) in a manner consistent with the terms and conditions of this Agreement.

2. Company's Right of First Negotiation to Purchase at End of Term.

- (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.
- (b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three months, Company shall have the exclusive right to negotiate in good faith with Seller the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated. If, at the conclusion of the Exclusive Negotiation Period, the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, the fair market value of the Facility shall be determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller).

- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiating Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company (i) prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), or (ii) within thirty (30) Days of the determination of the Appraised Fair Market Value of the Facility as provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility or the Appraised Fair Market Value (as applicable), Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions; provided, however, that Company shall have three (3) months in which to notify Seller of its intent to exercise this right.
3. Procedure to Determine Fair Market Value of the Facility.
- (a) If, at the conclusion of the Right of First Negotiation Period, the Exclusive Negotiation Period, or the period provided in Section 6(a) (Company's Option to Purchase Pursuant to Section 24.5(d)) of this Attachment P (Sale of Facility by Seller) (as applicable), the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the

appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to Section 3(c) of this Attachment P (Sale of Facility by Seller). Each of Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

- (b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.
- (c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.

- (d) The "Appraised Fair Market Value of the Facility" means the fair market value determined pursuant to Section 3(a) or Section 3(c) of this Attachment P (Sale of Facility by Seller) as applicable.
4. Purchase and Sale Agreement. The purchase and sale agreement concluded by the Parties pursuant to Section 1(a) (Right of First Negotiation) and Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:
- (a) Seller shall, as of the closing of the sale, convey good and marketable title to the Facility and Site, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except as approved by Company in writing;
 - (b) Seller shall assign or otherwise make available to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;
 - (c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may request to convey good and marketable title to the Facility free from all liens, claims, encumbrances, or rights of others;
 - (d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;
 - (e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, good and marketable title to the Facility, free and clear of all other liens, claims, encumbrances and rights of others, except as approved by Company in writing;
 - (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and

Seller shall indemnify Company against any such losses, liabilities or damages;

- (g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least [__] Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;
 - (h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company;
 - (i) Seller shall warrant that the Facility is in good operating order and repair, ordinary wear and tear excepted, in condition to perform in accordance with past practice, with no major maintenance items deferred, except as disclosed to and approved by Company in writing at least [__] Days prior to the date of closing on the sale of the Facility to Company;
 - (j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least [__] Days prior to the date of closing on the sale of the Facility to Company, the Facility conforms and has been operated by Seller in conformity with all Laws;
 - (k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility); and
 - (l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease.
5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval

by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

- (a) Company shall submit the purchase and sale agreement to the PUC for approval promptly after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an Approval Order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.

- (b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would

otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- (c) In order to constitute an Approval Order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.
- (d) The Final Non-Appealable Order from the PUC must be obtained within eighteen (18) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.
- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Seller), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
- (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Seller), either (i) Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either

Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.

6. Company's Option to Purchase Pursuant to Section 24.5(d). Once Company has given Seller notice of Company's preliminary interest in purchasing the Facility pursuant to Section 24.5(d), Seller and Company shall, for a period not to exceed three months, negotiate in good faith the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. Any such agreement shall be subject to PUC approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller). If, at the conclusion of the aforesaid three month period (as the same may be extended as aforesaid), the Parties have not reached an agreement on the sale of the Facility to Company because the Parties cannot agree on the fair market value of the Facility, the fair market value of the Facility shall be determined in accordance with Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller).

ATTACHMENT Q
[RESERVED]

ATTACHMENT R
REQUIRED INSURANCE

(See also Article 18 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident
Bodily Injury by Disease - \$1,000,000 each Employee
Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

(i) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (a) Premises, operations, and mobile equipment,
- (b) Products and completed operations,
- (c) Claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
- (d) Blanket contractual liability,
- (e) Broad form property damage (including completed operations),
- (f) Explosion, collapse and underground hazard,
- (g) Personal injury liability, and
- (h) Failure to supply liability.

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- (ii) Limits of liability for Bodily Injury & Property Damage shall be:
 - \$10,000,000 combined single limit per occurrence and;
 - \$20,000,000 aggregate annually
 - (iii) If coverage is written on a claims-made basis, the Seller warrants that any retroactive date applicable to coverage under the policy precedes the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of Term.
 - (iv) Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.
3. Automobile Liability Insurance. This insurance shall include coverage for owned, leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate annually. The policy shall be endorsed to include Transportation Pollution Liability insurance, covering hazardous materials to be transported by Seller, as appropriate.
4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property in transit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and supplies of any nature whatsoever, the property of the Seller or of others for which the Seller may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in Section 5 (All Risk Property/Comprehensive Boiler and Machinery Insurance (Upon Completion of Construction)). The amount of coverage shall be purchased on a full replacement cost basis, except for earthquake and flood perils which shall be no less than Twenty Million Dollars (\$20,000,000), if such insurance

amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property/Comprehensive Boiler and Machinery Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) and Comprehensive Boiler and Machinery Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake and flood perils which shall be no less than Twenty Million Dollars (\$20,000,000), if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Seller's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to operate for a period of at least twelve (12) months following a covered physical damage loss deductible period or reasonable dollar deductible.

