

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

OCTOBER 23, 2017

Docket No. 2017-0352

*Appendix C – Model PPA*



**Maui  
Electric**

POWER PURCHASE AGREEMENT  
For Firm Capacity Renewable Dispatchable Generation  
between

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and

Hawaiian Electric Company, Inc.  
Hawai'i Electric Light Company, Inc.  
Maui Electric Company, Limited

This document indicates, for information purposes only, the terms and conditions that may be negotiated in an agreement for the sale of electric energy and capacity to be executed with [Hawaiian Electric Company, Inc.][Hawai'i Electric Light Company, Inc.][Maui Electric Company, Limited]. The terms and conditions that may be offered by an applicable utility in this agreement may be modified to reflect factors such as different technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings regulating the approval or negotiation of such power purchase agreements, results of an interconnection requirements study, and negotiated terms and conditions.

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

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**POWER PURCHASE AGREEMENT**  
**For Firm Capacity Renewable Dispatchable Generation**  
**between**

[REDACTED]

**And**

**Hawaiian Electric Company, Inc.**  
**Hawai'i Electric Light Company, Inc.**  
**Maui Electric Company, Limited**

THIS POWER PURCHASE AGREEMENT FOR FIRM CAPACITY RENEWABLE DISPATCHABLE GENERATION ("Agreement") is made this [REDACTED] day of [REDACTED], [REDACTED] ("Execution Date"), by and between Hawaiian Electric Company, Inc. [Hawai'i Electric Light Company, Inc.] [Maui Electric Company, Limited.] (hereinafter referred to as "Company"), a Hawai'i corporation, with principal offices in [Honolulu][Hilo][Kahului], Hawai'i, and [REDACTED] (hereinafter referred to as "Seller"), a [REDACTED], with principal offices in [REDACTED], doing business in [REDACTED], Hawai'i.

W I T N E S S E T H:

WHEREAS, Company is an operating electric public utility on the Island of O'ahu[Maui][Hawai'i], 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 operates the Company System as an independent power grid and must maximize system reliability for its customers by ensuring that sufficient generation is available and that its system (including transmission and distribution) meets the requirements for voltage stability, frequency stability, and reliability standards; and

WHEREAS, Company desires to minimize fluctuations in its purchased power costs by acquiring renewable dispatchable generation at a generally fixed energy price subject to limited fluctuation based on changes to the GDPIPD (as defined herein) on an annual basis; and

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

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

WHEREAS, the Facility will be located at **[INSERT LOCATION]**, State of Hawai'i and is more fully described in Attachment A (Facility Description) attached hereto and made a part hereof; and

WHEREAS, Seller desires to sell to Company electric capacity and energy generated by the Facility, and Company, at its dispatch, agrees to purchase such capacity and energy from Seller, upon the terms and conditions set forth herein.

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

DRAFT

## ARTICLE 1 - DEFINITIONS

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

“Acceptance Tests” – Shall mean the tests conducted by Seller as described in Section 4.a (Seller Tests of the Facility) of Attachment B (Facility Owned by Seller).

“Agreement” – Shall have the meaning set forth in the first paragraph of the first page of this agreement.

“American National Standards Institute Code for Electricity Metering” – The publication of the American National Standards Institute which establishes acceptable performance criteria for new types of watthour meters, demand meters, demand registers, instrument transformers and auxiliary devices. It states acceptable in-service performance levels for meters and devices used in revenue metering. It also includes information on related subjects, such as recommended measurement standards, installation requirements and test schedules.

“Appeal Period” – Shall have the meaning set forth in Section 25.12(B) (Non-Appealable PUC Approval Order).

“Appraised Fair Market Value of the Facility” – Shall have the meaning set forth in Section 3(d) (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller).

“Attachments” – Shall have the meaning set forth in Section 25.21 (Attachments).

“Audit Period” – Shall have the meaning set forth in Section 3.3(C)(1) (Company Right to Cancel, General).

“Available Capacity Factor” – Shall have the meaning set forth in Section (B)(4) (Available Capacity Factor Formula) of Attachment J (Energy Charge And Capacity Charge Payment Formulas).

“Business Day” – Any Day other than a Saturday, Sunday or legal holiday of either the United States or the State of Hawai‘i.

“Calendar Month” – The period commencing at 12:00 a.m. on the first Day of any month and terminating at 11:59 p.m. on the last Day of the same month.

“Cancellation Fee” – Shall have the meaning set forth in Section 3.3(C)(1) (Company Right to Cancel, General).

“Capacity Charge” – The monetary rate in \$/kW per month to be paid by Company to Seller pursuant to Section 5.1(D) (Capacity Charge) of this Agreement based on the net capacity available to the Company System from the Facility.

“Capacity Rate Inclusion Date” – The earlier of (i) the effective date of an interim or final rate increase authorized by an interim or final order (whichever is first) of the PUC in a Company general rate case that includes in Company’s electric rates the additional purchased power costs (including the costs incurred as a result of the Capacity Charge and the Variable O&M Component of the Energy Charge) incurred by Company pursuant to this Agreement that are not recovered through the Energy Cost Adjustment Clause; (ii) the date upon which Company is allowed to begin recovering such additional purchased power costs through the Purchased Power Adjustment Clause; (iii) the date upon which Company is allowed to begin recovering such additional purchased power costs through the Energy Cost Adjustment Clause or (iv) the effective date of an interim increase in rates authorized by the PUC pursuant to HRS § 269-27.2(d) by which the Company begins recovering such additional purchased power costs.

“Capacity Test” – The test performed by Seller in accordance with Section 5.1(E) (Capacity Test) and Attachment W (Capacity Test Procedures) to determine Demonstrated Firm Capacity.

“Cause” – Shall have the meaning set forth in Section 3.3(2)(c) (Demonstration of Loading and Unloading Ramp Rates).

“Claim” – Any claim, suit, action, demand or proceeding.

“Claiming Facility” – Shall mean Seller and any direct or indirect owner of a membership and/or ownership interest in Seller which is eligible to claim a Refundable Tax Credit or Non-Refundable Tax Credit in a given year.

“Closing Date” – The date at which the closing of long-term construction financing of the Facility under the Financing Documents occurs.

“Contractual” – Shall have the meaning set forth in Attachment Q (Form of Security Agreement).

“Commercial Operation” – Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operation on the Day specified in Seller's written notice described below: (i) satisfactory completion of the Conditions Precedent and the requirements of Section 5.1(E) (Capacity Test) and Attachment W (Capacity Test Procedures), (ii) the Online Acceptance Test has been passed, (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 (as defined in Section 6.b.i.(1) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller)), (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.(1)



(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.(1) (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 Operation Date based on actual operation of the Facility at an electric output level of at least ninety percent (90%) of the Contract Firm Capacity, and (bb) the Commercial Operation Date will occur within 24 hours (i.e., the next Day).

“Commercial Operation Date” – The date on which the Facility first achieves Commercial Operation.

“Commercial Operation Date Deadline” – The date described as such in Section 3.2(A)(3) (Commercial Operation Date Deadline).

“Company” – Shall have the meaning set forth in the first paragraph of the first page of this Agreement.

“Company Dispatch” – Company’s right, through supervisory equipment or otherwise, to direct or control both the capacity and the energy output of the Facility from its minimum output rating to its maximum output rating consistent with this Agreement, which dispatch shall include real power, reactive power, voltage, frequency, the determination to cycle a unit off-line or to restart a unit and, if the unit is a combined cycle plant consisting of one or more combustion turbines and a steam turbine, requiring the plant to run in simple cycle mode when not able to run in combined cycle mode, the droop control setting, the ramp rate setting, and other characteristics of such electric energy output whose parameters are normally controlled or accounted for in a utility dispatching system.

“Company-Owned Interconnection Facilities” – Shall have the meaning set forth in Attachment G (Company-Owned Interconnection Facilities).

“Company Site Representative” – Company’s representative as described in Section 10.5 (Company Site Representative).

“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 individual(s) designated by job position(s) as Company’s representative(s) to act on behalf of Company on all issues regarding the daily dispatch of all generation being supplied 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 the order issued December 8, 2006.

“Conditions Precedent” – The conditions listed in Section 2.3(A) (Company Conditions Precedent).

“Consent to Assignment” – Shall have the meaning in Section 3.1(E)(8) (Consent to Assignment).

“Consents” – All necessary consents to be executed in favor of Company in order for Company to establish, exercise and enforce its rights under the Security Agreement, the Mortgage, and the other Security Documents, as such consents may be amended from time to time in accordance with the terms thereof.

“Consumer Advocate” – The entity referred to in Section 3.2(I)(2) (Confidentiality) which represents the interests of consumers in proceedings involving the Company.

“Consumer Price Index” – The Consumer Price Index for All Urban Consumers (CPI-U).

“Contract Firm Capacity” – [ ] kilowatts [( ] kW] of reliable electrical capacity made available to Company from the Facility at the Metering Point subject to Company Dispatch.

“Contract Year” – A twelve (12) Calendar Month period which begins on the first Day of the month coincident with or (in the event the Commercial Operation Date is not the first Day of a Calendar Month) next following the Commercial Operation Date and, thereafter during the Term, each anniversary thereof; provided, however, that, in the event the Commercial Operation Date is not the first Day of the Calendar Month, the initial Contract Year shall also include the Days from the Commercial Operation Date to the first Day of the succeeding month.

“Control System Acceptance Test” – A test coordinated and conducted by Seller and witnessed by Company, within ten (10) Days of successful completion of the Generator Acceptance Test and within two (2) Days of successful completion of the Control System RTU Points List and in accordance with criteria and test procedures determined by Company and Seller as set forth in Attachment O (Control System Acceptance Test Criteria), to determine conformance with Seller’s obligations in Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility) and Good Engineering and Operating Practices. Successful completion of the Control System Acceptance Test shall be a condition precedent for the performance of the On-line Acceptance Testing and the Commercial Operation Date.

“Control System RTU Points List” – The Control System RTU Points List includes, but is not limited to, all of the Facility’s equipment and generation performance/quality parameters that will be monitored, alarmed and/or controlled by Company’s Energy Management System (EMS) throughout the Term of this Agreement.

Examples of the Control System RTU Points List include:

- Seller's substation/equipment status – breaker open/closed status, equipment normal/alarm operating status, etc.
- Seller's generation data (analog values) – number of generators available/online, voltage, current, MW, MVAR, etc.
- Seller's generation performance (status and/or analog values) – ramp rate, generator frequency, etc.
- Curtailment control interface – curtailment MW setpoint, etc.
- Voltage control interface – voltage kV setpoint, etc.
- Power factor control interface – power factor setpoint, etc.

This Control System RTU Points List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

“Covered Source Air Permit” – That “Covered Source Air Permit” permit/authority to construct the Facility to be issued in favor of the Facility by the DoH.

“Daily Delay Damages” – Shall have the meaning set forth in Section 2.4(B)(3)(a) (Daily Delay Damages).

“Day” – A calendar day.

“Demonstrated Firm Capacity” – The amounts of capacity that Seller demonstrates for the Facility in accordance with Section 5.1(E) (Capacity Test) and in accordance with the procedures set forth in Attachment W (Capacity Test Procedures), but not to exceed the Contract Firm Capacity.

“Development Period Security” – Shall have the meaning set forth in Section 7.1(B) (Development Period Security).

“Dispatch Forecast” – The notice given to Seller by Company in accordance with Section 3.3(A)(3) (Dispatch Forecast).

“Dispatch Range” – The range of real power output through which the Facility can be dispatched by remote control under Company's EMS, in accordance with Section 3.3 (A) (Dispatch of Facility Power). Notwithstanding anything to the contrary, the Dispatch Range shall be provided between [ ] MW and the Demonstrated Firm Capacity.

“Dispute” – Shall have the meaning set forth in Section 17.1 (Good Faith Negotiations).

“DoH” – The State of Hawai'i Department of Health.

“Dollars” – The lawful currency of the United States of America.

“DPR” – Shall have the meaning set forth in Section 17.2(A) (Mediation).



“EAF” or “Equivalent Availability Factor” – The ratio (in percent) calculated in accordance with the formula, terms and concepts defined by NERC GADS, as set forth in Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS), based on the Net Maximum Capacity of the Facility, unless otherwise defined in this Agreement.

“Effective Date” – The Non-appealable PUC Approval Order Date.

“EFOR” or “Equivalent Forced Outage Rate” – The ratio (in percent) calculated in accordance with the formula, terms and concepts defined by NERC GADS, as set forth in Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS), based on the Net Maximum Capacity of the Facility, unless otherwise defined in this Agreement.

“EMS” or “Energy Management System” – The real-time, computer-based control system, or any successor thereto, used by Company to manage the supply and delivery of electric energy to its consumers. It provides the Company System Operator with an integrated set of manual and automatic functions necessary for the operation of the Company System under both normal and emergency conditions. The EMS provides the interfaces for the Company System Operator to perform real-time monitoring and control of the Company System, including but not limited to monitoring and control of the Facility for system balancing, supplemental frequency control and economic dispatch as prescribed in this Agreement.

“Energy Charge” – The amount to be paid by Company to Seller pursuant to Section 5.1(C) (Energy Charge) of this Agreement for the Net Electric Energy Output.

“Energy Cost Adjustment Clause” – Company’s cost recovery mechanism for Fuel and purchased energy costs approved by the PUC in conformance with Hawai‘i Administrative Rules § 6-60-6, whereby the base electric energy rates charged to retail customers are adjusted to account for fluctuations in the costs of Fuel and purchased energy or such successor provision that may be established from time to time.

“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 Facility is a non-fossil fuel facility. Such Environmental Credits shall include, but not be limited to, 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.

“Environmental Policy” – Shall mean, collectively, that certain Hawaiian Electric Companies' Procurement of Biofuel from Sustainably Produced Feedstock (prepared by

Hawaiian Electric and NRDC, dated August 2013) and the Roundtable on Sustainable Biofuels (RSB) Principles and Criteria for Sustainable Biofuel Production (prepared by the Roundtable on Sustainable Biofuels 2010) (RSB reference code: [RSB-STD-01-001 (Version 2.0)]).

“Exclusive Negotiation Period” – Shall have the meaning set forth in Section 2(b) (Negotiations) of Attachment P (Sale of Facility by Seller).

“Event of Default” – An event or occurrence specified in Section 8.1(A) (Default by Seller) or Section 8.1(B) (Default by Company).

“Execution Date” – The date referred to in the first paragraph of the first page of this Agreement.

“Extension Term” – Shall have the meaning set forth in Section 2.2(E) (Extension Term).

“Facility” – **[THE FINAL WORDING OF THIS DEFINITION WILL BE BASED ON THE LOCATION OF THE FACILITY, INTERCONNECTION POINT AND RELATED FACTORS]** – Seller’s renewable **[IDENTIFY TYPE OF GENERATION]** electric energy generating facility that is the subject of this Agreement and as more fully described in Attachment A(Facility Description), including the Seller-Owned Interconnection Facilities, Seller’s Fuel supply facilities (including all facilities required for importation, receipt, storage and handling of Fuel, waste collection, interim and final waste disposal, cooling water and any other facilities necessary for proper operation of the Facility), the Fuel, the Site, the Land Rights and all other real property, equipment, fixtures and personal property owned, leased, controlled, operated or managed in connection with the production and delivery of electric energy by Seller to the Company System. **[IF THE AGREEMENT CONTAINS A PROVISION FOR THERMAL ENERGY SALES, FACILITY DEFINITION SHOULD REFER TO EQUIPMENT FOR STEAM SALES AND THAT SHOULD ALSO BE REFERENCED IN ATTACHMENT A.]**

“Facility Description” – Shall have the meaning set forth in Attachment A (Facility Description).

“FASB” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“FASB ASC 810” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“FASB ASC 840” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“Financial Compliance Information” – Shall have the meaning set forth in Section 3.2(I)(1) (Financial Compliance).

“Financing Debt” – The financing 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.

“Financing Documents” – The loan and credit agreements, notes, indentures, security agreements and other agreements, documents and instruments relating to the Financing Debt for the construction financing and permanent financing (including refinancing and amendments) entered into by Seller for the Facility, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Financing Parties” – Any and all lenders and equity investors, other than the Guarantor(s), or any person affiliated with the Guarantor(s), providing the Financing Debt for the construction financing or permanent financing (including refinancing) for the Facility and any and all nominees, trustees and collateral agents associated therewith. For purposes of any notices herein required to be delivered by Company to the Financing Parties, it shall be sufficient for Company to deliver such notices to the Party designated under the Financing Documents as the collateral agent, agent, trustee or nominee for such Financing Parties.

“Fixed O&M Component Rate” – Shall have the meaning set forth in Section (B)(2) (Fixed O&M Component Rate) of Attachment J (Energy Charge and Capacity Charge Payment Formulas).

“Force Majeure” – Shall have the meaning set forth in Section 18.1 (Definition of Force Majeure).

“Fuel” – The fuel for the Facility shall be either: **[TYPE OF FUEL TO BE INSERTED AS APPROPRIATE FOR THE SPECIFIC PROJECT. EXAMPLES INCLUDE: (1) FALLING WATER; (2) BIOGAS, INCLUDING LANDFILL AND SEWAGE-BASED DIGESTER GAS; (3) GEOTHERMAL; (4) OCEAN WATER, CURRENTS, AND WAVES, INCLUDING OCEAN THERMAL ENERGY CONVERSION; (5) BIOMASS, INCLUDING BIOMASS CROPS, AGRICULTURAL AND ANIMAL RESIDUES AND WASTES, AND MUNICIPAL SOLID WASTE AND OTHER SOLID WASTE; (6) BIOFUELS (LIQUID OR GASEOUS FUELS PRODUCED FROM ORGANIC SOURCES SUCH AS BIOMASS CROPS, AGRICULTURAL RESIDUES AND OIL CROPS, SUCH AS PALM OIL, CANOLA OIL, SOYBEAN OIL, WASTE COOKING OIL, GREASE, AND FOOD WASTES, ANIMAL RESIDUES AND WASTES, AND SEWAGE AND LANDFILL WASTES); OR (7) HYDROGEN PRODUCED FROM RENEWABLE ENERGY SOURCES.]** The type of Fuel to be used in the Facility shall be specified in Seller’s Fuel report. The Fuel shall be suitable for the operation of the Facility in accordance with this Agreement, the Company’s Environmental Policy, applicable Governmental Approvals and equipment manufacturer specifications relating to the Facility. **[COMPANY AND SELLER WILL DISCUSS FUEL CERTIFICATION REQUIREMENTS IF APPROPRIATE FOR THE SPECIFIC PROJECT.]**

“Fuel Component” – Shall have the meaning set forth in Section (A)(1) (Energy Charge Formula) of Attachment J (Energy Charge And Capacity Charge Payment Formulas) (Fuel Component).

“Fuel Report” – The annual Fuel plan which shall be delivered in a format acceptable to Company pursuant to Section 2.3.(A)(2)(ii) (Executed Project Documents) and which demonstrates that Seller has secured sufficient Fuel to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term. Where the Fuel for the Facility is biomass, the Fuel Report shall include but not be limited to, as applicable, a forestry development plan, crop rotation plan, harvesting and regeneration rates and schedule, description of silviculture practices in-place, and tree condition inventory. Where the Fuel for the Facility is biogas, biofuel, or hydrogen produced from renewable energy sources, the Fuel Report shall include but not be limited to, as applicable, any and all Fuel supply agreements and/or agreements for the supply of the raw material required to produce the Fuel.

“Fuel Supply Agreements” – The agreements, a copy of which are delivered to Company pursuant to Section 2.3(A)(2)(i) (Executed Project Documents), under which Seller obtains Fuel for the Facility.

“Generator Acceptance Test” – A test conducted by Seller and, at Company's option, witnessed by Company within ten (10) Days of successful completion of the Interconnection Acceptance Test and in accordance with criteria and test procedures determined by Company and Seller as set forth in Attachment BB (Generator Acceptance Test General Criteria), to determine conformance with Seller's obligations in the specific subsections of Attachment B (Facility Owned by Seller) and Good Engineering and Operating Practices. Successful completion of the Generator Acceptance Test shall be a condition precedent for the performance of the Control System Acceptance Test and achieving the Commercial Operation Date.

“GDPIPD” or “Gross Domestic Product Implicit Price Deflator” – The value shown in the United States Department of Commerce, Bureau of Economic Analysis' publication entitled “Survey of Current Business” for the percentage change in prices over each quarter of the calendar year associated with the Gross Domestic Product for the immediately preceding quarter, or, a successor publication or index.

“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, and expedition. With respect to the Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:



1. Adequate materials, resources and supplies, including Fuel, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.
2. 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.
3. Preventive, predictive, 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.
4. Appropriate monitoring and testing is done to ensure that equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
5. 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.
6. **[ADDITIONAL PRACTICES MAY BE ADDED DEPENDING ON THE NATURE OF THE FACILITY.]**

"Governmental Approvals" -- All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities, as well as any agreements with Governmental Authorities, required to fulfill its obligations under this Agreement, including 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.

"Guaranteed Milestones" – Each of the events described as Guaranteed Milestones in Attachment K (Guaranteed Project Milestones).

"Hawai'i General Excise Tax" – The tax on gross income codified under Hawai'i Revised Statutes Chapter 237 and administered by the State of Hawai'i Department of Taxation



and all other similar taxes imposed by any Governmental Authority with respect to payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, but excluding federal or state net income tax.

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

"Hawaii Production Tax Credit" – Shall mean a credit against Hawaii source income for which Seller is eligible on the Commercial Operation Date or thereafter because of the energy produced by the Facility.

"Hawaii Renewable Energy Tax Credit" – Shall mean any favorable Hawaii tax treatment for either Seller's investment in the renewable energy technologies incorporated into the Facility or for the energy produced by the Facility.

"HERA" – The Hawaii Electricity Reliability Administrator.

"HERA Law" – Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawaii 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 Hawaii electricity reliability surcharge to be collected by Hawaii'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 Hawaii 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 Hawaii electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system.

"HST" – Hawai'i Standard Time.

"Hawaiian Electric Industries, Inc." or "HEI" – The holding company incorporated in 1983 under the laws of Hawai'i and having Hawaiian Electric Company, Inc., Maui Electric Company, Limited, Hawaii Electric Light Company, Inc., and other companies as its subsidiaries.

"HRS" – Means the Hawaii Revised Statutes, as may be amended.

"Indemnified Company Party" – Shall have the meaning set forth in Section 13.1(A) (Indemnification of Company, Indemnification Against Third Party Claims).

“Indemnified Seller Party” – Shall have the meaning set forth in Section 13.2(A) (Indemnification of Seller, Indemnification Against Third Party Claims).

“Independent Engineering Assessment” – The determination and recommendations made by a Qualified Independent Engineering Company regarding the operation and maintenance practices of Seller at the Facility pursuant to Section 3.2(A)(5)(c) (Process for Resolving Disagreements) and Section 3.3(D)(1) (Implementation of Independent Engineering Assessment).

“Independent Evaluator” – The person selected to resolve a dispute under Section 24.10 (Dispute).

“Initial Term” – Shall have the meaning set forth in Section 2.2(A) (Term).

“Interconnection 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 Attachment N (Interconnection Acceptance Test General Criteria), to determine conformance with Seller’s obligations in Attachment B (Facility Owned by Seller) and Good Engineering and Operating Practices. Successful completion of the Interconnection Acceptance Test shall be a condition precedent for the performance of the Generator Acceptance Test and achieving the Commercial Operation Date.

“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 the PUC’s General Order No. 7, Company tariffs, operational practices and planning criteria), such as, but not limited to, transmission lines, transformers, switches, circuit breakers and telecommunication, as may be further described in the Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities).

“Interconnection Requirements Study” or “IRS” – A study, performed in accordance with the terms of the IRS Letter Agreement and with Section 1.c. (IRS) of Attachment G (Company-Owned Interconnection Facilities) to assess the projected interaction of the Facility with the Company System.

“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.

“kVA<sub>r</sub>” – KiloVar(s).

“kVA<sub>r</sub>h” – KiloVarhour(s).

“kW” – Kilowatt(s).

“kWh” – Kilowatthour(s).

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

“Laws” – Shall have the meaning set forth in Section 3.2(E) (Compliance with Laws).

“Letter of Credit” – Shall have the meaning set forth in Section 7.1(E) (Form of Security).

“Liquidated Damages” – Any of the damages provided for in Article 9 (Liquidated Damages).

“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.

“Malware” - 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 17.1 (Good Faith Negotiations).

“Major Generating Equipment Overhaul” – Overhaul, replacement or other major scheduled maintenance of [the major generating equipment component of the Facility, e.g., combustion turbine, internal combustion engine, electrical generator] conducted (i) in accordance with the equipment manufacturer’s recommendations or (ii) otherwise in the judgment of Seller in accordance with Good Engineering and Operating Practices.

“Metering Point(s)” – The physical point(s) located on the high side of the step up transformer(s), as depicted in Attachment E (Single-Line Diagram), at which Company’s metering is connected to the Facility for the purpose of measuring the output of the Facility in kW, kWh, kVAr and kVArh.

“Milestone Date(s)” – The date(s) in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones) for completion of the applicable Milestone Event(s).

“Milestone Delay Damages” – Shall have the meaning set forth in Section 2.4(A)(1)(b) (Milestone Delay Damages).

“Milestone Date Delay LD Period” – Shall have the meaning set forth in Section 2.4(A)(1)(b) (Milestone Delay Damages).

“Milestone Events” – The Guaranteed Milestones and the Reporting Milestones, collectively.

“Monthly Invoice” – Shall have the meaning set forth in Section 6.1 (Monthly Invoice).

“Monthly Progress Report” – Shall have the meaning set forth in Section 3.2(A)(7) (Monthly Progress Reports).

“Mortgage” – The mortgage, assignment of rents and security agreement to be executed by Seller in accordance with Section 3.1(E) (Company Security Documents), in favor of Company, granting to Company a mortgage and a lien on, among other things, Seller’s right, title and interest in and to the Facility, the Site (including any lease or sublease associated therewith, together with assignment of rents under any such lease or sublease) and the rights and interests of Seller associated therewith, as the same may be modified or amended from time to time in accordance with the terms thereof.

“MVAR” – Megavar(s).

“MW” – Megawatt(s).

“MWh” – Megawatthour(s).

“NERC GADS” or “North American Electric Reliability Council Generating Availability Data System” – The data collection system called “Generating Availability Data System” which is utilized by the North American Electric Reliability Council, a voluntary organization formed by the electric utility industry to promote the reliability and adequacy of the bulk power supply of the electric utility systems in North America. For purposes of this Agreement, the version of NERC GADS dated January 2017 [**UPDATE AS NECESSARY**] (selected portions of which are attached hereto as Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS)) shall be used whenever reference is made to NERC GADS. In the event that the definition of a term contained in this Article 1 (Definitions) is inconsistent with the definition of the term under NERC GADS, the definition contained in this Article 1 (Definitions) shall control.

“Net Electric Energy Output” – For any period of time, the total electric energy output of the Facility in kWh (net of auxiliaries and transformer losses) delivered to Company as measured at the Metering Point of the Facility.

“Net Maximum Capacity” – The maximum capacity the Facility can sustain over a specified period of time when not restricted by seasonal or other deratings less capacity utilized for the Facility’s station service or auxiliaries and less transformer losses, as measured at the Metering Point.

“Net Salvage Proceeds” – The aggregate amount of proceeds received from the salvage efforts described in Section 3.3(C)(1) (Company Right to Cancel, General), less reasonable, actual, verifiable costs and expenses incurred in such efforts.

“Non-appealable PUC Approval Order” – Shall have the meaning set forth in Section 25.12(B) (Non-appealable PUC Approval Order).

“Non-appealable PUC Approval Order Date” – Shall have the meaning set forth in Section 25.12(D) (Non-appealable PUC Approval Order Date).

“Non-Refundable Tax Credit” – Shall mean any U.S. Federal Tax Credit and State of Hawai‘i Tax Credit (including both a Hawaii Investment Tax Credit and a Hawaii Production Tax Credit) for which the federal government or State of Hawaii 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.

“On-Line Acceptance Test” – A test coordinated and conducted by Seller and witnessed by Company, within ten (10) Days of successful completion of the Control System Acceptance Test and in accordance with criteria and test procedures determined by Company and Seller as set forth in Attachment T (On-Line Acceptance Test General Criteria), to determine conformance with Seller’s obligations specifically set forth in Attachment T (On-Line Acceptance Test General Criteria) and Good Engineering and Operating Practices. Successful completion of the On-Line Acceptance Test shall be a condition precedent for achieving the Commercial Operation Date.

“Operating Period Security” – Shall have the meaning set forth in Section 7.1(D) (Operating Period Security).

“Ownership Control” – Shall have the meaning set forth in Section 1.(b) (Change in Ownership Interests and Control) of Attachment P (Sale of Facility By Seller).

“Ownership Interest” – Shall have the meaning set forth in Section 1.(b) (Change in Ownership Interests and Control) of Attachment P (Sale of Facility By Seller).

“Party” – Each of Seller or Company.

“Parties” – Seller and Company, collectively.

“Per Hour Variable Component” – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas) (Variable O&M Component).

“Performance Standards” – The various performance standards for the operation of the Facility and the delivery of electric energy from the Facility to the 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 24 (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 rates for purchase set forth in Article 5 (Rates for Purchase) in \$/kWh and/or \$/kW per month 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 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 24.10 (Dispute) of this Agreement, in the absence of such written agreement.

“Per kWh Variable Component” – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas) (Variable O&M Component).

“Point of Interconnection” – The point of delivery of energy output supplied by Seller to Company, depicted on Attachment E (Single-Line Diagram), where the facilities owned by Seller interconnect with the facilities owned by Company. Seller shall own and maintain the facilities from the Facility to the Point of Interconnection. Company shall own and maintain the facilities from the Point of Interconnection to the Company System. The Point of Interconnection will be identified in the IRS and set forth in Attachment E (Single-Line Diagram).

“Post-COD Termination Damages” – Shall have the meaning set forth in Section 9.3(B) (Post-COD Termination Damages).

“Pre-COD Termination Damages” – Shall have the meaning set forth in Section 9.3(A) (Pre-COD Termination Damages).

“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.

“Project Costs Incurred” – The aggregate amount expended or incurred by Seller with regard to the acquisition, development and construction of the Facility and the financing thereof, including without limitation (and without duplication) all amounts paid or payable with regard to the construction contract, site preparation, interconnect and start-up costs, materials and

equipment, Fuel inventory, insurance, taxes, project development fees and expenses, construction management expenses and fees, fees or penalties under all Project Documents, all Seller debt for financing the Facility (including principal, interest, fees, premiums and penalties relating thereto), equity funds, if any, invested in the Project (including fees, premiums and penalties relating thereto other than those payable to the Guarantor (if any) or any of its affiliates), fees and expenses incurred in arranging financing for the Facility and attorney's fees and disbursements.

“Project Documents” – This Agreement, any ground lease or other lease in respect of the Site and/or Land Rights, all construction contracts to which Seller is or becomes a party, Fuel Supply Agreement to which Seller is or becomes a party, 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 and the Security 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 25.17 (Proprietary Rights).

“PUC” or “Public Utilities Commission” – Shall have the meaning set forth in the recitals.

“PUC Application Period” – Shall have the meaning set forth in Section 2.2(C)(3)(b) (Time Period for PUC Approval).

“PUC Approval Order Date” – Shall have the meaning set forth in Section 25.12(C) (Company’s Written Statement).

“PUC Approval Order” – Shall have the meaning set forth in Section 25.12(A) (PUC Approval Order).

“PUC Performance Standards Revision Order” – An order issued by the PUC with respect to a Performance Standard Revision Document pursuant to Section 24.6 (PUC Performance Standards Revision Order).

“PUC Submittal Date” – The date of submittal of Company’s complete application or motion for approval of this Agreement pursuant to Section 2.2(C) (PUC Approval).

“Purchased Power Adjustment Clause” – The Company’s cost recovery mechanism incorporated into Company’s tariff rules as approved by the Commission in [HELCO: Docket No. 2009-0164, Decision and Order No. 30168 (filed February 8, 2012)][MECO: Docket No. 2009-0163, in Decision and Order No. 30365 (filed May 2, 2012)][HECO: Docket No. 2008-0083, in Final Decision and Order filed December 29, 2010] (or such successor provision that may be established from time to time), which permits Company to recover all capacity, operations and maintenance, and other non-energy payments incurred by the Company pursuant to a purchased power agreement.



“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 PUC.

“Qualified Independent Engineering Company” – Any company listed on Attachment D (Consultants List - Qualified Independent Engineering Companies), as such list is amended from time to time.

“Qualified Independent Engineers’ List” – The list of Qualified Independent Engineering Companies attached hereto as Attachment D (Consultants List - Qualified Independent Engineering Companies) and created and modified from time to time pursuant to Section 3.3(D)(2) (Qualified Independent Engineering Companies).

“Recipient” – Shall have the meaning set forth in Section 3.2(I)(2) (Confidentiality).

“Reference Year” – Shall have the meaning set forth in Attachment U (Adjustment of Charges).

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

“Revenue Metering Package” – The primary revenue meter, backup revenue meter (if required by Company), revenue metering PTs and CTs, secondary wiring, terminal blocks, test switches and fuses for secondary wiring.

“Revenue Terminal Unit” or “RTU” – The interface between Company’s EMS and the physical equipment at Facility.

“Reporting Milestone” – Each of the events identified as Reporting Milestones in Attachment V (Reporting Milestones).

“Required Model” -- 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.

“Right of First Negotiation Period” – Shall have the meaning set forth in Section 1(a) (Right of First Negotiation) of Attachment P (Sale Of Facility By Seller).

“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 Law” – 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 HRS §§ 269-91 through 269-95.

“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 4 (RPS Modifications Document) of Attachment AA (Renewable Portfolio Standards).

“RPS Pricing Impact” – Any adjustment in Contract Price in \$/kWh and/or \$/kW per month 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 (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.

“Salvage Period” – Shall have the meaning set forth in Section 3.3(C)(1) (Company Right to Cancel, General).

“Second Notice” – Shall have the meaning set forth in Section 3.3(D)(1)(c) (Implementation of Independent Engineering Assessment).

“Security Agreement” – The Security Agreement to be executed by Seller in the form of Attachment Q (Form of Security Agreement) in favor of Company in accordance with Section 3.1(E) (Company Security Documents), granting Company a security interest in, among other things, all of Seller’s right, title and interest in and to the Facility, the Project Documents, all accounts established pursuant to the Project Documents, all insurance proceeds in respect of the Facility and all proceeds of the foregoing, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Security Documents” – The Security Agreement, the Mortgage, and the Consents, together with all Uniform Commercial Code financing statements and other agreements,

consents, documents and instruments executed or filed in connection therewith, as the same may be modified or amended from time to time in accordance with the terms thereof.

“Security Funds” – Shall have the meaning set forth in Section 7.1(E) (Form of Security).

“Seller” – Shall have the meaning set forth in the first paragraph of the first page of this Agreement.

“Seller’s Centralized Control System” – Shall have the meaning set forth in Section 2.a (Seller’s Centralized Control System) of Attachment Y (Operation and Maintenance of the Facility).

“Seller’s General Manager” – The person appointed by Seller to act as the principal on-site person who is responsible for the Facility.

“Seller’s RPS Modifications Proposal” – Shall have the meaning set forth in Section 2.1(G) (Renewable Portfolio Standards).

“Seller-Owned Interconnection Facilities” – The Interconnection Facilities constructed and owned by Seller as described in Section 1 of Attachment B (Facility Owned by Seller).

“Settlement Date” – Shall have the meaning set forth in Section 3.3(C)(1) (Company Right to Cancel, General).

“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 by Seller, as further described in Section 2.1(D) (Site) and Attachment A (Facility Description).

“Source Code” – 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 set forth in Section 6.b(i)(5) (Authorized Use) of Attachment B (Facility Owned by Seller); 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)(5) (Authorized Use) of Attachment B (Facility Owned by Seller) of this Agreement.

“Source Code Escrow” – 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" – Iron Mountain Intellectual Property Management, Inc. or such other similar escrow agent approved by Company.

"Source Code Escrow Agreement" – 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" – 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 3.2(D)(1) (Financial Compliance).

"Spinning Reserve" - The difference between the load currently carried on the Facility while synchronized and on-line and the Facility's Net Maximum Capacity, both measured at the same instant in time.

"Start-up" – **[START-UP DEFINITION MAY BE REFINED BASED ON THE TECHNOLOGY USED BY SELLER.]** The action of bringing the Facility from non-operation to operation at the minimum load capability of [ ] MW] for the generating unit associated with such Facility, adjusted for ambient conditions.

"Supervisory Control And Data Acquisition" or "SCADA" – The Company system that provides remote control and monitoring of Company's transmission and sub-transmission systems and enables Company to perform real-time control of equipment in the field and to monitor the conditions and status of the Company System.

"Term" – The Initial Term and the Extension Term (if any), collectively.

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

"Transfer Date" – The date, prior to the Commercial Operation 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 25.12(E) (Unfavorable PUC Order).

"U.S. EPA" – The United States Environmental Protection Agency.

"Unit Trip" – **[UNIT TRIP DEFINITION WILL BE REFINED BASED ON THE TECHNOLOGY USED BY SELLER.]** The sudden and immediate removal from service of

one of the Facility's generators as a result of immediate mechanical/electrical/hydraulic control system trips or operator initiated action which causes a similar immediate removal from service or rapid and immediate reduction in power delivery not under control of the Company. Unit Trip shall also include (i) a trip of a Facility unit by the Company System Operator if the Company System Operator determines that an adverse condition at the Facility exists that is likely to endanger the safety of persons and/or property, and/or endanger the integrity of the Company System or have an adverse effect on Company customer's electric service; (ii) a trip of a Facility unit caused by an event outside the Facility through which it should have been expected to remain operating and /or synchronized to the Company System in accordance with Section 3.g (Frequency Requirements) and Section 3.e (Voltage Requirements) of Attachment B (Facility Owned by Seller); or (iii) a trip for an electrical fault or transient condition on the Company System of less than [ ] cycles duration for a three-phase fault located anywhere on the Company System or a trip of less than [ ] cycles duration for a single line to ground fault located anywhere on the Company system in accordance with Section 3.f (Transient Stability Ride-Through) of Attachment B (Facility Owned by Seller). Removal from service with less than one (1) hour notice to Company shall be deemed sudden and immediate.

"Unsubordinated Claims" – (i) Liquidated Damages payments in accordance with Article 9 (Liquidated Damages), (ii) damages payable under Section 8.3 (Equitable Remedies) or under Section 9.5 (Other Rights Upon Default), (iii) amounts to be reimbursed by Seller to Company for costs incurred by Company in connection with effecting a cure of defaults committed by Seller under the Financing Documents (if any) pursuant to Section 3.1(F)(5) (Reimbursement of Company Costs) or complying with requests of the Financing Parties (if any) in respect of, the Financing Documents (if any), (iv) payments by Seller for Company-Owned Interconnection Facilities to be installed by Company, (v) insurance premiums and other payments in accordance with Section 6.2 (Payment) and (vi) adjustments in accordance with Section 6.3 (Billing Disputes).

"Variable O&M Component" – Shall have the meaning set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas) (Energy Charge).

"Weekly Unit Commitment Schedule" – The written notice delivered in accordance with Section 3.3(A)(3) (Dispatch Forecast), stating for each day of the following week the times at which all generating facilities on the Company System shall start up and shut down.

"60-Month Schedule" – Shall have the meaning set forth in Section 8.a (60-Month Schedule) of Attachment Y (Operation and Maintenance of the Facility).

## ARTICLE 2 - SCOPE OF AGREEMENT

### 2.1 General Description of the Facility.

(A) Overview. Seller will design, construct, permit, own, operate and maintain the Facility in compliance with the RPS Law and the terms and conditions of this Agreement. The Demonstrated Firm Capacity and the Net Electric Energy Output of the Facility will be sold to Company under Company Dispatch for use in the Company System in accordance with the terms of this Agreement. Seller will carry out its obligations under this Agreement in all respects in a manner that gives full recognition to the fact that, in order for Company to meet its obligation under the RPS Law and to provide service to its customers, the Facility must be designed, constructed, operated, permitted, and maintained by Seller so that it will meet the RPS Law, achieve the Commercial Operation Date by the Commercial Operation Date Deadline and thereafter be available for service in accordance with the terms of this Agreement.

(B) Facility Specifications. The Facility shall be designed and constructed in accordance with Good Engineering and Operating Practices and the RPS Law. The Facility Description is attached to this Agreement as Attachment A (Facility Description). The single-line diagrams in Attachment E (Single-Line Diagram) shall expressly identify the Point of Interconnection of the Facility to the Company System.

(C) Interconnection Facilities. A description of the Interconnection Facilities and the terms and conditions related to the Interconnection Facilities shall be set forth in Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities.) of this Agreement.