7. Project Liability Errors and Omissions. Seller shall obtain adequate protection against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the design and/or construction of the Facility. This protection may be provided through any one or more of the following mechanisms: (i) construction contract(s) with the above parties who have sufficient financial creditworthiness to cover project liability errors and omissions; (ii) other agreement(s) with the above parties; or (iii) reserve account(s) which may be used to correct material deficiencies associated with the Facility as a result of negligent actions or inactions of the above parties.

8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

ATTACHMENT S
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement for Renewable As-Available Energy by and between _____, a **[Delaware limited liability company]** ("Seller"), and **[HECO/HELCO/MECO, as appropriate]**, a Hawai'i corporation, dated _____, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Government Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, "EPC Contractor" means the contractor responsible for engineering, procurement and construction of the Facility, including Seller if acting as contractor, and including all subcontractors.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.1.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.1.2 Financing
- 2.1.3 Governmental Approvals for Development
- 2.1.4 Site Control
- 2.1.5 Land Rights for Company-Owned Interconnection Facilities
- 2.1.6 Design and Engineering
- 2.1.7 Major Equipment Procurement
- 2.1.8 Construction
- 2.1.9 Interconnection

2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

2.2.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]

2.2.2 Financing

2.2.3 Development Permits

2.2.4 Site Control

2.2.5 Land Rights for Company-Owned Interconnection Facilities

2.2.6 Design and Engineering

2.2.7 Major Equipment Procurement

2.2.8 Construction

2.2.9 Interconnection

2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

2.3.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]

2.3.2 Financing

2.3.3 Governmental Approvals for Development

2.3.4 Site Control

- 2.3.5 Land Rights for Company-Owned Interconnection Facilities
- 2.3.6 Design and Engineering
- 2.3.7 Major Equipment procurement
- 2.3.8 Construction
- 2.3.9 Interconnection
- 2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.4.1 Construction Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Land Rights for Company-Owned Interconnection Facilities
- 2.4.6 Design and Engineering
- 2.4.7 Major Equipment procurement
- 2.4.8 Construction
- 2.4.9 Interconnection
- 2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in Attachment K and Attachment L and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [<i>specify reason</i>]; current expected completion date)
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3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller's course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Construction Milestone
- 3.2.2 Explain plans to achieve missed Construction Milestone
- 3.2.3 Explain plans to achieve subsequent Construction Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission

__/__/____
 (expected / actual)

Date application/submission deemed complete by agency

__/__/____
 (expected / actual)

Date of initial study (if applicable)

__/__/____
 (expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation

__/__/____
 (expected / actual)

Date of Draft ND/MND/EIR

___/___/___
(expected /
actual)

Date Notice of Determination filed at
OPR or County Clerk

___/___/___
(expected /
actual)

Governmental Approvals

Please describe each of the Governmental Approvals to be obtained by Seller and the status of each:

Status Summary

e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

Agency / Approval

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)
		__/__/____ (expected / actual)	__/__/____ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Certification

I, _____, on behalf of and as an authorized representative of [_____] , do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT T
 MONTHLY REPORTING AND DISPUTE
RESOLUTION BY INDEPENDENT AF EVALUATOR

1. Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall provide to Company a Monthly Report in Excel, Lotus or such other format as Company may require, which Monthly Report shall include (i) the data for the calendar month in question populated into the form of "Monthly Report" below and (ii) Seller's calculations of the performance metrics and any liquidated damages assessments for the LD Period ending with such calendar month as set forth below. Seller shall deliver such Monthly Report to Company by the fifth (5th) Business Day following the close of the calendar month in question. Seller shall deliver the Monthly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Monthly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Monthly Report.