(D) Site. The Site for the Facility is located at [REDACTED], Hawai'i.

(E) Requirements for Electric Energy Supplied by Seller. Electric energy supplied by Seller hereunder shall meet the specifications required by this Agreement. The Facility shall be designed to operate continuously and shall be designed to remain on-line and available to meet the requirements of Attachment B (Facility Owned by Seller) during events caused by natural forces, including but not limited to tropical storms, hurricanes, floods, earthquakes and volcanic eruptions, unless such events are of a severity as to exceed the specifications the Facility was designed to under Section 2.1(B) (Facility Specifications) except during planned outages, unplanned outages and outages pursuant to Article 4 (Suspension or Reduction of Deliveries). During events caused by natural forces, it is the intention of the Parties that the Facility shall be online and available to the greatest extent reasonably practicable within the then existing circumstances and conditions of operation and taking into account the Seller's determination, consistent with Good Engineering and Operating Practices, of whether the continued operation of the Facility (1) is likely to endanger the safety of persons and or property, and (2) is likely to endanger the integrity of the Facility.

(F) Fuel and Other Expendables. Seller will contract for, acquire or otherwise provide for a reliable supply of Fuel and other expendables necessary to operate the Facility.



(G) 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 ninety (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”). Such Seller’s RPS Modifications Proposal shall be in accordance with the provisions of Attachment AA (Renewable Portfolio Standards).

(H) Parallel Operation. Company agrees to allow Seller to interconnect and operate the Facility to provide firm dispatchable capacity and energy 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 Interconnection Acceptance Test, the Generator Acceptance Test, the Control System Acceptance Test and the On-Line Acceptance Test, in accordance with Good Engineering and Operating Practices.

## 2.2 Term and Effectiveness of Certain Obligations

(A) Term. The initial term of this Agreement shall commence on the Execution Date and shall remain in effect for [ ] years following the Commercial Operation Date (the “Initial Term”), unless extended pursuant to Section 2.2(E) (Extension Term) or terminated earlier as provided herein. Upon expiration of the Term, the Parties hereto shall no longer be bound by the terms and conditions of this Agreement, except as set forth in Section 25.23 (Survival of Obligations).

(B) Effectiveness of Certain Obligations. Notwithstanding the foregoing, prior to the Effective Date (i) in no event shall Seller be obligated to sell capacity or electric energy to Company, or have any other obligations to Company other than those set forth in this Section 2.2 (Term and Effectiveness of Certain Obligations), Section 2.3(A) (Company Conditions Precedent), Section 3.2(A)(1) (Design and Construction of Facility, General) (only as to obligations with respect to design and acquiring Land Rights), Section 3.2(A)(2) (Milestone Dates), Section 3.2(A)(4) (Seller’s Governmental Approvals and Land Rights) and Section 3.2(A)(5) (Review of Facilities), Article 13 (Indemnification), Article 15 (Insurance), Article 17 (Dispute Resolution), Article 18 (Force Majeure), Article 20 (Assignments and Financing Debt), Article 21 (Sale of Facility by Seller), and Article 25 (Miscellaneous) and Section 1.d. (Seller’s Payment Obligations) of Attachment G (Company-Owned Interconnection Facilities); and (ii) in no event shall Company be obligated to make any payments provided for herein to Seller or have any other obligations to Seller other than those set forth in this Section 2.2 (Term and Effectiveness of Certain Obligations), Section 2.3(B) (Failure of Seller Conditions Precedent), Section 3.1(E) (Company Security Documents), Section 3.2(A)(4) (Seller’s Governmental Approvals and Land Rights) and Section 3.2(A)(5) (Review of Facilities), and Article 13 (Indemnification), Article 17 (Dispute Resolution),

Article 18 (Force Majeure), Article 20 (Assignments and Financing Debt), Article 21 (Sale of Facility by Seller), and Article 25 (Miscellaneous).

(C) PUC Approval.

(1) PUC Approval Order.

(a) Notwithstanding any other provisions of this Agreement that might be construed to the contrary, Company's purchase of electric energy under this Agreement and Company's payment of the Capacity Charge, and any and all terms and conditions of this Agreement that are ancillary to that purchase and that payment, are all contingent upon obtaining the non-appealable PUC Approval Order and the occurrence of the Capacity Rate Inclusion Date. Upon the execution of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a satisfactory PUC Approval Order that satisfies the requirements of Section 25.12(A) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurance 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, and 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 arising therefrom.

(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 the 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.

(2) 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 12.1 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) (Engineering and Design Work Payment) 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) (Engineering and Design Work Payment) 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.

(3) Time Periods for PUC Submittal Date and for 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 2.2(C)(2) (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 PUC issues an Unfavorable PUC Order or if a 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 (the "PUC Application Period"), Company or Seller may, by written notice delivered within

one hundred eighty (180) Days of the Unfavorable PUC Order or the expiration of the PUC Application Period, declare this Agreement null and void. In the event the PUC Approval Order is obtained on or before the end of the PUC Application Period, but such PUC Approval Order is appealed, and a Non-appealable PUC Approval Order is not obtained within eighteen (18) months of the PUC Submittal Date, 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 one hundred eighty (180) Days of the end of such 18-month period, declare this Agreement null and void. If the Agreement is declared null and void as provided herein, the Parties hereto shall thereafter be free of all obligations hereunder, except as set forth in Section 2.2(D) (Obligations of the Parties Upon Declaration of the Agreement As Null and Void) and shall pursue no further remedies against one another.

(D) Obligations of Parties Upon Declaration of the Agreement as Null and Void. If pursuant to Section 2.2(C) (PUC Approval), a Party exercises its right to declare this Agreement null and void, this Agreement shall be deemed null and void and the Parties hereto shall be free of all obligations hereunder, other than as provided in Section 25.23 (Survival of Obligations), to the extent such obligations are applicable at the time the Party exercises its right to declare this Agreement null and void. Notwithstanding the foregoing, if Seller had requested Company to incur costs associated with Company-Owned Interconnection Facilities prior to receipt of a satisfactory PUC Approval Order or, if there is an appeal, a Non-appealable PUC Approval Order, 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; provided, however, that nothing in this Agreement shall obligate Company to incur such costs and cost obligations unless and until Seller provides Company with security that is adequate, as determined by Company in its sole discretion, to secure Seller's obligation to pay Company for such costs and cost obligations as set forth herein.

(E) Extension Term. If the Initial Term expires with the Parties hereto actively negotiating for the extension of this Agreement, a new power purchase arrangement, or the purchase of the Facility, then, with notice to the PUC, such Initial Term shall be automatically extended on a month-to-month basis under the same terms and conditions as contained in this Agreement for so long as said negotiations continue (the "Extension Term"). The Extension Term shall terminate sixty (60) Days after either Party notifies the other in writing that said negotiations have terminated.

### 2.3 Conditions Precedent.

(A) Seller Conditions Precedent. Company's obligation to purchase electric energy and/or capacity from Seller pursuant to this Agreement, and any and all obligations of Company which are ancillary to that purchase, are contingent upon the following Conditions Precedent:

(1) Following the Execution Date. Within sixty (60) days after the PUC Submittal Date, Seller shall submit to Company the then available detailed design materials and specifications for the Facility generally described in Attachment A (Facility Description) and Attachment B (Facility Owned by Seller), including but not limited to the prime mover(s), generator(s), main step-up transformer(s), condenser(s), Fuel handling equipment, electric energy storage equipment, as applicable, reasonably demonstrating to Company's satisfaction that the Facility, if constructed, operated and maintained pursuant to such design materials and in accordance with Good Engineering and Operating Practices, can be reasonably expected to have a useful life at least equal to the Initial Term.

(2) Executed Project Documents. Within one hundred eighty (180) Days after the Effective Date, Seller shall submit to Company copies of the following executed Project Documents: (i) the initial fully executed Fuel Supply Agreements (with commercial terms redacted to protect suppliers' confidential information); (ii) the Fuel Report which shall be updated annually and submitted to Company on January 1 of each Calendar Year this Agreement is in force; and (iii) other contracts (if any) entered into by Seller for the purchase of critical materials and services necessary for the operation and maintenance of the Facility. If any one or more Fuel Supply Agreements are for a term less than the Initial Term of this Agreement or expire prior to the termination of the Initial Term of this Agreement, then not later than six (6) months prior to the stated expiration date of said Fuel Supply Agreements, Seller shall use commercially reasonable efforts to renew or replace, or cause the renewal or replacement of, such Fuel Supply Agreement with one or more replacement Fuel Supply Agreements, and shall provide a copy of such Fuel Supply Agreement at such time to Company (with commercial terms redacted to protect suppliers' confidential information);

(3) On or before the Commencement of Construction. On or before the commencement of construction of all or any portion of the Facility, Seller shall submit to Company the following:

(a) Governmental Approvals and Land Rights- Construction.  
Documents or other evidence that Seller obtained all required Governmental Approvals and Land Rights needed to commence construction of the Facility;

(b) Governmental Approvals and Land Rights- Operations.  
Documents or other evidence that Seller has obtained all currently required Governmental Approvals and Land Rights needed to operate the Facility following completion of the Facility;

(c) Proof Of Insurance. Copies of any and all then-required insurance policies (or binders as appropriate) procured by Seller in accordance with Article 15 (Insurance) relating to the construction and operations of the Facility, as the case may be;

(d) Officer's Certificate. A certificate executed by a duly authorized officer of Seller certifying that: (i) Seller has the right to locate the Facility at

the Site for the Term and that such right may be transferred or assigned to Company so as not to limit or interfere with Company's exercise of its rights under this Agreement; and (ii) Seller has obtained all then-required Governmental Approvals and Land Rights needed to commence construction of the Facility; and

(e) Financing Documents and Security Documents. Financing Documents as provided in Section 3.1(F) (Financing Documents) and Security Documents as provided in Section 3.1(E) (Company Security Documents).

(4) On or Before the Commercial Operation Date. On or before the Commercial Operation Date, which shall in no event be later than the Commercial Operation Date Deadline, Seller shall:

(a) Proof of Insurance. Submit to Company copies of any and all then-required insurance policies (or binders as appropriate) provided by Seller required pursuant to Article 15 (Insurance) to be in effect prior to operation of the Facility; and

(b) Officer's Certificate. Submit to Company a certificate executed by a duly authorized officer of Seller certifying that: (i) Seller has obtained all then-required Governmental Approvals and Land Rights needed to operate the Facility throughout the Term or, if one or more of such Governmental Approvals or Land Rights is not available at that time for the full Term, for such lesser period as is available; and (ii) construction of the Facility is substantially complete, that the Facility has been constructed substantially in compliance with the terms of this Agreement and with the information submitted pursuant to this Section 2.3(A) (Company Conditions Precedent), and that all acceptance tests set forth in Section 2.3(A)(4)(c) (Acceptance Tests) have been satisfactorily accomplished and the Facility is ready to begin producing power on a commercial basis under the terms and conditions of this Agreement. Evidence required under this Section 2.3(A) (Company Conditions Precedent) shall be submitted or made available by Seller during or upon the completion of each phase of development (for example, completion of detailed engineering, completion of as-built drawings and receipt of manufacturers' guarantee performance data). To allow Company to evaluate the information provided by Seller, Seller shall cooperate in such physical inspections of the Facility pursuant to Section 10.4 (Inspection of Facility Operation) of this Agreement as may be reasonably required by Company during and after completion of the Facility. In no event shall Company's technical review and inspection of the Facility be deemed to be an endorsement of the design thereof or as any warranty of the safety, durability or reliability of the Facility nor a waiver of any of Company's rights.

(c) Acceptance Tests. Cause the Facility to pass each of the following acceptance tests:

- (i) Interconnection Acceptance Test;
- (ii) Generator Acceptance Test;
- (iii) Control System Acceptance Test; and,
- (iv) On-Line Acceptance Test.

(5) On or Before Commencement of Capacity Charge Payments. On or before the commencement of Capacity Charge payments by Company, the Facility shall pass the Capacity Test.

(B) Failure of Seller Conditions Precedent.

(1) Seller's Remedial Action Plan. If Seller misses any of the submission deadlines required by the Conditions Precedent in Section 2.3(A) (Company Conditions Precedent), Seller shall, within ten (10) Business Days of such missed submission deadline, provide Company a remedial action plan which shall set forth a detailed description of Seller's course of action and plan to provide Company with the required submission and to meet all subsequent submission deadlines and the Commercial Operation Date Deadline; provided, that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent submission deadlines and the Commercial Operation Date Deadline.

(2) Seller's Certification Requirements. Not later than ninety (90) Days after the PUC Submittal Date, Seller shall submit to Company a certificate executed by a duly authorized officer of Seller declaring whether Seller considers that it has complied with the submission requirements of Section 2.3(A)(1) (Company Conditions Precedent, Following the Execution Date), identifying with particularity the submissions on which such declaration relies, and certifying that such submissions are true and correct in all material respects and in no way materially misleading. On or before the Closing Date, Seller shall submit to Company a certificate executed by a duly authorized officer of Seller declaring whether Seller has determined that it has complied with the submission requirements of Section 2.3(A)(2) (Company Conditions Precedent, Executed Project Documents), identifying with particularity the submissions on which such declaration relies, and certifying that such submissions are true and correct in all material respects and in no way materially misleading. Within thirty (30) Days of receiving each of Seller's certificates pursuant to this Section 2.3(B)(2) (Seller's Certification Requirements), Company shall provide Seller with either (i) a written statement that Seller has satisfied the submission requirements of Section 2.3(A)(1) (Company Conditions Precedent, Following the Execution Date) and Section 2.3(A)(2) (Company Conditions Precedent, Executed Project Documents) identified in such certificate, or (ii) a written statement setting forth the requirement(s) Company believes have not been met by Seller. Seller shall comply substantially with the requirements set forth in the Company's statement within thirty (30) Days of receiving Company's statement. Unless and until Seller substantially complies with the Company's requirements for satisfying the Conditions Precedent in Section 2.3(A) (Company Conditions Precedent)



to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operation Date.

2.4 Failure to Meet Milestone Dates and Commercial Operation Date Deadline.

(A) Failure to Meet Milestone Dates.

(1) Guaranteed Milestones Other Than Commercial Operation Deadline.

(a) Seller's Plan and Monthly Progress Reports. If Seller fails to achieve any Guaranteed Milestone (other than the Commercial Operation Date Deadline) on or before the applicable Milestone Date as set forth in Attachment K (Guaranteed Project Milestones), as the same may be extended for reasons of Force Majeure or as otherwise provided in this Agreement, Seller shall within ten (10) Business Days thereafter submit for Company's review and approval, which approval shall not be unreasonably withheld, a detailed plan which describes (i) the reasons why such Guaranteed Milestone was not achieved, (ii) Seller's proposed measures for achieving such Guaranteed Milestone as soon as practicable thereafter, and (iii) Seller's proposed measures for meeting the Commercial Operation Date Deadline. Until such Guaranteed Milestone is met, Seller shall provide Company with monthly progress reports as to the status of Seller's efforts to achieve such Guaranteed Milestone.

(b) Milestone Delay Damages. If Seller fails to achieve any such Guaranteed Milestone on or before the applicable Milestone Date set forth in Attachment K (Guaranteed Project Milestones), as the same may be extended for reasons of Force Majeure or as otherwise provided in this Agreement, Company shall collect and Seller shall pay Liquidated Damages in the amount of \$3,000 for each Day ("Milestone Delay Damages") that Seller fails to achieve the Guaranteed Milestone; provided, that the number of Days for which Company shall collect and Seller shall pay Milestone Delay Damages shall not exceed ninety (90) Days (the "Milestone Date Delay LD Period") unless such Milestone Date is extended for other than Force Majeure or as otherwise provided in this Agreement then such Milestone Date Delay LD Period shall likewise be extended day-for-day for the period of such extension.

(c) Termination Right. If, upon the expiration of the Milestone Date Delay LD Period, Seller has not achieved such missed Milestone Date, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by declaring an Event of Default pursuant to Section 8.1(A)(2) and issuing a written termination notice to Seller pursuant to Section 8.2(B) (Right to Terminate). If the Agreement is terminated by Company pursuant to this Section 2.4(A)(1)(c) (Termination Right), Company shall have the right to collect Pre-COD Termination Damages, as provided in Section 9.3(A) (Pre-COD Termination Damages) of this Agreement. Unless and until Seller completes each

Guaranteed Milestone to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operation Date.

(2) Reporting Milestones.

(a) Seller's Plan and Monthly Progress Reports. If Seller fails to achieve any Reporting Milestone on or before the applicable Milestone Date as set forth in Attachment L (Reporting Milestones), as the same may be extended for reasons of Force Majeure or as otherwise provided in this Agreement, Seller shall within ten (10) Business Days thereafter submit for Company's review and approval, which approval shall not be unreasonably withheld, a detailed plan which describes (i) the reasons why such Reporting Milestone was not achieved, (ii) Seller's proposed measures for achieving such Reporting Milestone as soon as practicable thereafter, and (iii) Seller's proposed measures for meeting the Commercial Operation Date Deadline.

(b) Reporting Milestone Delay Consequences. If Seller fails to achieve any such Reporting Milestones on or before the applicable Milestone Date set forth in Attachment L (Reporting Milestones) as extended for reasons of Force Majeure or as otherwise provided in this Agreement, Seller shall provide Company with monthly progress reports to Company of the status of Seller's efforts to achieve such Reporting Milestone. Unless and until Seller substantially completes each Reporting Milestone to the reasonable satisfaction of the Company, Seller shall not be deemed to have achieved the Commercial Operation Date.

(B) Failure to Meet Commercial Operation Date Deadline.

(1) Commercial Operation Date Deadline and Grace Periods. Time is of the essence for this Agreement, and Seller shall achieve the Commercial Operation Date no later than the Commercial Operation Date Deadline. If Seller fails to achieve the Commercial Operation Date by the Commercial Operation Date Deadline, Seller shall have the following grace periods within which to achieve the Commercial Operation Date without incurring liability for Daily Delay Damages pursuant to Section 2.4(B)(3) (Daily Delay Damages and Termination Right):

(a) PUC Approval Order Date. If the failure to achieve the Commercial Operation Date by the Commercial Operation Date Deadline 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 Commercial Operation Date Deadline 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 Commercial Operation Date Deadline that are reasonably necessary for Seller, using reasonable diligence to achieve the Commercial Operation 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.]**

(b) Force Majeure. If the failure to achieve the Commercial Operation Date by the Commercial Operation Date Deadline is the result of Force Majeure (which, for purposes of this Section 2.4(B)(1)(b) excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 2.4(B)(1)(a) above) **[PRECEDING PARENTHETICAL SHOULD BE DELETED IF SECTION 2.4 (B)(1)(a) IS DELETED]**, and if and so long as the conditions set forth in Section 18.2(A) (Events That Could Qualify as Force Majeure) are satisfied, Seller shall be entitled to a grace period following the Commercial Operation Date Deadline equal to the lesser of two hundred seventy (270) Days or the duration of the Force Majeure.

(c) Company's Untimely Performance. If the failure to achieve the Commercial Operation Date by the Commercial Operation Date Deadline 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 the Commercial Operation Date Deadline equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such grace period shall be Seller's sole remedy for any such failure by Company. For purposes of this Section 2.4(B)(1)(c) (Company's Untimely Performance), 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.

(2) Notices and Reports. If Seller fails to achieve the Commercial Operation Date by the Commercial Operation Date Deadline or has reasonable grounds for concluding that it is unlikely to achieve that objective:

(a) Not Force Majeure. If such failure or anticipated failure is not the result of Force Majeure, Seller shall:

(i) promptly give Company written notice of such failure or anticipated failure in writing;

(ii) expeditiously provide Company with a written explanation of the reason for such failure or anticipated failure; and

(iii) provide Company with written weekly progress reports describing the actions taken to achieve the Commercial Operation Date and the estimated time frame for completion of such actions.



(b) Force Majeure. If such failure or anticipated failure is the result of Force Majeure, Seller shall, without limitation to the generality of Article 18 (Force Majeure), provide the notice, explanation and weekly progress reports required under Section 18.4(A) (Satisfaction of Certain Conditions).

(3) Daily Delay Damages and Termination Right.

(a) Daily Delay Damages. If the Commercial Operation Date has not been achieved on or before the latter of the Commercial Operation Date Deadline or the expiration of any applicable grace period set forth in Section 2.4(B)(1) (Commercial Operation Date Deadline and Grace Periods), Company shall collect and Seller shall pay liquidated damages in the amount of \$10,000 for each Day (“Daily Delay Damages”) that Seller fails to achieve the Commercial Operation Date Deadline until Seller achieves the Commercial Operation Date or, pursuant to Section 2.4(B)(3)(b) (Termination Right) below, Company terminates this Agreement, whichever occurs first.

(b) Termination Right. If Seller has not achieved the Commercial Operation Date within one hundred eighty (180) Days of the Commercial Operation Date Deadline, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by declaring an Event of Default pursuant to Section 8.1(A)(1) and issuing a written termination notice to Seller pursuant to Section 8.2(B) (Right to Terminate). If the Agreement is terminated by Company pursuant to this Section 2.4(B)(3) (Daily Delay Damages and Termination Right), Company shall have the right to collect Pre-COD Termination Damages, as provided in Section 9.3(A) (Pre-COD Termination Damages) of this Agreement.

(C) Development Period Security Fund. Company shall draw upon the Development Period Security established pursuant to Section 7.1 (Security Fund) on a monthly basis for payment of the total Milestone Delay Damages and 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.

2.5 No Waiver

(A) Conditions Precedent and Milestone Events. Except as otherwise provided herein, failure by Company to invoke its rights under Section 2.3(B) (Failure of Seller Conditions Precedent) or Section 2.4(A) (Failure to Meet Milestone Dates) with respect to any particular Condition Precedent or Milestone Event shall in no way diminish Company’s rights upon the failure of Seller to achieve any subsequent Condition Precedent or any subsequent Milestone Event.

(B) Event of Default. Notwithstanding any other provision herein to the contrary, Company’s failure to declare an Event of Default during the time periods provided for in this

Agreement shall not constitute a waiver if such failure is the direct or indirect result of Seller's misstatement of a material fact or Seller's omission of a material fact which is necessary to make any representation, warranty, certification, guarantee or statement made (or notice delivered) by Seller to Company in connection with this Agreement (whether in writing or otherwise) not misleading.

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ARTICLE 3 - SPECIFIC RIGHTS AND OBLIGATIONS OF THE PARTIES

3.1 Rights and Obligations of Both Parties.

(A) Sale and Purchase of Energy and Capacity. Seller shall produce, supply and sell to Company and Company shall take from and pay Seller for the Demonstrated Firm Capacity and Net Electric Energy Output as determined in accordance with the terms and conditions of this Agreement.

(B) Protection of Facilities. Each Party shall be responsible for protecting its own facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation or non-operation of the other Party's facilities, and such other Party shall not be liable for any such damage so caused.

(C) Good Engineering and Operating Practices.

(1) 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. **[THIS SECTION MAY BE REVISED TO INCLUDE SPECIFIC REQUIREMENTS DEPENDING ON THE TECHNOLOGY USED BY THE FACILITY.]**

(2) 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. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of Company.

(D) Interconnection Facilities. The terms and conditions related to the Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities are set forth in Attachment B (Facility Owned by Seller) and Attachment G (Company-Owned Interconnection Facilities). 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). **[ATTACHMENT G (COMPANY-OWNED INTERCONNECTION FACILITIES) CONTAINS ONLY GENERAL TERMS. SPECIFIC TERMS WILL BE PROVIDED AFTER THE COMPLETION OF THE INTERCONNECTION REQUIREMENTS STUDY.]**

(E) Company Security Documents. Concurrent with the Closing Date or such earlier date at which any Financing Party acquires any interest (including without limitation, a security



interest, stock pledge, mortgage, lien or any other interest under a Financing Document) in the Facility, this Agreement, or any other Project Document, Seller shall comply with the following requirements:

(1) Security Agreement. Seller shall cause to be executed and delivered to Company the Security Agreement in the form set forth in Attachment Q (Security Agreement) and the Mortgage, to secure the performance by Seller of its obligations under this Agreement. The Security Agreement shall be subordinate only to the mortgage and security interest provided to the Financing Parties (if any) and only in an amount and to the extent that such security interest and mortgage secure such amounts loaned or advanced by the Financing Parties (if any) to Seller as shall be required to finance the actual construction price (as established under the construction contracts) of the Facility. Notwithstanding the immediately preceding sentence, Company's right to receive or set off the Unsubordinated Claims against payments it otherwise is obligated to make under this Agreement shall in no respect be subordinate to the interests of the Financing Parties (if any) under the Financing Documents (if any).

(2) Consents. Seller shall cause to be executed and delivered to Company the Consents (if any).

(3) Financing Parties. Seller agrees to require the original Financing Parties (if any) and any additional or substitute Financing Parties (if any) to become parties to such documentation as is reasonably necessary to give effect to this Section 3.1(E) (Company Security Documents).

(4) Legal Opinions. Seller shall deliver to Company favorable legal opinions of counsel, addressed to Company, in form and substance satisfactory to Company, that the Security Agreement and Mortgage have been duly authorized by Seller.

(5) Requirements for the Security Documents. The Security Documents shall be governed by Hawai'i law, be in form and content customarily used in Hawai'i for substantial commercial loan transactions by knowledgeable institutional lenders, and shall in all respects be reasonably satisfactory to Company.

(6) Further Assurances. Seller shall execute and deliver to Company such other documents and instruments, and take such other actions, as may be reasonably necessary for Company to establish and perfect its rights under the Security Documents (if any) and to obtain and give full effect to the security interest, Mortgage, pledge and priority contemplated hereby.

(7) Filing of Security Documents. Seller hereby expressly authorizes Company to file or record fixture filings, financing statements, and other Security Documents as Company deems necessary or appropriate to perfect its security interest in the Facility and Project Documents.

(8) Consent to Assignment. The Parties acknowledge that Seller may obtain construction and long-term project financing (including refinancing) for the Facility and

that Financing Parties providing such financing will require the financing to be secured by liens upon the Facility and other assets of Seller in accordance with the Security Documents. In the event that Seller elects to use outside project financing that requires a mortgage on Seller's owned property, Company shall, if its reasonable costs (including internal staff time and legal fees of outside counsel) in connection with such consent are paid by Seller, execute and deliver on or before the Closing Date a consent to assignment of this Agreement and other related agreements ("Consent to Assignment"). The Consent to Assignment shall (i) be governed by Hawai'i law; (ii) be in form and content reasonably satisfactory to Company; (iii) acknowledge the assignment and the right of the Financing Parties to receive notice of Events of Default where Seller is the defaulting party; and (iv) provide the Financing Parties an opportunity to cure such defaults, and to exercise remedies to assume Seller's obligations under this Agreement.

(9) Summaries and Copies of Documents. In the event that Seller elects to use outside project financing (including refinancing) that requires a mortgage on Seller's owned property, 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.

(F) Financing Documents. Seller shall use its commercially reasonable efforts to obtain Financing Documents in a form reasonably satisfactory to Company which contain the following provisions for Company's benefit:

(1) No Action by Financing Parties. Each Financing Party 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 Financing Party 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 receive delivery of capacity and electric energy from the Facility, nor to terminate or otherwise adversely affect this Agreement, by means of (a) 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 (b) any other suit, action or proceeding upon the Financing Documents or the exercise of any other rights of such Financing Party pursuant to any other documents or as a matter of law.

(2) Notice of Event of Default and Right to Cure. Each Financing Party shall agree: (a) to give written notice to Company of any event of default by Seller and any event known to such Financing Party which, with notice or the passage of time or both, would constitute an event of default by Seller, under any Financing Documents; and (b) 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 Financing Party in respect of such event of default during such cure period.

(3) Company's Rights. Each Financing Party 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 do one or more of the following: (a) cure Seller's default without assuming Seller's obligations under the Financing Documents; (b) cure Seller's default and directly or by an affiliate assume Seller's obligations under the Financing Documents; and (iii) directly or by an affiliate acquire all of the Financing Party's interest under the Financing Documents.

(4) Company's Lien and Security Interest. The Company shall have a lien and security interest that is subordinate (except for the Unsubordinated Claims) only to those of the Financing Parties on any escrow accounts established in connection with financing for the Facility to secure all of Seller's obligations to Company under this Agreement, and Seller and the Financing Parties shall execute such documents as Company shall reasonably require to grant, establish and perfect such interest.

(5) Reimbursement of Company Costs. Seller shall reimburse Company for costs incurred by Company in responding to Financing Parties' 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 Sections 3.1(F)(2) (Notice of Event of Default and Right to Cure) and Section 3.1(F)(3) (Company's Rights) or any assumption of Seller's obligations under Section 3.1(F)(3) (Company's Rights).

### 3.2 Rights and Obligations of Seller.

#### (A) Design and Construction of Facility.

(1) General. Seller shall furnish all financial resources, labor, tools, materials, equipment, transportation, supervision, and other goods and services necessary to completely design and build the Facility to fulfill the requirements of this Agreement. Seller shall also be responsible for acquiring any and all necessary Land Rights for the Facility as well as for Fuel handling and waste disposal infrastructures. The design and construction of the Facility as well as the acquisition of other necessary infrastructures shall take place using Good Engineering and Operating Practices. The Facility design and specifications must conform to Company design specifications and standards, where applicable. It is the intent and expectation of the Parties that the Facility have a plant life equal to at least the Initial Term of this Agreement. To the extent practicable, all new equipment shall be designed and constructed by Seller in a manner consistent with that objective.

(2) Milestone Dates. Due to the critical nature of Company's energy needs, Seller's attainment of all Milestone Events, on or prior to applicable Milestone Dates specified in Attachment K (Guaranteed Project Milestones) and Attachment L

(Reporting Milestones), is essential. Any failure to achieve a Milestone Event by its Milestone Date shall be treated in accordance with the provisions of Section 2.4(A) (Failure to Meet Milestone Dates).

(3) Commercial Operation Date Deadline. The Commercial Operation Date shall occur no later than (i) [ ] , or (ii) [ ] months after receipt of the PUC Approval Order described in Section 25.12 (PUC Approval), whichever is later (the “Commercial Operation Date Deadline”), unless deferred pursuant to Section 3.3(B) (Company Right to Defer the Commercial Operation Date). A failure to achieve the Commercial Operation Date by the Commercial Operation Date Deadline shall be treated in accordance with the provisions of Section 2.4(B) (Failure to Meet Commercial Operation Date Deadline).

(4) Seller’s Governmental Approvals and Land Rights.

(a) Seller’s Responsibilities. Seller is responsible for the acquisition and continuous maintenance of all Governmental Approvals and Land Rights required for the construction and operation of the Facility during the Term under conditions which allow Seller to meet the requirements of this Agreement including, but not limited to, Company’s right to control the Facility through Company Dispatch. Seller shall obtain the necessary Governmental Approvals to allow Company to start up and shut down Seller’s generating units as necessary in accordance with this Agreement and to dispatch Seller’s generating units at maximum continuous output twenty-four (24) hours per day for as long as needed to satisfy the Company System demand, as Company deems appropriate, in its reasonable discretion.

(b) Duration of Governmental Approvals and Land Rights. All Governmental Approvals and Land Rights shall be acquired for the Initial Term of this Agreement and to the extent applicable any Extension Term; provided, however, that if the pertinent Governmental Authority does not issue a specific Governmental Approval for at least a period equal to the Initial Term, Seller shall obtain the Governmental Approval for the longest time period generally allowed by law. All Governmental Approvals shall be obtained and renewed by Seller in accordance with procedures set by the pertinent Governmental Authority. Seller must comply with all provisions in operating Governmental Approvals and with all Site specific requirements imposed by any Governmental Authority. Seller shall be responsible for all costs related to any violations by Seller, its employees, agents or representatives, of any provisions of any of the Governmental Approvals or Land Rights, and in no situation shall Company be held responsible for violations of Seller’s Permits or Land Rights.

(5) Review of Facilities.

(a) Drawings and Calculations. Seller shall make readily available to Company a complete set of all detailed engineering, vendor and manufacturing and as-built drawings and calculations relating to the design and construction of



the Facility, including the documentation required by Section 1(b)(iii)(G) (Cyber-Security) of Attachment B (Facility Owned by Seller), within a reasonable time after such drawings are available, but in no event later than seven (7) Days following the date on which the application for the required Governmental Approvals for construction of the Facility are submitted to the appropriate Governmental Authority and, with respect to the as-built drawings, no later than one hundred (120) Days after the Facility achieves the Commercial Operation Date. Such drawings and calculations shall be submitted in electronic format, if requested by Company, in a format compatible with Company's computer hardware and software.

(b) Review, Observation and Inspection. Company shall have an opportunity to (i) review and comment on the design of the Facility, (ii) to observe the construction of the Facility and the equipment to be installed therein, and (iii) to inspect the Facility and related equipment following the completion of construction and during the course of this Agreement; provided that such activities do not materially interfere with Seller's construction or operation of the Facility. Unless otherwise agreed to by the Parties, Company shall, as soon as practicable, but in no event later than thirty (30) Days following submission to Company of (aa) any design materials or (bb) any opportunity for inspection by Company of the construction of the Facility, review and provide comments thereon, and Seller shall, as soon as practicable, but in no event later than thirty (30) Days after receipt of such comments, respond in writing, either noting agreement and action to be taken or reasons for disagreement.

(c) Process for Resolving Disagreements. If Seller disagrees with Company, it shall note 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, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineers List pursuant to Section 3.3(D)(1)(b) (Implementation of Independent Engineering Assessment) and the Qualified Independent Engineering Company will make a recommendation to remedy the situation pursuant to the Independent Engineering Assessment. The Seller shall abide by the Qualified Independent Engineering Company's recommendation contained in such Independent Engineering Assessment. Both Parties shall equally share in the cost for the Independent Engineering Assessment. However, Seller shall pay all costs associated with implementing the recommendation set forth in the Independent Engineering Assessment.

(d) No Endorsement, Warranty or Waiver. In no event shall any review, comment or failure to comment by Company be deemed to be an endorsement, warranty or waiver of any right by Company. In no event shall any failure by Company to exercise its rights under this Section 3.2(A)(5) (Review of Facilities) constitute a waiver by Company of, or otherwise release Seller from, any other provision of this Agreement.

(e) Areas of Common Concern. In areas of common concern, such as the type and settings of Seller's protective relaying equipment, Seller shall submit such concerns, designs and settings for Company's review and acceptance. Protective relay settings must coordinate with the Company System as Company, within its sole discretion, designs and operates the Company System.

(6) Facility Protection and Control Equipment.

(a) Seller's Obligations. Seller shall, at its own cost, furnish, install, operate and maintain internal breakers, relays, switches, synchronizing equipment and other associated protective and control equipment necessary to maintain the standard of reliability, quality and safety of electric energy production suitable for parallel operation with the Company System as required by this Agreement and Good Engineering and Operating Practices.

(b) [Reserved].

(c) Company's Right to Review the Design. Company shall have the right, but not the obligation, to review and accept the design of all such equipment, protective relay settings, and control logic as soon as practicable, and in no event later than thirty (30) Days after the receipt of all Governmental Approvals for construction of the Facility and shall present any comments relating thereto to Seller, as soon as practicable and in no event later than sixty (60) Days after receiving such design information.

(d) Company's Right to Review Modifications. Company shall have the right, but not the obligation, to review and accept any proposed future action by Seller to modify or replace such equipment, or change such settings, as soon as practicable, and in no event later than forty-five (45) Days prior to such future action; provided, however, that Company shall present any comments relating thereto to Seller as soon as practicable, and in no event later than fifteen (15) Days after receiving information relating to such future action.

(e) Company's Right to Review Installation. Company shall have the right, but not the obligation, to review, inspect and accept the installation, construction and setting of all such equipment in order to ensure consistency with the design submitted by Seller for Company's review. If Company exercises such right, Company shall inform Seller as soon as practicable, and in no event later than forty-five (45) Days after such review or inspection, of any problems it believes exist and any recommendations it has for correcting such problems.

(f) No Endorsement, Warranty or Waiver. Company's inspection and acceptance of Seller's equipment and settings shall not be construed as endorsing the design thereof, nor as any warranty of the safety, durability or reliability of said equipment and settings, nor as a waiver of any of Company's

rights. In no event shall any failure by Company to exercise its rights under this Section 3.2(A)(6) (Facility Protection and Control Equipment) constitute a waiver by Company of, or otherwise release Seller from, any other provision of this Agreement.

(g) Cooperation. Seller and Company shall cooperate with each other in good faith in agreeing upon design standards for any equipment or settings referred to in this Section 3.2(A)(6) (Facility Protection and Control Equipment).

(h) Timing for Implementation of Company Proposals. Within a reasonable time after receipt of Company's comments referred to in this Section 3.2(A)(6) (Facility Protection and Control Equipment) or notification by Company of problems related to Seller's obligations under this Section 3.2(A)(6) (Facility Protection and Control Equipment), but no later than ninety (90) Days after such notification (unless such condition is causing a safety hazard or damage to the Company System or the facilities of any of Company's customers, in which event the correction must be promptly made by Seller), Seller shall implement Company's proposals.

(i) Relay Settings and Control Logic. Notwithstanding the foregoing, Seller shall utilize relay settings and control logic prescribed by Company, which may be changed over time within the design capability of the equipment as the requirements of the Company System change. If Seller demonstrates to the satisfaction of Company that the utilization of such relay settings and control logic would likely result or have resulted in an event normally requiring Liquidated Damages or an Event of Default, Seller shall be excused from same. If Seller and Company disagree as to whether the utilization of such relay settings resulted in an event that required Liquidated Damages or an Event of Default, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineers List pursuant to Section 3.3(D)(1)(b) (Implementation of Independent Engineering Assessment) and the Qualified Independent Engineering Company will determine if the utilization of such relay settings resulted in the event that gave rise to Liquidated Damages or an Event of Default pursuant to the Independent Engineering Assessment. The Seller and Company shall abide by the Qualified Independent Engineering Company's determination.

(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 Operation Date is achieved, progress reports in a form set forth on Attachment S (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each specific Condition Precedent contained in Section 2.3(A) (Company Conditions Precedent) and the status of efforts to meet each Milestone Date contained in Attachment K (Guaranteed Project Milestones) and Attachment L (Reporting Milestones). 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 Conditions Precedent or Milestones. Seller shall provide Company with any requested documentation to support the achievement of Conditions Precedent or Milestones within ten (10) Business Days of receipt of such request from Company. At Company's request, Seller shall provide an opportunity for Company to meet with appropriate personnel of Seller or its contractors to discuss and assess any such monthly progress report. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 18.4 (Consequences of Force Majeure) to the extent such requirements provide for communications to Company beyond those required under this Section 3.2(A)(7) (Monthly Progress Reports).

(B) Warranties and Guarantees of Performance.

(1) Equivalent Availability Factor. Seller warrants and guarantees that, in each Contract Year during the Term, after the first Contract Year, the Facility will achieve an EAF of 90% or greater. If a Force Majeure event(s) occurs, the Force Majeure period shall not count for the purposes of calculating EAF to compute Liquidated Damages or Event of Default criteria, but only to the extent that Seller's inability to perform is caused by one (1) or more Force Majeure event(s).

(2) Equivalent Forced Outage Rate. Seller warrants and guarantees that, in each Contract Year during the Term after the first Contract Year, the Facility will not exceed a 4% EFOR. If a Force Majeure event(s) occurs, the Force Majeure period shall not count for the purposes of calculating EFOR to compute Liquidated Damages or Event of Default criteria, but only to the extent that Seller's inability to perform is caused by one (1) or more Force Majeure event(s).

(3) Demonstrated Firm Capacity. Seller warrants and guarantees that the Facility will have and maintain the capability to produce and deliver to the Metering Point the Demonstrated Firm Capacity in accordance with the terms of this Agreement.

(4) Power Quality. Seller warrants and guarantees that the Facility will produce electric energy that meets the quality standards in Section 3.a. (Voltage/Reactive Power Requirements), Section 3.c. (Reactive Amount), Section 3.g.i. (Frequency Requirements), and Section 3.j. (Harmonics Standards) of Attachment B (Facility Owned by Seller).

(5) Unit Trips. Seller warrants and guarantees that, after the first Contract Year, Unit Trips will not exceed three (3) per Contract Year.

(6) Liquidated Damages. In the event Seller fails to satisfy the warranties and guarantees of performance in this Section 3.2(B) (Warranties and Guarantees of Performance), Seller shall be liable for liquidated damages as provided in Article 9 (Liquidated Damages).

(7) Exclusive Warranties. The foregoing warranties and guarantees of performance constitute the exclusive warranties and guarantees under this Agreement and operate in lieu of all other warranties and guarantees, whether oral or written. Seller and Company disclaim any other warranty and guarantee, express or implied, including without limitation, warranties of merchantability or fitness for a particular purpose.