Monthly Report

NAME OF IPP FACILITY: [Facility Name]

MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

DOWNTIME DURING MONTHLY REPORT PERIOD

DownTime Event No.	Event Date	Start Time	End Time	Number of Seconds for Event	Number of Inverters Unavailable for Event	DownTime for Event (# of Unavailable Inverters X # of Seconds for Event)

Total number of inverters installed at Facility: _____

Total number of seconds in monthly report period: _____

Total number of inverter-seconds (i.e., 1 installed inverter for 1 second) in monthly report period: _____

Total number of inverter-seconds of DownTime in monthly report period (sum of "DownTime for Event" column): _____

Monthly Report (continued)

EXCLUDEDTIME DURING MONTHLY REPORT PERIOD

ExcludedTime Event No.	Event Date	Start Time	End Time	Number of Seconds for Event	Number of Inverters Unavailable for Event	ExcludedTime for Event (# of Unavailable Inverters X # of Seconds for Event)	Reason for ExcludedTime Event

Total number of inverter-seconds of ExcludedTime in monthly report period
(sum of "ExcludedTime for Event" column): _____

PERFORMANCE METRICS FOR LD PERIOD (i.e., 12-month period ending with
month covered by Monthly Report)

Availability Factor

Total number of inverter-seconds for the 11 months prior to
month covered by Monthly Report: _____

Total number of inverter-seconds of DownTime for the
11 months prior to month covered by Monthly Report: _____

Total number of inverter-seconds of ExcludedTime for the
11 months prior to month covered by Monthly Report: _____

Availability Factor for LD Period: _____

Amount (if any) by which Availability Factor for LD Period
falls below Availability Benchmark: _____

Liquidated Damages (if any) assessed for falling below
Availability Benchmark: _____

Lump Sum Payment due for month covered by Monthly Report: _____

GPR Benchmark

GPR Benchmark for LD Period: _____

GPR Benchmark as adjusted for applicable degradation factor: _____

95% of adjusted GPR Benchmark to establish threshold for
LD assessment: _____

Measured Performance Ratio ("MPR") for LD Period: _____

Amount (if any) by which MPR for LD Period falls below
threshold for LD assessment set forth above: _____

Liquidated Damages (if any) assessed for falling below
LD threshold: _____

Lump Sum Payment due for month covered by Monthly Report: _____

2. Disagreements Concerning Availability Factor, GPR Benchmark and Measured Production Ratio.

(a) Notice of Disagreement With Monthly Report. Within five (5) Business Days following the close of the calendar month in question, Seller shall provide to Company the Monthly Report for such calendar month and the LD Period ending with such calendar month, as provided in Section 1 (Monthly Report) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). Within ten (10) Business Days after Company's receipt of a Monthly Report, Company shall provide written notice to Seller of any disagreement with any matter concerning such Monthly Report, including the data for the calendar month covered by such Monthly Report, Seller's calculation of the Availability Factor for the LD Period ending with such calendar month ("AF Disagreement") or Seller's calculation of Measured Performance Ratio for the LD Period ending with such calendar month ("MPR Disagreement"). Together with any such notice of disagreement ("Notice of Disagreement"), the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of AF Disagreement or a Notice of MPR Disagreement within said 10-Business Day period, the Monthly Report provided by Seller shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

(b) Notice of Disagreement With GPR Benchmark Determination. If Seller disagrees with either (i) the GPR Benchmark derived by Company pursuant to Section 2.6(b) (Determination of GPR Benchmark) of this Agreement or (ii) Company's claim that it is unable to reasonably derive such GPR Benchmark, Seller shall, within thirty (30) Days after receipt of Company's written notice of the GPR Benchmark pursuant to Section 2.6(b) (Determination of GPR Benchmark), provide written notice to Company of Seller's disagreement with either (i) the GPR Benchmark derived by Company as aforesaid or (ii) Company's claim that it is unable to reasonably derive a GPR Benchmark ("GPR Benchmark Disagreement"). Together with such notice of disagreement ("Notice of GPR Benchmark

Disagreement"), the Seller shall include its own calculation and other support for its position. If Seller fails to provide such notice within such 30-Day period, the GPR Benchmark designated in Company's written notice shall be deemed to be accepted by Seller and shall no longer be subject to dispute by Company or Seller. For avoidance of doubt, if Company claims that it is unable to reasonably derive a GPR Benchmark from, as applicable, the IE Energy Assessment Report and supporting data on plane of array irradiance and corresponding power output or any written clarification of an Initial OEPR or Subsequent OEPR issued by an OEPR Evaluator, Company shall be deemed to have designated a GPR Benchmark of **0.9**.