(C) Waste Handling. Seller shall be responsible for the handling and proper disposal of any waste products produced by the Facility, including but not limited to waste water and ash, and for any costs associated therewith.

(D) Emissions. Seller shall be responsible for the control and consequences of any and all emissions produced as a result of operation of the Facility and for all costs and expenses associated therewith.

(E) Compliance with Laws. Seller shall at all times comply with all applicable federal, state and local laws, rules, regulations, orders, ordinance, permit conditions and other governmental actions (collectively "Laws") and shall be responsible for all costs associated therewith.

(F) Adequate Spare Parts. Seller shall at all times keep on hand or have ready access to sufficient spare parts, which shall include, but not be limited to, the critical spare parts shown in Attachment Z (Critical Spare Parts), to maintain the Facility in a manner which provides reasonable assurance, consistent with Good Engineering and Operating Practices, that the performance of the Facility will meet the requirements of this Agreement.

(G) Periodic Meetings. The Seller's General Manager or an alternate satisfactory to Company shall attend periodic meetings with appropriate Company representatives and be prepared to discuss Facility operations and maintenance and interface with the Company System operations. Such meetings may be regularly scheduled or called by Company specifically to address particular problem areas.

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

(1) Obligations Related to Borrowed Money. Seller shall fail to comply with any provision with respect to any obligations for borrowed money in excess of One Million Dollars (\$1,000,000) if the effect of such failure to comply is to cause, or to permit the holder or holders of such obligations (or a trustee on their behalf), to cause such obligations to become due prior to their stated maturity, except to the extent that such failure to comply shall have been cured or waived prior to any acceleration of such obligations thereunder and said cure or waiver shall not have involved the receipt by any such holder or holders of any additional consideration, financial or otherwise. **THE COMPANY IS WILLING TO NEGOTIATE THE AMOUNT OF THE**



**OBLIGATION REFERRED TO IN THIS SECTION 3.2(H)(1) (OBLIGATIONS RELATED TO BORROWED MONEY) DEPENDING ON THE SIZE OF THE PROPOSED PROJECT (Delete this Comment prior to providing this form to Seller)]**

(2) Order for Payment of Money. Any final order, judgment or decree is entered in any proceeding, which final order, judgment or decree provides for the payment of money in excess of One Hundred Thousand Dollars (\$100,000) by Seller, and Seller shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within sixty (60) Days from the entry thereof, and within such period of sixty (60) Days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal.

(3) Payments for Materials or Labor. Seller shall fail to make any payment for materials or labor used in the engineering, design, construction, maintenance or operation of the Facility within ninety (90) Days after the due date thereof, except for payment obligations contested in good faith by Seller or adequately bonded to the reasonable satisfaction of Company or contract retentions withheld during Seller's review of a contractor's performance.

(4) Financing Documents. The Financing Parties shall declare an event of default under the Financing Documents.

(5) Governmental Approvals and Land Rights. Seller shall have received any notice that it is not in compliance with any of the Governmental Approvals and/or Land Rights that enable Seller to operate the Facility.

(I) Financial Compliance.

(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 "Financial Compliance 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 the Facility, or the administration of this Agreement, from having access to such Information (unless approved in writing in advance, by Seller).

(2) Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Section 3.2(I) (Financial Compliance). Company may share the Information on a confidential basis with HEI and the independent auditors and attorneys for HEI and Company. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Section 3.2(I) (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 Section 3.2(I) (Financial Compliance).

(3) Required Disclosure. In circumstances other than those addressed in the immediately preceding paragraph, if any Recipient becomes legally compelled under applicable law 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 Section 3.2(I) (Financial Compliance). If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions of this Section 3.2(I) (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.

(4) Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient under this Section 3.2(I) (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.

(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 ASC 842, effective January 1, 2019.

(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. Further, Company may take any and all action necessary to eliminate consolidation, including without limitation, by immediately terminating this Agreement without fault or liability, if at any time during the Term of this Agreement: (i) Seller takes an action which Company considers, in its sole but nonarbitrary discretion, is likely to trigger consolidation or (ii) Seller fails to take commercially reasonable actions to avoid consolidation. Further Company is under no obligation to consent to any change to this Agreement or action by Seller under this Agreement that Company considers, in its sole but nonarbitrary discretion is likely to result in consolidation.

(b) Capital Lease. If there is a change in circumstances during the Term that would trigger capital lease treatment under FASB ASC 840 as of the Execution Date, 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 as of the Execution Date, 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 or capital lease treatment or lease treatment or Company's ability to terminate this Agreement in the event consolidation is triggered due to the action or inaction of Seller as provided in Section 3.2(I)(5)(a) (Consolidation), Seller shall, if requested by Company, take commercially reasonable steps to effectuate a sale of the Facility to Company as provided in Attachment P (Sale of Facility by Seller).

(J) Seller's Obligation to Deliver Facility. Upon the exercise by Company of its rights under Section 8.2(B)(2)(a) (Company's Assumption of Seller's Interest), Seller shall deliver the Facility to Company in proper working order in accordance with then current electric utility standards for a facility similar to the Facility. If Seller fails to meet this obligation, Company shall have the right to put the Facility in proper working order in accordance with such standards either directly or through a qualified contractor. Seller shall reimburse Company within thirty (30) Days of written demand for payment in immediately available funds for any and all reasonable costs incurred by Company in connection with such work. Where such payments are reimbursements for amounts paid by Company to third parties prior to receipt of payment from Seller, interest shall be paid thereon at the Prime Rate for the period between payment by Company and receipt of payment from Seller. The obligations of Seller under this Section 3.2(J) (Seller's Obligation to Deliver Facility) shall survive the expiration or termination of this Agreement.

### 3.3 Rights and Obligations of Company.

#### (A) Dispatch of Facility Power.

##### (1) Routine Dispatch.

(a) Company shall have the right to dispatch capacity and real and reactive power delivered from the Facility to the Company System and to start up and shut down Seller's generating units as many times per day, 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) and Seller's maintenance schedule determined in accordance with Section 8 (Schedule of Outages) of Attachment Y (Operation and Maintenance of the Facility).

(b) Company Dispatch will either be by Seller's manual control under the direction of the Company System Operator or by computerized control by the EMS as provided in Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), in each case at Company's reasonable discretion. Unless otherwise agreed to, Company may request the maximum real power output at [ ] lagging power factor [THE LAGGING POWER FACTOR VALUE WILL BE DETERMINED FOLLOWING COMPLETION OF THE IRS.] from the Facility. The Dispatch Range under

remote control shall be between the Minimum Load Capability specified in Section 3.i (Minimum Load Capability) of Attachment B (Facility Owned by Seller) and the Demonstrated Firm Capacity. Notwithstanding anything to the contrary, the power produced by the Facility shall always be subject to remote or manual dispatch by Company.

(c) Refusal to comply with Company Dispatch shall result in an EAF and EFOR derating. The size of the derating shall be determined by subtracting the kW's delivered by the Facility from the Demonstrated Firm Capacity, from the time such dispatch request was received until such time as Seller demonstrates the Demonstrated Firm Capacity as requested by Company. Seller shall utilize the full capability of the Facility to satisfy its obligation to deliver Demonstrated Firm Capacity in accordance with Company Dispatch by taking necessary actions, including but not limited to [ ] **[EXAMPLES WILL DEPEND ON TECHNOLOGY USED AT THE FACILITY]**.

(2) [RESERVED]

(3) Dispatch Forecast. Company shall provide Seller with a forecast of the following: (i) the annual dispatch which shows the amount of capacity and energy Company expects the Facility to produce on a monthly basis for the following calendar year, no later than sixty (60) Days prior to the anticipated Commercial Operation Date for the first Contract Year, and prior to September 1 for each Contract Year thereafter; and (ii) the "Weekly Unit Commitment Schedule" no later than Friday, 12:00 noon HST of each week which indicates the general expected daily use. Company's failure to comply with the foregoing forecast provisions shall not affect Company's right to dispatch the Facility pursuant to this Section 3.3(A) (Dispatch of Facility Power).

(B) Company Right to Defer the Commercial Operation Date.

(1) Deferral Of Up To 18 Months.

(a) Deferral Costs. At any time up until [ ] **[e.g.: Effective Date, PUC Submittal Date, etc. to be filled in by Company prior to providing to Seller]**, Company may once choose to defer the Commercial Operation Date of the Facility by up to eighteen (18) months beyond the then expected Commercial Operation Date by giving Seller written notice of its decision to defer and the extent of the deferral period. Subject to Seller's obligation to minimize the cost resulting from such deferral as provided below, Company shall bear all additional reasonable actual, verifiable costs ("Deferral Costs") incurred by Seller with respect to the Facility of each type includable in Project Costs Incurred which directly result from a deferral. Seller shall, on a monthly basis, provide Company with an accounting of all Deferral Costs incurred by Seller and then payable. Company shall pay to Seller all such Deferral Costs within thirty (30) Days of each such accounting.

(b) Duty To Minimize Deferral Costs. Upon the commencement of the deferral period, Seller shall take such steps as may be reasonably necessary to minimize out-of-pocket costs of the parties interested in participating in the Facility project (including parties acting as suppliers of goods, services, financing or otherwise) which result from such deferral, excluding from such obligation to minimize, however, deferral fees, penalties or similar charges by such parties which have been agreed upon and prior written notice of such amounts given to Company or, if applicable, included in any Pre-Deferral Estimate, provided, that during its negotiations with such other parties, Seller shall use commercially reasonable efforts to minimize such fees, penalties or charges before they are agreed upon.

(c) Reasonable Steps. Consistent with Seller's obligation to minimize Deferral Costs, Seller shall take such steps as it reasonably deems necessary during the deferral period to assure the timely occurrence of the Commercial Operation Date (as so deferred), including attainment or renewal of applicable Governmental Approvals, contracts, rights or properties, and Company shall cooperate with Seller in such effort.

(d) Pre-Deferral Estimate. Upon the written request (and at the expense) of Company given not more often than once in any six (6) month period and before a deferral notice under this Section 3.3(B)(1) (Deferral Of Up To 18 Months) has been given, Seller shall within forty-five (45) Days of the date of such notice provide an estimate (“Pre-Deferral Estimate”) of the anticipated costs (to the extent then known by Seller) to be paid by Company under this Section 3.3(B)(1) (Deferral Of Up To 18 Months) if a deferral notice were given at or about the time of such request.

(2) Deferral Of Up To 12 Months.

(a) General. At any time after [ ] [e.g.: **Effective Date, PUC Submittal Date, etc. to be filled in by Company prior to providing to Seller**] and prior to the Commercial Operation Date, Company may once propose in writing that the Commercial Operation Date for the Facility be deferred beyond the then expected Commercial Operation Date for the Facility by up to twelve (12) months (less the number of months of the deferral period, if any, elected under Section 3.3(B)(1) (Deferral Of Up To 18 Months)).

(b) Consultation Period. Upon receiving a deferral request from Company in writing, Seller and Company shall immediately commence consulting between themselves and among all the parties interested in the Facility project, whether as suppliers of goods, services or financing or otherwise, with the intent of attaining the consent of all such parties to such proposed deferral on terms and conditions satisfactory to each of them, Company and Seller. Such consultations shall continue until the earlier of (i) the commencement of such deferral by agreement of all the parties interested in the Facility project or (ii) sixty (60) Days after the giving of the deferral request by



Company (the “Consultation Period”). During the Consultation Period, Seller shall continue to proceed towards reaching the Commercial Operation Date without taking into account the proposed deferral.

(c) Costs. Company shall bear all (i) reasonable actual, verifiable additional out-of-pocket costs of Seller and the other interested parties incurred during the Consultation Period as a result of such consultations and (ii) all Deferral Costs incurred by Seller which result from the deferral, if implemented. Seller shall on a monthly basis provide Company with an accounting of such out-of-pocket costs and Deferral Costs incurred by Seller and then payable. Company shall pay to Seller all such costs within thirty (30) Days of each such accounting.

(3) Adjustments to Times. Any deferral under Section 3.3(B)(1) (Deferral Of Up To 18 Months) or Section 3.3(B)(2) (Deferral Of Up To 12 Months) shall result in each Milestone Date deadline or time milestone in this Agreement by which performance of Seller is measured or affected to be deferred by a period equal to the duration of the actual delay (as mutually agreed upon by Company and Seller) incurred by Seller as a result of such deferral, including any additional period of time as is reasonably necessary to equitably reflect Seller's need to cease and restart efforts related to such Milestone Dates. Any obligation of Seller under this Agreement shall be excused to the extent and for the period that its inability to perform results from the actual delay it incurs as a result of any deferral under Section 3.3(B)(1) (Deferral Of Up To 18 Months) or Section 3.3(B)(2) (Deferral Of Up To 12 Months).

(C) Company Right to Cancel.

(1) General. At any time up until the Commercial Operation Date, if Company reasonably determines that it no longer needs the capacity addition provided by the Facility, Company may choose to cancel this Agreement by giving Seller written notice of its decision to cancel. Immediately upon such notice, Seller shall take steps to cease all construction activity and proceed to take such steps as may be necessary to mitigate the losses due to such cancellation. Seller shall use its commercially reasonable efforts to salvage the value of any equipment or materials purchased or contracts signed for the Facility. All such mitigation efforts shall be made in consultation with Company and shall cease (unless continued by Company as described below) one hundred eighty (180) Days after receipt of the cancellation notice from Company (the “Salvage Period”). Upon the earlier of completion of all such mitigation efforts or the end of the Salvage Period, Seller shall render an accounting to Company showing in detail (i) the Project Costs Incurred, up to the Settlement Date (including estimated costs for the period from the date of such accounting to the Settlement Date), and (ii) the Net Salvage Proceeds. After the accounting is rendered, Company shall have sixty (60) Days (the “Audit Period”) to audit such accounting only to verify that Project Costs Incurred in fact were incurred and that Net Salvage Proceeds in fact reflect such net proceeds. Upon the later of thirty (30) Days after the end of the Audit Period or satisfactory completion of the requirements of Section 3.3(C)(2) (Seller’s Conveyance of Facility and Related Property) (the “Settlement Date”), Company shall

pay to Seller the difference between (aa) the sum of (1) Project Costs Incurred, where estimated amounts included in Seller's accounting shall be replaced with actual amounts incurred or expended as reported to and verified by Company, plus (2) the Cancellation Fee, and (bb) Net Salvage Proceeds. The "Cancellation Fee" shall be determined as follows based upon the date of notice of cancellation:

For any time prior to the Date of PUC Approval of Agreement: [\$ ] [Seller]  
From the Date of PUC Approval of Agreement: [\$ ] [Seller]

In the event mitigation efforts are not completed by the end of the Salvage Period, Company may at its own expense continue such efforts and retain the proceeds thereof. Once the payment to be made on the Settlement Date is made in full, this Agreement shall be deemed canceled and the Parties shall have no further obligations hereunder.

(2) Seller's Conveyance of Facility and Related Property. Upon termination of the Audit Period, Seller shall promptly take all actions as may be necessary (i) to convey to Company free and clear of all liens and encumbrances (other than those of Company and the Financing Parties (if any)) all of Seller's right, title and interest in the Facility and any and all materials, equipment, design materials and supplies relating to the Facility, including without limitation, any such materials, equipment, design materials or supplies located at the Site or in transit to the Site, whether or not completed or ready for use or incorporated into the Facility, and any such materials, equipment, design materials or supplies being processed, fabricated, assembled or prepared off the Site for installation in the Facility or for use at or in connection with the Facility, and (ii) to assign to Company, with such consents and undertakings as may be necessary to make such assignments fully effective, the Project Documents. Seller shall take such steps as may be necessary to assure that it has sufficient rights with respect to materials, equipment, design materials and supplies purchased or contracted for by Seller, and sufficient rights under all leases and contracts relating to Facility, to enable Seller to comply with its obligations pursuant to this Section 3.3(C)(2) (Seller's Conveyance of Facility and Related Property). Company shall assume as of the Settlement Date all of Seller's right, title and interest in the foregoing materials, equipment, design materials, supplies and Project Documents.

(D) Company Right to Require Independent Engineering Assessment.

(1) Implementation of Independent Engineering Assessment.

(a) If (i) Seller is failing to operate the Facility in accordance with Section 2.1(E) (Requirements for Electric Energy Supplied by Seller), Section 3.2(A)(6) (Facility Protection and Control Equipment), Section 1 (Standards) of Attachment Y (Operation and Maintenance of the Facility), Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), Section 4 (Protective Equipment) of Attachment Y (Operation and Maintenance of the Facility), and Section 5 (Personnel and System Safety) of Attachment Y (Operation and Maintenance of the Facility), or is otherwise failing to comply

with Good Engineering and Operating Practices, and fails to remedy such failure within ninety (90) Days of written notice thereof from Company, or fails to comply with Section 10.4(B) (Correction of Certain Conditions), and Company reasonably believes that such failure is likely to result in a failure to meet the performance standards set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller); (ii) Seller is in breach of this Agreement with respect to the performance or operation of the Facility and has not cured such breach within the time limits specified in Article 8 (Default); (iii) otherwise required by Section 8.2(C) (Right to Demand Independent Engineering Assessment and Modification); or (iv) as required by Section 3.2(A)(5)(c) (Process for Resolving Disagreements), Company may require that the practices in question be assessed by a qualified professional engineering firm to be chosen from Attachment D (Consultants List – Qualified Independent Engineering Companies) and revised from time to time under Section 3.3(D)(2) (Qualified Independent Engineering Companies).

(b) The Parties shall promptly undertake to agree on a firm to be used from the Qualified Independent Engineers' List; provided, however, that if such agreement is not reached within seven (7) Days after Company gives notice to Seller that it is invoking its rights under this Section 3.3(D) (Company Right to Require Independent Engineering Assessment), the firm shall be chosen from the Qualified Independent Engineers' List by Company.

(c) The Qualified Independent Engineering Company selected shall make an Independent Engineering Assessment as to whether the practices in question conform to Good Engineering and Operating Practices as promptly as possible under the circumstances. If such determination is that the practices in question do not so conform, the engineering firm shall recommend necessary actions by Seller to bring it within Good Engineering and Operating Practices (the "Recommendations"). If the Recommendations require action by Seller to change its practices, Seller shall take such actions. Where the Recommendations require action by Seller, the engineering firm shall determine, after reasonable consultation with Seller within thirty (30) Days (or such longer period as deemed appropriate by such engineering firm) after its Recommendations are first made, whether Seller has taken adequate action to carry out such Recommendations. If the engineering firm then certifies that Seller has failed to take adequate action, Company shall notify Seller and the Financing Parties in writing of such certification and the basis therefor. Such notice shall state in bold letters that failure to commence implementation of the Recommendations on or before the date that is thirty (30) Days from the date of such notice (the "Implementation Date") may lead to termination of this Agreement. If neither Seller nor the Financing Parties has begun to implement the Recommendations on or before the Implementation Date, such failure shall constitute an Event of Default under Section 8.1(A)(6) (Events of Default; Default by Seller). If either Seller or any Financing Party begins to implement the Recommendations on or before the Implementation Date, the engineering firm shall monitor whether the implementation thereof is being diligently pursued. If, after reasonable

consultation with the parties involved in such implementation, the engineering firm determines that such implementation is not being diligently pursued, it shall promptly so certify to Company. Company shall thereupon promptly notify Seller and the Financing Parties in writing of such certification, the basis therefor and the remedial steps that must be taken to cure (the “Second Notice”). Such Second Notice shall state in bold letters that failure to implement the remedial steps identified in the Second Notice (the “Remedial Steps”) on or before the date that is thirty (30) Days from the date of the Second Notice may lead to termination of this Agreement. If at any time after the date that is thirty (30) Days from the date of the Second Notice, the engineering firm again certifies to Company that implementation of Recommendation is not being diligently pursued and/or the Remedial Steps are not being implemented, such certification shall constitute an Event of Default by Seller under Section 8.1(A)(6) (Events of Default; Default by Seller). Seller shall bear all costs of the engineering firm’s services unless the Independent Engineering Assessment determined that the practices in question were in accordance with Good Engineering and Operating Practices, in which case Company shall bear all costs of the Independent Engineering Assessment.

(2) Qualified Independent Engineering Companies. The Company and Seller shall agree on the Qualified Independent Engineers’ List which shall be attached hereto as Attachment D (Consultants List – Qualified Independent Engineering Companies) containing the names of engineering firms which both Parties agree are fully qualified to perform the Independent Engineering Assessment under Section 3.3(D)(1) (Implementation of Independent Engineering Assessment). At any time, except when an Independent Engineering Assessment is being made under Section 3.2(A)(5)(c) (Process for Resolving Disagreements) and Section 3.3(D)(1) (Implementation of Independent Engineering Assessment), either Party may remove a particular company from the Qualified Independent Engineers’ List by giving written notice of such removal to the other Party. However, neither Party may remove a company or companies from the Qualified Independent Engineers’ List without approval of the other Party if such removal would leave the Qualified Independent Engineers’ List with less than two (2) companies. During January of each calendar year, both Parties shall review the current Qualified Independent Engineers’ List and give notice to the other Party of any proposed additions to the Qualified Independent Engineers’ List and any intended deletions. Intended deletions shall be effective upon receipt of notice by the other Party, provided that such deletions do not leave the Qualified Independent Engineers’ List with less than two (2) companies. Proposed additions to the Qualified Independent Engineers’ 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) Days. By mutual agreement between the Parties, a new company or companies may be added to the Qualified Independent Engineers’ List at any time.



ARTICLE 4 - SUSPENSION OR REDUCTION OF DELIVERIES

4.1 Initiation by Company.

This section shall apply to suspensions or reductions of electric energy deliveries from the Facility directly resulting from instructions or remote control actions by the Company System Operator. This section does not apply to changes in electric energy output of the Facility within the normal Dispatch Range. This section does not apply to suspensions and/or reductions of energy output from the Facility initiated by Facility personnel and/or equipment in response to conditions on the Company System, such as by the action of protective equipment or governor droop response to Company System frequency.

(A) Safety of Persons and/or Property. If the Company System Operator determines that an adverse condition exists that is likely to endanger the safety of persons and/or property, and/or endanger the integrity of the Company System or have an adverse effect on Company customer's electric service, the Company System Operator may remotely separate the Facility from the Company System by tripping the Facility's synchronizing breakers via the EMS without prior notice. If Company disconnects the Facility from the Company System, it shall immediately notify Seller by telephone or hotline and thereafter confirm in writing the reasons for the disconnection.

(B) Reclosing. If the Facility is separated from the Company System for any reason, under no circumstances shall Seller reclose into the Company System without first obtaining specific approval to do so from the Company System Operator which approval shall be granted promptly upon the removal of the adverse condition stated above.

(C) Duration of Disconnection. The Facility shall remain disconnected until such time that the adverse condition has been corrected.

(D) Facility Problems. If the operation of the Facility is causing or substantially contributing to an adverse condition due to the failure to meet any of the requirements of this Agreement, Seller shall, at its own cost, modify its electric equipment or operations to the extent necessary to promptly resume full deliveries of electric energy at the quality of electric service required.

4.2 No Obligation to Accept Energy.

(A) General. During periods in which Seller has reduced or suspended deliveries of electric energy as requested or required by Company under Section 4.1(A) (Safety of Persons and/or Property), Company shall have no obligation to accept any electric energy which might otherwise have been received from the Facility during such period, and Company shall have no obligation to pay for electric energy which otherwise would have been available or received from the Facility during such period, and, except as provided in Section 4.2(B) (Review by Seller), the Facility shall be considered unavailable during such period for purposes of calculating Seller's EAF, EFOR and Unit Trips.

(B) Review by Seller. The claim of occurrence of any of the adverse conditions described above in Section 4.1(A) (Safety of Persons and/or Property) or Section 4.1(D) (Facility Problems) shall be subject to verification by Seller. If it is determined that Company did not have a valid reason for disconnecting the Facility, Company shall have no obligation to accept any electric energy which otherwise would have been received from the Facility during such period, and Company shall have no obligation to pay for electric energy which otherwise would have been available or received from the Facility during such period, however, the duration of the period of separation will not be counted against EAF or EFOR or for the purpose of calculating any other performance standard.

4.3 Initiation by Seller. If Seller suspends, or can reasonably anticipate the need to suspend or substantially reduce, deliveries of electric energy below the level called for by Company Dispatch pursuant to Section 3.3(A) (Dispatch of Facility Power) for any reason other than a request by Company pursuant to Section 4.1 (Initiation by Company), it shall provide immediate oral notice and subsequent written notice to Company as soon as practicable, containing a reasonably detailed statement of the reasons for such suspension or reduction and the likely duration thereof. Seller shall use commercially reasonable efforts to restore full deliveries of electric energy as soon as practicable.

ARTICLE 5 - RATES FOR PURCHASE

5.1 Capacity and Energy Purchased by Company.

(A) Energy and Capacity. Subject to the other provisions of this Agreement, Company shall accept and pay for the Net Electric Energy Output generated by the Facility and delivered to Company and make capacity payments to Seller when such capacity is available as set forth herein. The Net Electric Energy Output and capacity (demand) shall be metered in accordance with Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility), and Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility) and such metering shall constitute the official and legal measurements for any payments hereunder.

(B) Seller's Start-up Plan. Prior to the Commercial Operation Date, Company will use reasonable efforts to accept electric energy from the Facility during the Capacity Test conducted pursuant to Section 5.1(E) (Capacity Test). Seller shall provide to Company a written, detailed, and comprehensive start-up plan thirty (30) Days in advance of delivering any electric energy to Company and shall provide written notice to Company of any changes to such start-up plan as soon as reasonably practicable, but no less than three (3) Days in advance of implementing those changes. Seller shall use reasonable efforts to coordinate such start-up and testing so as to minimize any additional costs to Company as a result of departing from economic dispatch in the operation of the Company System and shall reimburse Company for such additional costs. Net Electric Energy Output delivered to and accepted by Company pursuant hereto shall be considered non-firm, unscheduled energy, but must meet all of the quality standards established in this Agreement. Company shall only pay Energy Charges for any such Net Electric Energy Output actually delivered from the Facility.

(C) Energy Charge. Subject to the terms of this Agreement, following successful completion of the On-Line Acceptance Test, beginning with energy delivered during the Capacity Test, Company shall pay Seller for electric energy delivered to the Point of Interconnection in response to Company's dispatch in accordance with the formulas set forth in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

(D) Capacity Charge. Subject to the terms of this Agreement, Capacity Charge Payments shall be calculated in accordance with the formulas specified in Attachment J (Energy Charge and Capacity Charge Payment Formulas).

(E) Capacity Test. After successful completion of the Acceptance Tests, Seller shall be allowed to conduct Capacity Tests (subject to inspection by Company) in accordance with the testing procedures set forth in Attachment W (Capacity Test Procedures), to determine the Demonstrated Firm Capacity of the Facility and whether Capacity Charge payments may be adjusted in accordance with Section 5.1(F) (Capacity Shortfall) and should begin in accordance with Section 5.1(G) (Commencement of Capacity Charge Payments).



(F) Capacity Shortfall. If, after determining the Demonstrated Firm Capacity as provided in Section 5.1(E) (Capacity Test), the Demonstrated Firm Capacity is less than the Contract Firm Capacity, the Capacity Charge payment to Seller shall be reduced by a factor of 1.2 multiplied by each one percentage point (1%), rounded up to the nearest one percentage point (1%) when the fraction of the percentage is between 0.5 inclusive and the next integer, by which the Demonstrated Firm Capacity is less than the Contract Firm Capacity, down to a maximum of ten percentage points (10%) below the Contract Firm Capacity in accordance with Section 2(iv) of Attachment W (Capacity Test Procedures).

(G) Commencement of Capacity Charge Payments. The Capacity Charge payments under Section 5.1(D) (Capacity Charge) shall begin when the Facility has successfully completed the Capacity Test referred to in Section 5.1(E) (Capacity Test), Seller declares that the Facility has achieved the Commercial Operation Date and the Capacity Rate Inclusion Date has occurred.

(H) Demonstrated Firm Capacity. After the Commercial Operation Date, Seller shall not increase the Demonstrated Firm Capacity of the Facility.

(I) Hawai'i General Excise Tax. Company shall not be liable for payment of the applicable Hawai'i General Excise Tax levied and assessed against Seller as a result of this Agreement. The rates and charges in this Article 5 (Rates for Purchase) shall not be adjusted by reason of any subsequent increase or reduction of the applicable Hawai'i General Excise Tax.

(J) No Payment of Emission Fees. Company shall not be liable for payment of the applicable air pollutant emission fees imposed by the DoH or U.S. EPA on Seller as a result of operating or having the potential to operate the Facility.

(K) No Payment of Other Taxes or Fees. Company shall not be liable for payment of nor reimbursement of any Seller payment of any new or modified tax or fee imposed by any Governmental Authority.



ARTICLE 6 - BILLING AND PAYMENT

6.1 Monthly Invoice. As soon as practicable, but not later than the fifth (5th) Business Day of each Calendar Month, Company shall provide Seller with the appropriate data for Seller to compute the payment due for capacity provided and electric energy delivered to Company in the preceding Calendar Month as determined in accordance with this Agreement. Seller shall compute the Energy Charge and the Capacity Charge for the same Calendar Month and promptly thereafter, but not later than the tenth (10<sup>th</sup>) Business Day of each Calendar Month, submit an invoice (“Monthly Invoice”) for the Capacity Charge and Energy Charge to be paid to Seller for the preceding Calendar Month. Each Monthly Invoice shall include Seller's backup data for the computation of the Capacity Charge and the Energy Charge. Unless and until Company designates a different address, the Monthly Invoice shall be delivered to:

Hawaiian Electric Company, Inc.  
Hawaii Electric Light Company, Inc.  
Maui Electric Company, Limited  
[Company Address]  
Attention: Energy Contract Manager

6.2 Payment.

(A) Date Payment Due. No later than the twentieth (20<sup>th</sup>) Business Day of each Calendar Month (or the last Business Day of that month if there are less than twenty (20) Business Days in that month), Company shall pay, in immediately available funds, such monthly Capacity Charge and Energy Charge payments as computed in Article 5 (Rates for Purchase), or provide to Seller an itemized statement of its objections to all or any portion of such Monthly Invoice and pay any undisputed amount. Notwithstanding all or any portion of such invoice in dispute, simple interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20<sup>th</sup>) 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, at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due such 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.

(B) Set Off. Company at any time may set off against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including damages, liquidated damages, insurance premiums, and other payments, that are owed by Seller to Company pursuant to this Agreement or are past due under other accounts Seller has with Company for other services. Undisputed and non-set off portions of amounts invoiced under this Agreement shall be paid on or before the due date.

(C) Other Payments. Any amounts due from either Party under this Agreement other than monthly Energy Charges and Capacity Charges shall be paid or objected to within

thirty (30) Days following receipt from either Party of an itemized invoice from the other Party setting forth, in reasonable detail, the basis for such invoice.

6.3 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 17 (Dispute Resolution). When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with simple interest from the date that such disputed amount was payable until the date that the amount owed is paid at the average daily Prime Rate for the period.

6.4 Adjustments.

(A) Adjustments Due to Inaccuracies. In the event adjustments are required to correct inaccuracies in Monthly Invoices, the Party requesting adjustment shall use the method described in Section 13.c. (Corrections) of Attachment Y (Operation and Maintenance of the Facility), if applicable, to determine the correct measurements, and shall recompute the amounts due during the period of such inaccuracies. Except as noted below, the difference between the amount paid and that recomputed for each Monthly Invoice affected shall be paid, or repaid, with interest from the date that such Monthly Invoice was payable until the date that such recomputed amount is paid at the average daily Prime Rate for the period, or objected to by the Party responsible for such payment within thirty (30) Days following its receipt of such request. 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 be resolved pursuant to Article 17 (Dispute Resolution). All claims for adjustments shall be waived for any deliveries of electric energy made more than thirty-six (36) months preceding the date of any such request.

(B) Adjustments Related to Escalation Indices. If applicable, Adjustments to correct Monthly Invoices resulting from escalation indices not being published at the time such Monthly Invoices were prepared shall be paid or refunded without interest. The escalation indices initially published by the appropriate Governmental Authority for the period covered by the invoice shall be the indices applied.

ARTICLE 7 - CREDIT ASSURANCE AND SECURITY

7.1 Security Fund.

(A) General. Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 7 (Credit Assurance and Security).

(B) Development Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period prior to the Commercial Operation Date (including but not limited to Seller's obligation to meet the Commercial Operation Date Deadline), Seller shall provide financial security to Company within ten (10) Days of the Execution Date of the Agreement in an amount equal to \$100/kW of the Contract Firm Capacity (the "Development Period Security") **[DEVELOPMENT PERIOD SECURITY AMOUNT TO BE DETERMINED PRIOR TO PROVIDING THIS FORM TO SELLER]**.

(C) Return of the Development Period Security. In the event (1) either Party declares this Agreement null and void pursuant to Section 2.2(C) (PUC Approval), (2) the PUC issues an order denying an application for a PUC Approval Order, (3) the PUC issues an order that is not a complete approval and which is not satisfactory to Company or Seller, or (4) following Company's receipt of the Operating Period Security, unless the Development Period Security is converted to Operating Period Security pursuant to Section 7.1(D) (Operating Period Security), the Development Period Security (including any accumulated interest, if applicable) shall be returned to Seller, subject to the Company's right to draw from the Development Period Security as set forth in Section 7.1(G) (Company's Right to Draw From Security Funds).

(D) Operating Period Security. To guarantee the performance of Seller's obligations under the Agreement for the period starting from the Commercial Operation Date to the expiration or termination of this Agreement, Seller shall provide financial security to Company in the amount equal to \$175/kW of the Contract Firm Capacity based on the Contract Firm Capacity (the "Operating Period Security") **[OPERATING PERIOD SECURITY AMOUNT TO BE DETERMINED PRIOR TO PROVIDING THIS FORM TO SELLER]**. When the Commercial Operation 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 Operation Date.

(E) Form of Security. Seller shall supply the Development Period Security and Operating Period Security required in the form of an irrevocable standby Letter of Credit substantially in the form attached to this Agreement as Attachment M (Form Of Standby Letter of Credit) from a bank or other financial institution located in the United States with a credit rating of "A-" or better (the "Security Funds"). If the rating (as measured by Standard & Poors) of the bank or financial institution issuing such Letter of Credit falls below A-, Company may require Seller to replace such Letter of Credit with an irrevocable standby Letter of Credit from

another bank or financial institution located in the United States with a credit rating of “A-” or better. Any such Letter of Credit must be issued for a minimum term of one (1) year. Furthermore, at the end of each year the Security Funds must be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such Security Funds shall not be less than one (1) year. Any Letter of Credit satisfying this security requirement shall include a provision for at least thirty (30) Days advance notice to Company of any expiration or earlier termination of the Security Funds so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the Security Funds. 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.

(F) Security Funds. The Security Funds established, funded, and maintained by Seller pursuant to the provisions of this Section 7.1 (Security Fund) 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 7.1(G) (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, and 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.

(G) 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 form of security to the extent available pursuant to this Section 7.1 (Security Fund), 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.

(H) Failure to Renew or 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 "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 7.1(I) (L/C Proceeds Escrow), until and unless Seller provides a substitute form of irrevocable standby Letter of Credit meeting the requirements of this Article 7 (Credit Assurance and Security).

(I) L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 7.1(H) (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 7.1(I) (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 escrow 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 Seller 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. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing reducing or otherwise administering the Security Funds through the L/C Proceeds Escrow shall be borne by Seller.

7.2 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 damages owed by Seller to Company, under this Agreement, Company shall release the Security Funds (including any accumulated interest, if applicable) to Seller.

ARTICLE 8 - DEFAULT

8.1 Events of Default.

(A) Default by Seller. The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by Seller:

(1) Company declares an Event of Default pursuant to Section 2.4(B)(3)(b) (Termination Right);

(2) Company declares an Event of Default pursuant to Section 2.4(A)(1)(c) (Termination Right);

(3) Seller shall fail to pay Company any amount as and when due under this Agreement (less any amounts disputed in good faith pursuant to Article 17 (Dispute Resolution)) and neither Seller nor the Financing Parties remedy such non-payment within thirty (30) Days after written demand therefor by Company served upon Seller with a copy served upon the Financing Parties;

(4) Seller shall fail to operate, maintain or repair the Facility in accordance with the terms of this Agreement such that a condition exists in the Facility which has an adverse physical impact on the Company System or the equipment of Company's customers or which Company reasonably determines presents an immediate danger to personnel or equipment, and Seller shall fail to initiate and diligently pursue reasonable action to cure such failure within seven (7) Days after actual receipt by Seller and the Financing Parties of demand therefor by Company, provided, that Company may, after providing written notice to Seller and Financing Parties, enter upon the Site, and undertake such reasonable action on behalf of Seller, consistent with Good Engineering and Operating Practices, until either such adverse effect or danger is eliminated or Company is reasonably satisfied that Seller has, within the aforesaid seven (7) Day period, initiated and is diligently pursuing such reasonable action. Seller shall bear or reimburse Company, as the case may be, for all reasonable, documented, out-of-pocket costs incurred by Company in connection with such reasonable actions taken by Company on behalf of Seller as provided herein, and shall cooperate in good faith with Company in providing access to the Facility and the Site, in the event Company elects to undertake such action as provided herein;

(5) Seller shall (i) abandon the Facility prior to the Commercial Operation Date or (ii) fail to maintain continuous service to the extent required by this Agreement for a period of seven (7) or more consecutive Days, the last twenty-four (24) hours of which shall be after notice by Company to Seller that it is not in compliance with this provision, unless such abandonment or failure is caused by Force Majeure or an Event of Default by Company. For purposes of this Section 8.1(A)(5)(i) (Events of Default, Default by Seller), abandonment of the Facility prior to the Commercial Operation Date shall mean the failure by Seller, after the Non-appealable PUC Approval Order Date, to

proceed with or prosecute in a diligent manner the planning, design, engineering, permitting, completion (including, without limitation, purchasing, accounting, training and administration) and start-up of the Facility for a consecutive period of thirty (30) Days, the last ten (10) Days of which shall be after notice from Company to Seller that it is not in compliance with this provision;

(6) Company declares an Event of Default in accordance with Section 3.3(D)(1)(c) (Implementation of Independent Engineering Assessment);

(7) Seller shall fail to deliver the Facility in accordance with Section 3.2(J) (Seller's Obligation to Deliver Facility);

(8) Failure to Meet EAF and EFOR Performance Requirements. Seller shall fail to meet the warranties and guarantees of performance specified in Section 3.2(B)(1) (Equivalent Availability Factor) or Section 3.2(B)(2) (Equivalent Forced Outage Rate) by more than ten (10) percentage points on average in any Contract Year or if Seller fails, after the twelfth (12th) full month following the Commercial Operation Date, to maintain an Equivalent Availability Factor (EAF) greater than seventy-five percent (75%) on a twelve-month rolling average basis; provided, that to the extent such failure of performance is attributable to an event of Force Majeure, the contribution of such event of Force Majeure to such failure of performance shall be eliminated from the EAF calculation for the purposes of, and only for the purposes of, establishing an Event of Default of Seller pursuant to this Section 8.1(A)(8) (Events of Default, Default by Seller), and provided further, that the event of Force Majeure contributing, in whole or in part, to such failure of performance is subject to the provisions of Article 18 (Force Majeure);

(9) Failure to Meet Unit Trip Performance Requirement. Seller shall fail to meet the warranty and guarantee of performance specified in Section 3.2(B)(5) (Unit Trips) by more than seven (7) Unit Trips in any Contract Year;

(10) Change in management of Seller or change in operator of Facility:

(a) Without the prior written consent of Company, such consent not to be unreasonably withheld, **[NAME]** is replaced as **[GENERAL PARTNER/MANAGING MEMBER]** of Seller, through either forced or voluntary withdrawal; provided, however, that to the extent that the grant of consent by Company is dependent upon qualifications to carry out the role of **[GENERAL PARTNER/MANAGING MEMBER]**, Company's consent shall be granted if Company is reasonably satisfied that the substitute **[GENERAL PARTNER/MANAGING MEMBER]** (i) has the qualifications to carry out the role **[GENERAL PARTNER/MANAGING MEMBER]** 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; or

(b) Without the prior written consent of Company, such consent not to be unreasonably withheld, **[NAME OF ENTITY OPERATING FACILITY]** is no longer the operator of the Facility; provided, however, that to the extent that the grant of consent by Company is dependent upon qualifications to carry out the role of **[ENTITY OPERATING FACILITY]**, Company's consent shall be granted if Company is reasonably satisfied that the substitute **[ENTITY OPERATING FACILITY]** (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.