- (c) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Disagreement and attempt to resolve such Monthly Report Disagreement. If the Parties are able to agree on a resolution of any Monthly Disagreement, the resulting corrected Monthly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Monthly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Monthly Report Disagreement affects future Monthly Reports, such future Monthly Reports shall be prepared, and the Availability Factor and Measured Performance Ratio in such future Monthly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Monthly Report Disagreement within thirty (30) Days after Company's issuance of such Notice of Monthly Report Disagreement, either Party may, within five (5) Business Days after the end of such 30-Day period, submit the unresolved Monthly Report Disagreement to an Independent AF Evaluator for resolution.
- (d) Submission of GPR Benchmark Disagreement to Independent AF Evaluator. Upon issuance of a notice of GPR Benchmark Disagreement, the Parties shall review, as applicable, the IE Energy Assessment Report and the supporting data on plane of array irradiance

and corresponding power output, the Initial OEPR, the supporting data on plane of array irradiance and corresponding power output and any written clarification of the Initial OEPR issued by the OEPR Evaluator who prepared the Initial OEPR, and any Subsequent OEPR, the supporting data on plane of array irradiance and corresponding power output and any written clarification of such Subsequent OEPR issued by the OEPR Evaluator who prepared the Subsequent OEPR, together with such Notice of GPR Benchmark Disagreement, and attempt to resolve such GPR Benchmark Disagreement. If the Parties are able to agree on a resolution of any GPR Benchmark Disagreement, the resulting corrected GPR Benchmark shall be set forth in writing executed by both Parties, following which such corrected GPR Benchmark shall constitute the GPR Benchmark for the period in question. If the Parties are unable to resolve such GPR Benchmark Disagreement within thirty (30) Days after Seller's issuance of such Notice of GPR Benchmark Disagreement, either Party may, within five (5) Business Days after the end of such 30-Day period, submit the unresolved GPR Benchmark Disagreement to an Independent AF Evaluator for resolution. The authority of the Independent AF shall be limited to deciding the following issues:

- i. If Company derived a GPR Benchmark from, as applicable, (i) the IE Energy Assessment and the supporting data on plane of array irradiance and corresponding power output, (ii) the Initial OEPR, the supporting data on plane of array irradiance and corresponding power output and/or any written clarification issued by the OEPR Evaluator who prepared the Initial OEPR, or (iii) a Subsequent OEPR, the supporting data on plane of array irradiance and corresponding power output and/or any written clarification issued by the OEPR Evaluator who prepared such Subsequent OEPR, the authority of the Independent AF Evaluator shall be limited to deciding:

- (aa) Is the GPR Benchmark derived by Company reasonably supported by the document and data set from which it was derived as aforesaid?; and
 - (bb) If not, what is the GPR Benchmark that is best supported by such document and data set?
- ii. If Company claimed that is was unable to reasonably derive a GPR Benchmark, the authority of the Independent AF Evaluator shall be limited to deciding:
- (aa) Was Company correct in claiming that a GPR Benchmark cannot be reasonably derived from the document and data set in question?; and
 - (bb) If Company was not correct, what is the GPR Benchmark that is best supported by such document and data set?

For avoidance of doubt, because **0.9** is the GPR Benchmark that shall apply to any period for which a GPR Benchmark cannot be reasonably be derived from the applicable document as aforesaid, the Independent AF Evaluator shall not have the authority to resolve a GPR Benchmark Dispute by performing an independent evaluation of the Facility to estimate, among other things, its performance ratio, in order to arrive at an independent determination of an GPR Benchmark.

- (e) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved AF Disagreement, an unresolved GPR Benchmark Disagreement or an unresolved MPR Disagreement to an Independent AF Evaluator, it shall provide written notice to that effect (the "Submission Notice") to the other Party, which notice shall designate which of the engineering firms on the OEPR Consultants List is to act as the Independent AF Evaluator for purposes of resolving such dispute; provided, however, for purposes of

facilitating consistency in the resolution of Monthly Report Disagreements, all Monthly Report Disagreements arising out of any one or more of the twelve (12) Monthly Reports issued for a given Contract Year shall be submitted to the same Independent AF Evaluator unless such Independent AF Evaluator declines to accept any such submission(s). A Submission Notice must be provided within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent AF Evaluator.

- (f) Eligibility for Appointment as Independent AF Evaluator. Both Parties agree that the engineering firms listed in Section 4(h) of Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to serve as Independent AF Evaluator. Prior to the end of any Contract Year, either Party may remove a particular consultant from the OEPR Consultants List by giving written notice of such removal to the other Party, which removal (i) will have effect as of January 31st of the immediately following Contract Year but (ii) will not divest such Independent AF Evaluator of its authority to decide any disagreements submitted to such Independent AF Evaluator on or before such January 31st. However, neither Party may remove a name or names from the OEPR Consultants List without approval of the other Party if such removal would leave the list without any names. Proposed additions to the OEPR Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day period. By written agreement between the Parties, a new name or names may be added to the OEPR Consultants List at any time.
- (g) Participation of Parties. Promptly following the issuance of a Submission Notice as provided in Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), Seller and Company shall provide the Independent AF Evaluator which such data as they consider to be material to the resolution of the disputed issue(s). Seller and

Company shall also provide such additional data and information as the Independent AF Evaluator may reasonably request. The Parties shall assist the Independent AF Evaluator throughout the process of resolving such dispute, including making key personnel and records available to the Independent AF Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent AF Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

- (h) Written Decision of Independent AF Evaluator. The terms of engagement with the Independent AF Evaluator shall require the Independent AF Evaluator to issue its written decision resolving the disputed issues submitted to it within the applicable time period set forth below, which time periods are subject to any tolling that may be applicable pursuant to Section 2(i) (Sequence to Resolving Inter-related Disagreements) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator):
- (i) 30 Days as measured from the issuance of the Submission Notice; or
 - (ii) such other time period as the Parties may agree in writing.

Unless otherwise agreed by the Parties in writing: (i) for an AF Disagreement, the written decision of the Independent AF Evaluator shall set forth the Availability Factor for the applicable LD Period; (ii) for a MPR Disagreement, the written decision of the Independent AF Evaluator shall set forth the Measured Performance Ratio for the applicable LD Period; and (iii) for a GPR Benchmark Disagreement, the written decision shall: (aa) confirm that the GPR Benchmark derived by the Company was reasonably derived and state that such percentage constitutes the GPR Benchmark; or (bb) confirm the Company's conclusion that it is unable to reasonably derive a GPR Benchmark and state that **0.9** is the GPR Benchmark; or (cc) disagree with the Company's conclusion that it is unable to reasonably derive a GPR Benchmark, state the

percentage that is the best-supported GPR Benchmark, and state that such percentage constitutes the GPR Benchmark.

(i) Sequence for Resolving Interrelated Disagreements.

- (i) If at the time AF Disagreement is submitted to an Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved AF Disagreements concerning the same LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other AF Disagreement(s) is necessary to the resolution of the AF Disagreement that has been newly submitted to a new Independent AF Evaluator as aforesaid, the time period for such new Independent AF Evaluator to issue its written decision resolving such newly submitted AF Disagreement shall be tolled until such pending AF Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over availability data and calculations for a given calendar month shall (i) not be subject to resolution twice and (ii) once resolved, shall not be reopened.
- (ii) If a GPR Benchmark Disagreement is unresolved at the time a MPR Disagreement is submitted to an Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), and the resolution of such GPR Disagreement is necessary to the

resolution of such MPR Disagreement, the time period for an Independent AF Evaluator to issue its written decision resolving such MPR Disagreement shall be tolled until the resolution of such GPR Benchmark Disagreement pursuant to either Section 2(d) (Submission of GPR Benchmark Disagreement to Independent AF Evaluator) or Section 2(h) (Written Decision of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

- (iii) If at the time MPR Disagreement is submitted to an Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved MPR Disagreements concerning the same LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other MPR Disagreement(s) is necessary to the resolution of the MPR Disagreement that has been newly submitted to a new Independent AF Evaluator as aforesaid, the time period for such new Independent AF Evaluator to issue its written decision resolving such newly submitted MPR Disagreement shall be tolled until such pending MPR Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance ratio data and calculations for a given calendar month shall (i) not be subject to resolution twice and (ii) once resolved, shall not be reopened.

- (j) Final, Conclusive and Binding. The Parties acknowledge the inherent uncertainty in calculating the Availability Factor and the Measured Performance Ratio, and hereby assume the risk of such uncertainty and waive any right to dispute the qualification of the person or entity appointed as the Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) and/or the appropriateness of the methodology used by Independent AF Evaluator in resolving such AF Disagreement or MPR Disagreement. Without limitation to the generality of the preceding sentence, the decision of the Independent AF Evaluator as to each AF Disagreement and each MPR Disagreement submitted to an Independent AF Evaluator shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement.
3. Periodic Review of Method of Calculating and Reporting Availability and Measured Performance Ratio. At least once per Contract Year, Company shall review the method of calculating and reporting availability and the Measured Performance Ratio under this Agreement method to determine if other variables should be incorporated into such calculations.
4. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U
CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

1. Net Energy Potential.

(a) Net Energy Potential and the Intent of the Parties. The essence of this Agreement is that Company is paying to Seller a Lump Sum Payment in exchange for Company's right to dispatch, subject to Renewable Resource Variability, the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years; (ii) is subject to adjustment from time to time as provided in this Attachment U (Calculation and Adjustment of Net Energy Potential); and (iii) as so adjusted, provides a basis for calculating and adjusting the Lump Sum Payment, as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement. It is the intent of the Parties that the estimate of Net Energy Potential, as calculated and adjusted as foresaid, should reflect the following risk allocation between the Parties under this Agreement:

(i) Seller has assumed the risk of downward adjustment to the Net Energy Potential (and hence the Lump Sum Payment) to account for any of the following circumstances:

(aa) if the Renewable Resource Baseline (as estimated on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is lower than Seller had assumed when it submitted its **[Response to RFP]**;

(bb) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and delivering such electric energy to the Point of Interconnection as Seller had assumed when it submitted its **[Response to RFP]**; and

- (cc) if the Facility's level of operational efficiency is below the standard of comparable facilities;
- (ii) Company has assumed the risk of the following (i.e., the following are to be disregarded for purposes of estimating Net Energy Potential (and hence the Lump Sum Payment)):
 - (aa) Renewable Resource Variability; and
 - (bb) the possibility that, at any given moment, Company does not need to dispatch any or all of the electric energy that the Facility is then capable of generating and delivering to the Point of Interconnection.

The foregoing is not intended as an exhaustive list of the risks assumed by either Party under this Agreement or as a limitation on the circumstances that an OEPR Evaluator, in its professional judgment, may decide to take into account in preparing its OEPR under Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (b) NEP RFP Projection. In its response to RFP, the Seller projected that the Facility would have a Net Energy Potential (as defined in this Agreement) of MWh [REDACTED] **[VALUE TO BE INSERTED]** and provided the plane of array irradiance data used in arriving at the NEP RFP Projection, and Company relied on Seller's NEP RFP Projection in deciding to contract with Seller in lieu of other developers. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Seller if (i) the IE Energy Assessment does not support the NEP RFP Projection and/or (ii) the operational performance of the Facility indicates a Net Energy Potential that is below the applicable thresholds set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (c) NEP IE Estimate and Company-Designated NEP Estimate. The Seller shall require the Facility Lender to provide Company with a copy of the IE Energy Assessment Report and the data on plane of array irradiance and corresponding power output used in arriving at the NEP IE Estimate. Notwithstanding any other provision of this Agreement to the contrary, Company shall have no obligation to co-

operate with the Facility Lender or execute any documents in connection with the Financing Documents unless (i) Company has received a copy of the IE Energy Assessment Report and the data on plane of array of irradiance and corresponding power output used in arriving at the NEP IE Estimate and (ii) the Facility Lender represents to Company that the IE Energy Assessment Report is the latest energy assessment prepared for the Facility Lender as part of the Facility Lender's due diligence leading up to the Facility Lender's legally binding commitment to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing Documents. If the two conditions set forth in the preceding sentence are not satisfied, or if the IE Energy Assessment Report fails to provide a NEP IE Estimate that is consistent with the requirements of this Agreement, or if the data on plane of array of irradiance and corresponding power output used in arriving at the NEP IE Estimate is not provided, Company shall have the option, exercisable by written notice to Seller issued no later than **[30]** Days, or such longer period as the Parties may agree in writing, following the first to occur of Company's receipt of (i) the IE Energy Assessment Report or (ii) notice that Company will not be provided with a copy of the IE Energy Assessment Report and the data on plane of array of irradiance and corresponding power output used in arriving at the NEP IE Estimate, to (aa) designate such Company-Designated NEP Estimate as Company, in its sole discretion, determines to be reasonable in light of the information then available to Company or (bb) declare this Agreement null and void. In connection with Company's decision as to whether to designate a Company-Designated NEP Estimate, Company shall have the right to require Seller to pay for an energy assessment to be performed by an independent engineer selected by Company. In such case, the aforesaid 30-Day period for Company's decision to designate a Company-Designated NEP Estimate or to declare this Agreement null and void shall be tolled for the time necessary to prepare such assessment. If Company fails, within the aforesaid 30-Day period as such period may be tolled as provided in the preceding sentence, to either designate a Company-Designated NEP Estimate or to declare this Agreement null and void, the NEP RFP Projection shall constitute the First NEP Benchmark, unless the Parties agree in writing on a lower First NEP Benchmark.

- (d) NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right. If the NEP IE Estimate is higher than the NEP RFP Projection, the NEP RFP Projection shall constitute the First NEP Benchmark. In any other case, Seller shall have the option to declare this Agreement null and void by written notice to Company as follows:
- (i) if (aa) the NEP IE Estimate is lower than the NEP RFP Projection and (bb) Seller issues its null and void notice to Company not later than **[30]** Days after issuance of the IE Energy Assessment Report; or
 - (ii) if (aa) Company exercises its right to designate a Company-Designated NEP Estimate under Section 1(c) of this Attachment U (Calculation and Adjustment of Net Energy Potential), (bb) such Company-Designated NEP Estimate is lower than the NEP RFP Projection, and (cc) Seller issues its null and void notice to Company not later than **[30]** Days after Company's notice of the Company-Designated NEP Estimate.