(11) Seller 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 or 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;

(12) Without the application, approval or consent of Seller, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Seller, or any part of its property, or a proceeding described in Section 8.1(A)(11) immediately above shall be instituted against Seller and such appointment shall continue undischarged or such proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive Days or Seller shall fail to file in a timely manner, an answer or other pleading denying the material allegations filed against it in any such proceeding;

(13) Without the prior written consent of Company, Seller shall transfer, convey, lose or relinquish its right to own the Facility or to occupy the Site to any person, except an entity to whom Seller may assign this Agreement under Article 20 (Assignments and Financing Debt);



(14) The security provided by Seller under the Security Agreement becomes substantially impaired and Seller fails to cure such impairment promptly upon becoming aware of its existence;

(15) Seller's failure to establish and maintain the funding of the Security Fund in accordance with Section 7.1 (Security Fund) and such failure continues for forty-five (45) Days after written notice of noncompliance with this Section by Company;

(16) If the Security Fund is established in the form of a Letter of Credit and Seller shall fail to maintain in full force and effect throughout the Term a Letter of Credit in accordance with the provisions of Article 7 (Credit Assurance and Security) and such failure continues for forty-five (45) Days after written notice of noncompliance with this Section by Company;

(17) The Financing Parties shall declare an event of default under the Financing Documents;

(18) Seller shall fail to perform a material obligation of this Agreement not otherwise specifically referred to in this Section 8.1(A) (Default by Seller), which failure has or may reasonably be anticipated to have a material adverse effect on Seller's delivery of capacity and energy to Company in accordance with the terms of this Agreement and which failure shall continue for forty-five (45) Days after written demand by Company for performance thereof; or

(19) Seller makes any representation or warranty to Company required by, or relating to Seller's performance of, this Agreement that is false and misleading in any material respect when made.

(20) Seller shall fail to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6.b.i.(1) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller).

(B) Default by Company. The occurrence of any of the following at any time during the Term of this Agreement shall constitute an "Event of Default" by Company:

(1) Company shall fail to pay Seller any amount as and when due under this Agreement (less any amounts disputed in good faith pursuant to Section 6.2 (Payment)) and shall fail to remedy such non-payment within forty-five (45) Days after demand therefor from Seller;

(2) Company shall fail to construct, operate, maintain or repair the Interconnection Facilities for which Company is responsible under Attachment G (Company-Owned Interconnection Facilities), in accordance with the terms of this Agreement, such that the safety of persons or property, the Facility, Seller's equipment, or Seller's entitlement to payments hereunder for capacity or energy is adversely affected, and shall fail to cure such failure within forty-five (45) Days after demand therefor from Seller;

(3) Company shall abandon the Company-Owned Interconnection Facilities or shall discontinue purchases of capacity and electric energy required under this Agreement, unless such discontinuance is caused by reasons of Force Majeure or an Event of Default by Seller, and shall fail to cure such failure within forty-five (45) Days after demand therefor from Seller;

(4) Company shall (i) be dissolved, be adjudicated as bankrupt, or become subject to an order for relief under any federal bankruptcy law; (ii) fail to pay, or admit in writing its inability to pay, its debts generally as they become due; (iii) make a general assignment of substantially all its assets for the benefit of creditors; (iv) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for itself or any substantial part of its property; (v) institute any proceedings seeking an order for relief or to adjudicate it as bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors; or (vi) take any action to authorize or effect any of the foregoing actions;

(5) Without the application, approval or consent of Company, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Company or any part of its respective property, or a proceeding described in Section 8.1(B)(4)(v) (Default by Company) shall be instituted against Company and such appointment shall continue undischarged or such proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive Days or Company shall fail to file timely an answer or other pleading denying the material allegations filed against it in any such proceeding;

(6) Company shall fail to perform a material obligation of this Agreement not otherwise specifically referred to in this Section 8.1(B) (Default by Company), which failure shall have a material adverse effect on its ability to accept and pay for, or Seller's ability to deliver, capacity and energy in accordance with the terms of this Agreement and which failure shall continue for forty-five (45) Days after written demand by Seller for performance thereof; or

(7) Company makes any representation or warranty to Seller required by, or relating to Company's performance of, this Agreement that is false and misleading in any material respect when made.

(C) Cure Periods and Force Majeure Exceptions. Before becoming an Event of Default, the occurrences set forth in Section 8.1(A) (Default by Seller) and Section 8.1(B) (Default by Company) are subject to cure periods and Force Majeure exceptions as follows:

(1) Under Section 8.1(A)(1) (Events of Default, Default by Seller), cure periods and the consequences of Force Majeure are addressed in Section 2.4(B) (Failure to Meet Commercial Operation Date Deadline) and no further opportunity to cure or Force Majeure exceptions are applicable;

(2) Under Section 8.1(A)(2) (Events of Default, Default by Seller), cure periods are addressed in Section 2.4(A) (Failure to Meet Milestone Dates) and the consequences of Force Majeure are addressed in Section 18.5 (Effect of Force Majeure on Milestone Dates and Commercial Operation Date Deadline) and no further opportunity to cure or Force Majeure exceptions are applicable;

(3) Under Section 8.1(A)(11) through Section 8.1(A)(13), Section 8.1(A)(18), Section 8.1(A)(20), Section 8.1(B)(4), Section 8.1(B)(5) and Section 8.1(B)(8), no opportunities to cure or Force Majeure exceptions are applicable; or

(4) Under Section 8.1(A)(3), Section 8.1(A)(4), Section 8.1(A)(5), Section 8.1(A)(6), Section 8.1(A)(7), Section 8.1(A)(8), Section 8.1(A)(9), Section 8.1(A)(10), Section 8.1(A)(14), Section 8.1(A)(15), Section 8.1(A)(16), Section 8.1(A)(17), Section 8.1(A)(19), Section 8.1(B)(1), Section 8.1(B)(2), Section 8.1(B)(3), Section 8.1(B)(7) and Section 8.1(B)(8):

(a) If the occurrence is not the result of Force Majeure, non-performing Party shall be entitled to a cure period, if any, to the limited extent expressly set forth in each section; or

(b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 18.2(A) (No Liability) are satisfied, the non-performing Party shall be entitled to a grace period as provided in Section 18.4 (Right to Terminate Due to Force Majeure), which shall apply in lieu of any cure periods provided in Section 8.1(A) (Default by Seller) and Section 8.1(B) (Default by Company).

## 8.2 Rights and Obligations of the Parties Upon Default.

(A) Notice of Default. Upon the occurrence of an Event of Default specified in Section 8.1 (Events of Default), the non-defaulting Party shall deliver to the defaulting Party (with a copy to the Financing Parties and/or the collateral agent designated therefor) a written notice which (i) declares that an Event of Default has occurred under Section 8.1 (Events of Default) of this Agreement; and (ii) identifies the specific provision or provisions of such Section under which such Event of Default shall have occurred.

### (B) Right to Terminate; Forward Contract.

(1) Notice of Termination. If an Event of Default under Section 8.1 (Events of Default) shall have occurred and not been cured within the cure periods provided in Section 8.1(C) (Cure Periods and Force Majeure Exceptions), or, as to Events of Default under Section 8.1(A)(6) (Events of Default, Default by Seller) or Section 8.1(A)(7) (Events of Default, Default by Seller) pursuant to the remedial provisions described therein, or such other cure periods provided under the Financing Documents to which Company is a party, as applicable, the non-defaulting Party shall have the right to terminate this Agreement by delivering a written notice of termination which shall be effective thirty (30) Days from the date such notice is delivered, provided that if such

notice of termination is not given within ninety (90) Days of the date such right to terminate is triggered, such termination shall not be effective.

(2) Termination by Company.

(a) Company's Assumption of Seller's Interest. If an Event of Default by Seller occurs, and if Company delivers to Seller the notice required under Section 8.2(B) (Right to Terminate; Forward Contract) stating that Company has elected to exercise its rights hereunder, Company shall promptly assume all right, title and interest of Seller in the Facility and the Interconnection Facilities, this Agreement, the Project Documents and the Financing Documents to the extent it is legally capable of doing so, to take over the construction or operation of the Facility and the Interconnection Facilities forthwith and to construct or operate the Facility and the Interconnection Facilities during the period in which the foregoing assumption is being perfected, and to complete the construction of and/or operate the same, provided that Company also assumes all of Seller's obligations (except any default charges or similar penalties) under the Financing Documents and the Project Documents (other than this Agreement). Upon such assumption, Company shall have no obligation to remedy or cause to be remedied the events which gave rise to the Event of Default under Section 8.1(A) (Default by Seller) or to pay any delinquent principal, interest, penalties, or other amounts which, but for such Event of Default or any default or Event of Default under the Financing Documents or the Project Documents (whether or not declared), would not have become due. The Financing Documents and the Project Documents shall specify that Company has the assumption rights described in this Section 8.2(B)(2) (Termination by Company), and that such rights shall have priority over the exercise by the Financing Parties of their security interest in, and mortgage on, this Agreement, the other Project Documents and/or the Facility. Despite such assumption of rights by Company, Seller shall continue to be liable to Company for all obligations to Company arising from events which occurred through the date of Company's assumption; provided, however, that such obligations shall be reduced for this purpose by an amount equal to the lesser of either (i) the market value of the Facility at the time rights under this Section 8.2(B)(2) (Termination by Company) are exercised, (ii) the original capital cost of the Facility and the Interconnection Facilities or otherwise assumed by Company as of the time rights under this Section 8.2(B)(2) (Termination by Company) are exercised, or (iii) the net present value of this Agreement (not including Fuel). Seller shall take all action and provide all information necessary to facilitate Company's decision whether to exercise its rights under this Section 8.2(B)(2) (Termination by Company) and to implement the exercise of those rights if Company so chooses.

(b) Seller's Obligations Upon Termination. If Company elects to exercise its rights under this Section 8.2(B)(2) (Termination by Company), Seller shall take all actions as may be necessary (i) to convey to Company free and clear of all liens and encumbrances (other than those of Company and the Financing Parties) all of Seller's right, title and interest in and to the Facility and



the Interconnection Facilities and any and all materials, equipment, design materials and supplies relating to the Facility and the Interconnection Facilities, including without limitation, any such materials, equipment, design materials or supplies located at the Site or in transit to the Site, whether or not completed or ready for use or incorporated into the Facility and the Interconnection Facilities, and any such materials, equipment, design materials or supplies being processed, fabricated, assembled or prepared off the Site for installation in the Facility and the Interconnection Facilities or for use at or in connection with the Facility and the Interconnection Facilities, and (ii) to assign to Company, with such consents and undertakings as may be necessary to make such assignments fully effective, all of Seller's interests under the Financing Documents and the Project Documents (other than this Agreement). Seller's obligations under this Section 8.2(B)(2) (Termination by Company) shall survive any exercise by Company of its remedies under Section 8.2(B)(1) (Notice of Termination) or any termination of this Agreement by Company pursuant to Section 8.2(B)(2) (Termination by Company).

(c) Other Assumption of Seller's Interest. If Company elects not to acquire all of Seller's interests, rights, and obligations in accordance with Section 8.2(B)(2)(a) (Company's Assumption of Seller's Interest), and if, and only if, the Event of Default declared by Company shall have occurred under Section 8.1(A)(8) (Events of Default, Default by Seller), Section 8.1(A)(9) (Events of Default, Default by Seller), the Financing Parties (and/or the collateral agent designated therefor) shall have 60 Days from receipt of the notice delivered by Company pursuant to Section 8.2(A) (Notice of Default), subject to the requirements of this Section 8.2(B)(2)(c) (Other Assumption of Seller's Interest), to cause an affiliate of the Financing Parties or a new purchaser or lessee of the Facility to assume all of the right, title and interest of Seller under this Agreement and the Project Documents. The right of the Financing Parties (and/or collateral agent) to provide such affiliate or new purchaser or lessee shall be subject to Company's consent, not to be unreasonably withheld, and to satisfaction of the following conditions: (i) the affiliate or new purchaser or lessee shall have 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; (ii) the affiliate or new purchaser or lessee shall have provided Company with adequate assurances of its creditworthiness (including such guarantees as Company deems appropriate) and ability to perform its financial obligations hereunder in a manner consistent with the terms and conditions of this Agreement; and (iii) the affiliate and/or Financing Parties shall remedy or cause to be remedied the event which gave rise to the Event of Default under Section 8.1(A) (Default by Seller) within sixty (60) Days of the Financing Parties' receipt of the notice delivered by Company under Section 8.2(A) (Notice of Default). Notwithstanding such assumption by the affiliate or new purchaser or lessee, Seller shall continue to be liable to Company for all obligations to Company arising from events which occur through the date on which the affiliate or new purchaser or lessee makes such assumption effective. The performance or non-performance of the terms of this Agreement by the

affiliate or new purchaser or lessee shall be measured from the date of such assumption. During the pendency of such assumption, Seller shall cooperate with the Financing Parties and shall take all actions as may be necessary (aa) in the case of a new purchaser or an affiliate of the Financing Parties which is to acquire the Facility, to convey to the affiliate or new purchaser all right, title and interest in the Facility and any and all materials, equipment, design materials and supplies relating to the Facility, including without limitation, any such materials, equipment, design materials or supplies located at the Site or incorporated into the Facility, and any such materials, equipment, design materials or supplies being processed, fabricated, assembled or prepared off the Site for installation in the Facility or for use at or in connection with the Facility, and (bb) to assign to such new purchaser or affiliate or to a lessee, with such consents and undertakings as may be necessary to make such assignments fully effective, all of Seller's interests under this Agreement, the other Project Documents and the Financing Documents. If the assumption of rights, interests and obligations by the affiliate or new purchaser or lessee occurs strictly in accordance with this Section 8.2(B)(2)(c) (Other Assumptions of Seller's Interest), Company shall continue this Agreement with the affiliate or new purchaser or lessee substituted in the place of Seller hereunder.

(d) Effective Date. Without limitation to the generality of the preceding subsections of this Section 8.2(B)(2) (Termination by Company), the earliest Day upon which a termination of this Agreement can be effective as a result of a failure to achieve the Commercial Operation Date Deadline would be the Day following expiration of the one hundred eighty (180) Day Commercial Operation Date Delay LD Period provided in Section 2.4(B)(3) (Daily Delay Damages and Termination Right).

(e) Termination Damages. 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 8.2(B) (Right to Terminate; Forward Contract), to collect all damages, including liquidated damages ("Termination Damages"), in accordance with Article 9 (Liquidated Damages).

(3) Forward Contract. Without limitation to the generality of the foregoing provisions of this Section 8.2 (Rights and Obligations of the Parties Upon Default), 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 8.1 (A) (Events of Default by Seller), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

(C) Right to Demand Independent Engineering Assessment and Modification.

(1) Notice of Default. If an Event of Default described in Section 8.1(A)(8) (Failure to Meet EAF and EFOR Performance Requirements), or Section 8.1(A)(9)

(Failure to Meet Unit Trip Performance Requirement) occurs, Company shall, prior to exercising its rights under Section 8.2(A) (Notice of Default) or Section 8.2(B) (Right to Terminate) on the basis thereof, give written notice to Seller that it will obtain an Independent Engineering Assessment concerning the failure to meet the specified warranted levels. Within thirty (30) Days after receipt by Seller of such notice, a president, vice president, or other authorized delegate of Company and Seller, both having full authority to settle the matter, shall personally meet in Hawai'i and attempt in good faith to make the determination described in Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment). If these officials reach agreement on a determination, the provisions of Section 8.2(C)(3) (Determination That There Are No Commercially Reasonable Changes) and Section 8.2(C)(4) (Determination That There Are Commercially Reasonable Changes) shall apply thereto. If no meeting takes place within thirty (30) Days of Seller's receipt of the aforesaid written notice, or if agreement between these officials is not reached within forty-five (45) Days of Seller's receipt of such notice, Company may at any time thereafter require that an Independent Engineering Assessment be conducted in accordance with Section 3.3(D) (Company Right to Require Independent Engineering Assessment) except that in every instance all costs and expenses of such Independent Engineering Assessment shall be borne by Seller.

(2) Changes Based on Independent Engineering Assessment. The representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, shall determine whether there are commercially reasonable changes in the Facility, or in the manner in which Seller operates the Facility, which (i) could be implemented within two hundred and seventy (270) Days (or such other time period which Company and Seller mutually agree upon) after such findings are made by the Parties or the Qualified Independent Engineering Company, as the case may be, and (ii) could reasonably be expected to result in future operation of the Facility in each Contract Year at the following levels:

- (a) An EAF not less than ninety percent (90%) computed in accordance with Section 3.2(B)(1) (Equivalent Availability Factor);
- (b) An EFOR not to exceed four percent (4%) computed in accordance with Section 3.2(B)(2) (Equivalent Forced Outage Rate);
- (c) The Facility shall have the capability, within Good Engineering and Operating Practices and within the design limitations of the Facility equipment, of producing the Demonstrated Firm Capacity; or
- (d) No more than three (3) Unit Trips in any Contract Year.

(3) Determination That There Are No Commercially Reasonable Changes. If the representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, determine that there are no commercially reasonable changes meeting the requirements of Section 8.2 (C)(2), Company may thereafter declare an Event of Default on the basis of the failure

described in Section 8.1(A)(8) or Section 8.1(A)(9) which preceded Company's request for an Independent Engineering Assessment.

(4) Determination That There Are Commercially Reasonable Changes. If the representatives of the Parties or the Qualified Independent Engineering Company based on the Independent Engineering Assessment, as applicable, determine that there are commercially reasonable changes meeting the requirements of Section 8.2(C)(2) above, Company may not declare an Event of Default on the basis of the failure described in Section 8.1(A)(8) (Failure to Meet EAF and EFOR Performance Requirements) or Section 8.1(A)(9) (Failure to Meet Unit Trip Performance Requirement) which preceded Company's request for an Independent Engineering Assessment unless Seller either (i) fails to diligently carry out such recommended changes as determined in accordance with the procedures and requirements set forth in Section 3.3(D) (Company Right to Require Independent Engineering Assessment) or (ii) implements such changes but the Facility nevertheless does not meet the standards of Section 8.2(C)(2) (Changes Based on Independent Engineering Assessment) in the first full Contract Year after such changes are implemented; provided that, if such right to declare an Event of Default is not exercised within three (3) months after such first full Contract Year, Company shall be deemed to have waived such right.

8.3 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 8.2 (Rights and Obligations of the Parties Upon Default). Accordingly, the remedies set forth in Section 8.2 (Rights and Obligations of the Parties Upon Default) 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 9 - LIQUIDATED DAMAGES

9.1 Liquidated Damages. Recognizing that Company must provide the ultimate service to its customers and that the capacity and energy produced by the Facility is needed to meet the requirements of Company's customers, and in order to avoid the difficulties of proof in connection with the damages Company would incur in the event of a failure of the Facility to meet the performance standards herein, the Parties agree that the following Liquidated Damages for failure by Seller to attain required performance (i) constitute a reasonable and good faith estimate of the anticipated or actual loss or damage which would be incurred by Company as a result of such failure, (ii) are not intended as a penalty, (iii) may be invoked by Company to ensure that the Facility meets the performance standards established under this Agreement and (iv) constitute Company's sole and exclusive monetary remedy with respect to the matters set forth in Section 9.2 (Calculation of Liquidated Damages) and Section 9.3 (Damages in the Event of Termination by Company), provided, however, that the Company's invoking Liquidated Damages shall not limit or otherwise affect Company's right to seek (aa) monetary damages when Liquidated Damages are not applicable under the terms of this Agreement and when Company has not terminated this Agreement, and (bb) specific performance or injunctive relief when monetary damages will not provide adequate relief.

9.2 Calculation and Payment of Liquidated Damages. **THIS SECTION MAY BE REVISED BASED ON THE SPECIFIC PROJECT.**

(A) Equivalent Availability Factor. For each one-tenth (1/10) of a percentage point that the Equivalent Availability Factor of the Facility falls below the guarantee level specified in Section 3.2(B)(1) (Equivalent Availability Factor) on average for the current and prior Contract Year, Seller shall pay to Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

EAF Damages Schedule

EAF	Liquidated Damages
90.0% - 100%	-0-
85.0% - 89.9%	\$3,000 per 0.1%
80.0% - 84.9%	\$4,000 per 0.1%
75.0% - 79.9%	\$5,000 per 0.1%
Below 75.0%	\$6,000 per 0.1%

Such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(A) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement

(B) Equivalent Forced Outage Rate. For each one-tenth (1/10th) of a percentage point that the EFOR exceeds the guaranteed level in Section 3.2(B)(2) (Equivalent Forced Outage Rate) for the current Contract Year up to ten percent (10%) above such guaranteed level, Seller shall pay Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

EFOR Damages Schedule

EFOR	Liquidated Damages
0.0% - 3.9%	-0-
4.0% - 6.9%	\$3,000 per 0.1%
Above 7.0%	\$5,000 per 0.1%

Such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(B) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(C) Excessive Unit Trips. For each Unit Trip in excess of the limit set forth in Section 3.2(B)(5) (Unit Trips) for the current Contract Year, Seller shall pay Company Liquidated Damages in the amount set forth in the following table (on a progressive basis) upon proper demand at the end of the current Contract Year.