If Seller fails to declare this Agreement null and void under the conditions set forth in either clause (i) or clause (ii) above, then: (x) the NEP IE Estimate or the Company-Designated NEP Estimate, as applicable, shall thereafter constitute the First NEP Benchmark and (y) Seller shall, within five (5) Business Days following the expiration of the applicable 30-Day period for the issuance of Seller's null and void notice, pay liquidated damages equal to **[\$10]** for every MWh by which the NEP RFP Projection exceeds the First NEP Benchmark.

2. Initial OEPR. Following the first Day of the calendar month following the calendar month during which there occurs the first anniversary of the Commercial Operations Date, the Initial OEPR shall be prepared pursuant to the process set forth in Section 4 (Preparation of OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential) and the Initial NEP OEPR Estimate shall be as set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If the Initial NEP OEPR Estimate differs from the First NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.ii (Lump Sum Payment During Second Benchmark Period) of Attachment J (Company Payments for Energy and Dispatchability) to this Agreement.

3. Subsequent OEPRs.

- (a) Required Subsequent OEPR. If Seller makes any changes to the Facility that involve (i) replacing any step-up transformer(s) or (ii) making any other changes (e.g., changing the characteristics of the Facility equipment or the specifications used in the IRS) that Company reasonably determines require an updated IRS, then Seller shall also be required to have a subsequent OEPR prepared as of the first Day of the calendar month following the second anniversary of the date such change to the Facility was completed.
- (b) Voluntary Subsequent OEPR. Without limitation to the generality of Section 3(a) (Required Subsequent OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential), if the Seller makes any changes to the Facility (e.g., replacing original equipment) that does not trigger a required Subsequent OEPR but which changes Seller has reasonable grounds to believe will improve the Facility's Net Energy Potential, Seller shall have a one-time option, exercisable by written notice to Company issued not less than [120] Days prior to the Applicable NEP Verification Date, of having a subsequent OEPR prepared as of a date no sooner than 12 months following completion of the then most recent OEPR.
- (c) Subsequent OEPR and Adjustment to Lump Sum Payment. If the Subsequent NEP OEPR Estimate differs from the Most Recent Prior NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.iii (Lump Sum Payment During Second Benchmark Period) of Attachment J (Company Payment for Energy and Dispatchability) to this Agreement.

4. Preparation of OEPR. The following provisions apply to the Initial OEPR and any Subsequent OEPR:

- (a) Selection of OEPR Evaluator. No later than [90] Days prior to the Applicable NEP Verification Date, Company shall select from the engineering firms listed on the OEPR Consultants List an independent engineer (the "OEPR Evaluator") to prepare an operational energy production report ("OEPR").
- (b) Eligibility for Appointment as OEPR Evaluator. Both Parties agree that the engineering firms listed in Section

4(h) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. Prior to the end of any Contract Year, either Party may remove a particular consultant from the OEPR Consultants List by giving written notice of such removal to the other Party, which removal (i) will have effect as of January 31st of the immediately following Contract Year but (ii) will not divest such OEPR Evaluator of its authority to prepare any OEPR for which it was selected on or before such January 31st. However, neither Party may remove a name or names from the OEPR Consultants List without approval of the other Party if such removal would leave the list without any names. Proposed additions to the OEPR Consultants List shall automatically become effective thirty (30) Days after notice is received by the other Party unless written objection is made by such other Party within said thirty (30) Day period. By written agreement between the Parties, a new name or names may be added to the OEPR Consultants List at any time.

- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured meteorological and production data from the OEPR Period of Record. However, although the OEPR Period of Record is a twelve-month period, the Parties acknowledge that, in certain circumstances (e.g., Force Majeure), there may not be twelve months of data available for the OEPR Period of Record. In such case, (i) it is the intent of the Parties that the OEPR be prepared using such measured meteorological and production data that is available from the OEPR Period of Record and (ii) Parties may, by written agreement, direct the OEPR Evaluator to use such additional data outside of the OEPR Period of Record as the Parties may agree. The preceding sentence does not constitute a limitation on the professional judgment of the OEPR Evaluator as to the appropriateness of using measured meteorological and/or production from outside of the OEPR Period of Record.
- (d) Participation of Parties. Promptly following the Applicable NEP Verification Date, Seller and Company shall provide the OEPR Evaluator which such data from the OEPR Period of Record as they consider to be material to the preparation of the OEPR. Seller and Company shall also provide such additional data and information as the OEPR Evaluator may reasonably request. The Parties shall assist the OEPR Evaluator throughout the process of

preparing the OEPR, including making key personnel and records available to the OEPR Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the OEPR Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

- (e) Terms of Engagement. The terms of engagement with the OEPR Evaluator must be acceptable to Company and shall, among other things, require the OEPR to provide (i) an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years and (ii) the data on plane of array of irradiance and corresponding power output used in arriving at the aforementioned estimated annual Net Energy for purposes of allowing the Parties to determine the GPR Benchmark as provided in Section 2.6(b)(ii) (Commencing With Initial OEPR) or Section 2.6(b)(iii) (Commencing With First Subsequent OEPR and Thereafter) of this Agreement, as applicable. The provisions of this Attachment U (Calculation and Adjustment of Net Energy Potential) do not impose a limit on the OEPR's professional judgment as to what other estimates (if any) to include in the OEPR. Without limiting the professional judgment of the OEPR Evaluator in estimating the Net Energy Potential and GPR Benchmark, the following is a general description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to implement the intent of the Parties as set forth in Section 1(a) (Net Energy Potential and the Intent of the Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential) by evaluating (i) whether, when the Renewable Resource Baseline (as estimated by the OEPR Evaluator on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is present and the Facility is in Full Dispatch, the Facility is capable of doing what the Parties expected the Facility to do: i.e., generating and delivering to the Point of Interconnection electric energy in an

amount consistent with the then applicable Net Energy Potential of the Facility (i.e., the estimate of Net Energy Potential then being used to calculate the monthly Lump Sum Payment pursuant to Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy and Dispatchability to this Agreement); and (ii) if the Facility is not doing what the parties expected in this regard, identifying a new estimated single number with a P-Value of 95 for annual Net Energy that could be generated and delivered by the Facility based on the estimated long-term monthly and annual total of such production over a period of the next ten years.

At a high level, the analysis relies on reported Actual Output during the OEPR Period of Record to estimate Facility performance over a future evaluation period of ten years. The data from the OEPR Period of Record are first quality screened and evaluated. One-time events are assessed and removed from the record where appropriate. Values for potential energy are then calculated from the reported energy production measured at the Point of Interconnection by adjusting for 100% availability and undispached energy. Suitable long-term reference data sets are then identified by analyzing the reference for irradiance and the normalized values for potential energy production at the Point of Interconnection over the OEPR Period of Record. Relationships between selected long-term reference irradiance data sets and normalized values for potential energy production at the Point of Interconnection are used to calculate long-term values for such on a monthly and annual basis. Finally, estimates of future Facility availability (taking into account anticipated maintenance) and losses (such as system degradation and balance of plant losses) are applied in order to calculate

the Net Energy Potential. For this purpose, no reductions are made for future estimates of energy that Company may choose not to dispatch. If a copy of the IE Energy Assessment Report is available to the OEPR Evaluator, the OEPR Evaluator should review such Report before commencing preparation of the OEPR and evaluate whether it is appropriate for the OEPR Evaluator to take into account any of the work reflected in the IE Energy Assessment Report.

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to issue the OEPR with 30 Days following the NEP Applicable Verification Date. The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the OEPR Evaluator in connection with the Initial OEPR. Seller shall pay all of the fees and expenses charged by the OEPR Evaluator in connection with any Subsequent OEPR.
- (g) Final, Binding and Conclusive. The Parties acknowledge the inherent uncertainty in estimating the Net Energy Potential and hereby assume the risk of such uncertainty and waive any right to dispute any of the qualification of the person or entity appointed as the OEPR Evaluator pursuant to Section 4(a) (Selection of OEPR Evaluator) and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement, the appropriateness of the methodology used by OEPR Evaluator in preparing the OEPR, and/or the NEP OEPR Estimate. Without limitation to the generality of the preceding sentence, the determination of the NEP OEPR Estimate in the OEPR or (as more fully set forth in the definition of NEP OEPR Estimate) on the basis of the OEPR, shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement.
- (h) Acceptable Persons and Entities. The following are acceptable as an OEPR Evaluator, subject to such additions or deletions effectuated by the Parties as provided in Section 2(f) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this

Agreement and Section 4(b) (Eligibility for Appointment as
OEPR Evaluator) of this Attachment U (Calculation and
Adjustment of Net Energy Potential):

DNV GL

AWS Truepower

Black & Veatch

Leidos Engineering

ATTACHMENT V
**SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED
IN PRIOR CALENDAR YEAR**

(See Article 5)

DATE WORK ORDER SUBMITTED: 06/28/96

WO#: 11451

EQUIPMENT #: 1CCF-TNK-1

EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1

PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR
UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR
OPERATION.

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96

WO#: 11136

EQUIPMENT #: 1WSA-BV-12

EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION

PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON
SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH
STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----