Number in excess of required limit	
Unit Trips	Liquidated Damages
1 - 3 Unit Trips	\$6,500 per trip
4 – 7 Unit Trips	\$9,500 per trip
Above 7 Unit Trips	\$12,500 per trip

Such Liquidated Damages shall be due within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(C) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(D) Damages in the Event of Seller Fails to Maintain Workforce. The amounts payable by Seller under Section 11 (Seller's Obligation to Maintain Workforce) of Attachment Y (Operation and Maintenance of the Facility) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand

from Company within thirty (30) Days after the first to occur of the end of such Contract Year or the end of Term. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(D) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(E) Milestone Delay Damages. The amounts payable by Seller under Section 2.4(A)(1)(b) (Milestone Delay Damages) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages) and Seller shall be pay such amounts in accordance with the provisions of Section 2.4(A)(1)(b) (Milestone Delay Damages).

(F) Daily Delay Damages. The amounts payable by Seller under Section 2.4(B)(3) (Daily Delay Damages and Termination Right) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages) and Seller shall be pay such amounts in accordance with the provisions of Section 2.4(B)(3) (Daily Delay Damages and Termination Right).

(G) Termination Damages. The amounts payable by Seller under Section 9.3 (Damages in the Event of Termination by Company) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand from Company within thirty (30) Days after such demand and in accordance with any applicable provisions of Section 8.2 (Rights and Obligations of the Parties Upon Default). In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(G) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

(H) Damages in the Event Seller Fails to Provide Source Code. The amounts payable by Seller under Section 6.b.i.(3) (Remedies) of Attachment B (Facility Owned by Seller) shall constitute Liquidated Damages under this Article 9 (Liquidated Damages). Seller shall pay such Liquidated Damages upon demand from Company within thirty (30) Days after such demand. In the event Seller fails to pay Company undisputed amounts of Liquidated Damages due under this Section 9.2(H) within thirty (30) Days of receipt of Company's written demand, Company may set off such undisputed amounts due against payments it is otherwise obligated to make under this Agreement.

### 9.3 Damages in the Event of Termination by Company.

(A) Pre-COD Termination Damages. If the Agreement is terminated by Company in accordance with this Agreement before the Commercial Operation Date due to an Event of Default where Seller is the defaulting Party, Company shall be entitled to liquidated damages in the amount of \$500,000 ("Pre-COD Termination Damages") in addition to any Milestone Delay Damages and Daily Delay Damages paid by Seller.

(B) Post-COD Termination Damages. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operation Date due to an Event of Default where Seller is the defaulting Party, Company shall be entitled to liquidated damages

calculated by multiplying the Demonstrated Firm Capacity by \$75 per kW (“Post-COD Termination Damages”).

(C) 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 Section 8.2(B) (Right to Terminate; Forward Contract) would be difficult or impossible to predict with certainty, and (ii) the Pre-COD Termination Damages and Post-COD Termination Damages, as applicable, are an appropriate approximation of such damages.

9.4 Adjustments. All of the dollar values noted in Section 9.2(A) (Equivalent Availability Factor), Section 9.2(B) (Equivalent Forced Outage Rate), and Section 9.2(C) (Excessive Unit Trips) will be adjusted each Contract Year in accordance with Attachment U (Adjustment of Charges).

9.5 Other Rights Upon Default. Upon the occurrence of an Event of Default by either Party, the non-defaulting Party, subject to the rights described in this Agreement, including, but not limited to, Section 8.1(C) (Cure Periods and Force Majeure Exceptions), Section 8.2(B) (Right to Terminate), Section 8.2(C) (Right to Demand Independent Engineering Assessment and Modification), may exercise, at its election, any rights and claim and obtain any remedies it may have at law or in equity, including, but not limited to, compensation for monetary damages, injunctive relief and specific performance.



ARTICLE 10 - COMPANY'S USE OF AND ACCESS TO FACILITY

10.1 Entry for Work On Site. Seller shall permit Company, its employees and agents (including but not limited to affiliates and contractors and their employees) to enter upon the Facility, with such prior notice as is reasonable under the circumstances, to take such action as may be necessary in the reasonable opinion of Company to: (i) maintain, inspect, read and test meters and other Company equipment pursuant to Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility), and Section 3 (Communications, Telemetry and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility), (ii) interconnect, interrupt (including, but not limited to, operating the manual disconnect device provided by Seller in accordance with Section 5 (Personnel and System Safety) of Attachment Y (Operation and Maintenance of the Facility)), monitor or measure electric generation produced at the Facility in accordance with the terms of this Agreement, and (iii) exercise any other rights Company may have under this Agreement.

10.2 Provision of Site Space. Seller shall provide without charge suitable space on the Site for all Company equipment to be placed on the Site under this Agreement. Suitable space as used herein means space appropriate for the intended use with adequate electric power, air conditioning, telecommunication wiring, security, and other necessary building services. In addition, Seller shall provide a means for reasonable access by Company to the Site, also without charge to Company. If Company exercises its rights to have a Company Site Representative under Section 10.5 (Company Site Representative), Seller will provide suitable office space at the Site for such Company Site Representative.

10.3 No Ownership Interest. Neither Seller nor any Financing Party shall acquire any ownership interest or security interest in or lien or mortgage on any equipment installed, owned, and maintained at the Site by Company pursuant to this Agreement, and Company shall have a reasonable time after termination of this Agreement in which to remove such equipment.

10.4 Inspection of Facility Operation.

(A) Company's Right to Inspect. Seller shall permit Company, its employees and agents (including but not limited to affiliates and contractors and their employees), from the Execution Date, to enter upon and inspect the Facility and the Facility's design manuals and drawings, its operating and maintenance manuals, and Seller's construction, operation and maintenance thereof from time to time, upon reasonable prior notice.

(B) Correction of Certain Conditions. If Company observes a condition during such inspections which it believes may have an adverse impact on Seller's ability to fulfill its obligations under this Agreement, Company may make a written request for Seller to correct such condition and Seller shall provide a written report on such condition within thirty (30) Days. If Company disagrees with the Seller's proposal to remedy the condition, a Qualified Independent Engineer will be chosen from the Qualified Independent Engineer's List pursuant to Section 3.3(D)(1)(b) (Implementation of Independent Engineering Assessment) and the Qualified Independent Engineer will make a recommendation to remedy the situation. The Seller shall abide by the Qualified Independent Engineer's recommendation. Both Parties shall

equally share in the cost for the independent engineering assessment. However, Seller shall pay all costs associated with implementing the recommendation. Company's inspection of Seller's equipment or operation shall not be construed as endorsing the design thereof nor as any warranty of the safety or reliability of said equipment or operation nor as a waiver of any right by Company.

10.5 Company Site Representative. Company may, at its sole discretion, assign a Company employee or representative as a "Company Site Representative" for the Facility. Such assignment of a Company Site Representative would become effective upon ten (10) Days' written notice to Seller. Upon the exercise by Company of the rights provided in this Section 10.5 (Company Site Representative), Seller shall provide at no cost to Company suitable office space at the Site for the Company Site Representative to conduct business. Once established, the Company Site Representative shall have free access at all times to any and all operational areas of the Facility. Seller shall comply with any reasonable request of the Company Site Representative for information concerning the design, construction, operation (including fueling) and maintenance of the Facility.

ARTICLE 11 - AUDIT RIGHTS

11.1 Rights of Company. Company shall have the right throughout the Term and for a period of three (3) years following the end of the Term, as extended, upon reasonable prior notice, to audit the books and records of Seller to the limited extent necessary to verify the basis for any claim by Seller for payments from Company or to determine Seller's compliance with the terms of this Agreement. Company shall not have the right to audit other financial records of Seller. Seller shall make such records available at its offices in [REDACTED], State of Hawai'i during normal business hours. Company shall pay Seller's reasonable actual, verifiable costs for such audits, including allocated overhead.

11.2 Rights of Seller. Seller shall have the right throughout the Term and for a period of three (3) years following the end of the Term, as extended, upon reasonable prior notice, to audit the books and related records of Company to the limited extent necessary to verify the basis for charges invoiced by Company to Seller under this Agreement. Seller shall not have the right to audit other records of Company. Company shall make such information available during normal business hours at its offices in [REDACTED], State of Hawai'i. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overheads.

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ARTICLE 12 - REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 By Seller. Seller represents, warrants and covenants, as of the Execution Date and for extent of the Term, as follows:

(A) Duly Organized. Seller is a **CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ETC.** duly organized, validly existing and in good standing under the laws of the State of [ ]. Seller has full power, authority and legal right to execute and deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, reorganization, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights from time to time in effect.

(B) Land Rights and Governmental Approvals.

(1) Seller shall obtain all Land Rights and Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System.

(2) 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 Facility and the Company Owned Interconnection Facilities.

(C) No Conflict. The execution and delivery of, and performance by Seller of its obligations under this Agreement will not result in a violation of, or be in conflict with, any provision of its **ORGANIZATIONAL DOCUMENTS OF SELLER, i.e., Articles of Incorporation, Partnership Agreement, etc.**, or result in a violation of, or be in conflict with, or constitute a default or an event which would, with notice or lapse of time, or both, become a default under, any mortgage, indenture, contract, agreement or other instrument to which Seller is a party or by which it or its property is bound, where such violation, conflict, default or potential default would materially adversely affect Seller's ability to perform its obligations under this Agreement, or result in a violation of any statute, rule, order of any court or administrative agency, or regulation applicable to Seller or its property or by which it or its property may be bound, or result in a violation of, or be in conflict with, or result in a breach of, any term or provision of any judgment, order, decree or award of any court, arbitrator or governmental or public instrumentality binding upon Seller or its property, where such violation, conflict, or breach would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(D) No Default. Seller is not in default, and no condition exists which, with notice or lapse of time, or both, would constitute a default by Seller under any mortgage, loan agreement, deed of trust, indenture or other agreement with respect thereto, evidence of indebtedness or other instrument of a material nature, to which it is party or by which it is bound, or in violation of, or in default under, any rule, regulation, order, writ, judgment,



injunction or decree of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, where such default, condition or violation would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(E) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending against such Seller, or of which Seller has otherwise received official notice, or which to the knowledge of Seller is threatened against Seller, wherein an adverse decision, ruling or finding would have a material adverse effect on Seller's ability to perform its obligations under this Agreement.

(F) Experience, Qualifications and Resources. Seller has entered into this Agreement in connection with the conduct of its business and it has the experience, qualifications and financial resources necessary to operate and maintain the Facility in accordance with the terms and conditions of this Agreement.

(G) Substitute Principal. In the event Seller proposes a substitute General Partner/Managing Member, Principal Entity or Entity Operating Facility to avoid an Event of Default under Section 8.1(A)(10)(a) (Event of Default, Default by Seller), the qualifications of such substitute **[OFFICER/GENERAL PARTNER/MANAGING MEMBER]** to carry out the role of General Partner and financial substance shall be reasonably satisfactory to Company; provided further, however, that if Company's grant of consent is dependent upon any valid business consideration not related to **[OFFICER/GENERAL PARTNER/MANAGING MEMBER]**'s qualifications or financial substance, Company shall specify such concern to the Seller and shall grant its consent if the Seller provides a **[OFFICER/GENERAL PARTNER/MANAGING MEMBER]** which is a reasonably satisfactory substitute meeting such concern.

(H) Substitute Entity Operating Facility. In the event Seller proposes a substitute Entity Operating Facility to avoid an Event of Default under Section 8.1(A)(10)(b) (Event of Default, Default by Seller), (i) the substitute Entity Operating Facility shall have 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) the substitute Entity Operating Facility shall have the 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.

(I) Adequate Fuel Supply. Seller shall maintain at the Facility a supply of Fuel adequate to give Seller the ability to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term of the Agreement.

(J) Qualified Renewable Resource. As of the Commercial Operation Date, the Facility will be a qualified renewable resource under the RPS Law in effect as of the Effective Date.

(K) Own Account. Seller is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or

recommendations of the Company and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement. It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

(L) 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.

(M) 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 Energy Charge 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 amend the Energy Charge.

12.2 By Company. Company represents and warrants, as of the Execution Date and for the extent of the Term, as follows:

(A) Duly Organized. Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Hawai'i. Company has full power, authority and legal right to execute and deliver and perform its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by Company and constitutes a legal, valid and binding obligation of Company, enforceable in accordance with its terms, except to the extent that such enforcement may be limited by any bankruptcy, reorganization, insolvency, moratorium or similar laws affecting generally the enforcement of creditors' rights from time to time in effect.

(B) No Conflict. The execution and delivery of, and performance by Company of its obligations under this Agreement will not result in a violation of, or be in conflict with, any provision of the articles of incorporation or bylaws of Company, or result in a violation of, or be in conflict with, or constitute a default or an event which would, with notice or lapse of time, or both, become a default under, any mortgage, indenture, contract, agreement or other instrument to which Company is a party or by which it or its property is bound, where such violation, conflict, default or potential default would materially adversely affect Company's ability to perform its obligations under this Agreement, or result in a violation of any statute, rule, order of any court or administrative agency, or regulation applicable to Company or its property or by which it or its property may be bound, or result in a violation of, or be in conflict

with, or result in a breach of, any term or provision of any judgment, order, decree or award of any court, arbitrator or governmental or public instrumentality binding upon Company or its property, where such violation, conflict, or breach would have a material adverse effect on Company's ability to perform its obligations under this Agreement.

(C) No Default. Company is not in default, and no condition exists which, with notice or lapse of time, or both, would constitute a default by Company under any mortgage, loan agreement, deed of trust, indenture or other agreement with respect thereto, evidence of indebtedness or other instrument of a material nature, to which it is party or by which it is bound, or in violation of, or in default under, any rule, regulation, order, writ, judgment, injunction or decree of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, where such default, condition or violation would have a material adverse effect on Company's ability to perform its obligations under this Agreement.

(D) No Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending against such Company, or of which Company has otherwise received official notice, or which to the knowledge of Company is threatened against Company, wherein an adverse decision, ruling or finding would have a material adverse effect on Company's ability to perform its obligations under this Agreement.

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ARTICLE 13 - INDEMNIFICATION

13.1 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, servants and agents, including but not limited to contractors, subcontractors and their 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 or to which any Indemnified Company Party becomes subject, resulting from, arising out of, or relating to, any Claim 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 (whether or not well founded, meritorious or unmeritorious) 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 or its agents or subcontractors Party, except as and to the extent that any of the foregoing such Loss is attributable to the gross negligence or willful misconduct of an Indemnified Company Party.

(B) Indemnification Against Third Party Claims 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 13.1(A) (Indemnification Against Third Party Claims), Section 13.1(B) (Indemnification Against Third Party Claims 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) Notice. In case any Claim subject to Section 13.1(A) (Indemnification Against Third Party Claims) or Section 13.1(B) (Indemnification Against Third Party Claims 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 13.1 (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) No Right to Assume. Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 13.1(A) (Indemnification Against Third Party Claims), Section 13.1(B) (Indemnification Against Third Party Claims Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the 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 13.1(D)(2) (No Right to Assume). 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) Subrogation. Upon payment of any Losses by Seller pursuant to this Section 13.1 (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) Cooperation. 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 13.1 (Indemnification of Company).

## 13.2 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, including but not limited to contractors, subcontractors and their 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 or to which any Indemnified Seller Party becomes subject, resulting from, arising out of, or relating to, 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) Knowledge of Claim. If Company shall obtain knowledge of any Claim subject to Section 13.2(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) Notice. In case any action, suit or proceeding subject to Section 13.2(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 13.2 (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, 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) Assumption and Control of Defense. Company shall not be entitled to assume and control the defense of any such Claim subject to Section 13.2(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 13.2(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) Subrogation. Upon payment of any Losses by Company pursuant to this Section 13.2 (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) Cooperation. 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 13.2 (Indemnification of Seller).

ARTICLE 14 - CONSEQUENTIAL DAMAGES

Except to the extent such damages are included in any Liquidated Damages provided in Article 9 (Liquidated Damages), indemnification as provided in Article 13 (Indemnification), or are a result of a Party's gross negligence or willful and intentional misconduct, damages from claims arising from or related to gross negligence or willful misconduct of a party or other specified measure of damages expressly provided for herein, neither party shall be liable to the other party for special, punitive, indirect, exemplary or consequential damages, whether such damages are allowed or provided by contract, tort (including negligence), strict liability, statute or otherwise. Nothing in this section prevents, or is intended to prevent, Company from proceeding against or exercising its rights with respect to any secured interests in Collateral as provided in this Agreement, including, but not limited to, Company's rights as provided in Section 3.1(E) (Company Security Documents) and Attachment Q (Form of Security Agreement). **DELETE IF SECURITY REQUIREMENTS ARE WAIVED**

## ARTICLE 15 - INSURANCE

15.1 Required Coverage. Seller shall, at its own expense, acquire and maintain, or cause to be maintained, 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 Financing Parties reasonably determine to be necessary during construction and operation of the Facility. The insurance coverage required hereunder shall provide that it is primary with respect to Seller and Company. Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements. Any deductible shall be the responsibility of Seller.

15.2 Waiver of Subrogation. Seller, and anyone acting under its direction or control or on its behalf, shall cause its insurers (except for Workers' Compensation insurers) to waive all rights or subrogation which Seller or its insurers may have against Company, Company's agents, or Company's employees.

15.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance) and Section 3 (Automobile Liability Insurance) of Attachment R (Required Insurance) shall include Company as an additional insured, as its interest may appear, with respect to any and all third party bodily injury and/or property damage claims arising from Seller's performance of this Agreement and, to the extent permitted by such insurers after commercially reasonable efforts of Seller to obtain such notice, shall require at least thirty (30) Days' written notice to Seller prior to cancellation of, or material modification to, such policy and ten (10) Days' written notice to Seller of cancellation due to failure by Seller to pay such premium. Such cancellation notice shall be disclosed to Company within two (2) Business Days of receipt. 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. Company acknowledges that Financing Parties 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 15 (Insurance) and Attachment R (Required Insurance).

15.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 15 (Insurance) shall be provided to Company within thirty (30) Days after Seller has bound coverage of the related policies or by the date specified in Section 2.3(A) (Company Conditions Precedent), whichever is later. 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 15 (Insurance) and Attachment R (Required Insurance).

15.5 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.

15.6 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.

15.7 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. The amount of any increase of the coverage limits, when considered as a percentage of the then existing coverage limits, shall not exceed the cumulative amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. 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.

15.8 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.

15.9 General Insurance Requirements.

(A) Each policy and certificate of insurance shall also specifically provide the following: "This policy shall be considered to be primary liability insurance which shall apply to any loss or claim before any contribution by any insurance which Company, its employees and/or agents may have in force."

(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 16 - SET OFF

Company shall have the right to set off any payment due and owing by Seller, including but not limited to any payment due under this Agreement and any amounts due as awarded in any action pursuant to this Agreement, against Company's payments of subsequent Monthly Invoices as necessary.

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## ARTICLE 17 - DISPUTE RESOLUTION

17.1 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 17.2 (Dispute Resolution Procedures), 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”).

### 17.2 Dispute Resolution Procedures.

(A) Mediation. Except as otherwise expressly set forth in this Agreement and subject to Section 17.1 (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement, (i) which remain unresolved for a period of twenty (20) Days after the Management Meeting takes place or (ii) for which the Parties fail to hold a Management Meeting within sixty (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 costs and attorney’s fees. If settlement of the Dispute(s) is not reached within sixty (60) Days after commencement of the mediation, either Party may initiate formal action subject to Section 25.9 (Governing Law, Jurisdiction and Venue) herein.

(B) Procedures for Appointing a Mediator. The Parties hereby agree that the choice of Mediator, process and procedure for the mediation and any desired outcome from the mediation shall be as the Parties agree in conjunction with their agreement to enter into a mediation. If the Parties cannot agree upon such matters within sixty (60) Days (or as the Parties may subsequently agree), either Party may withdraw from the mediation process and proceed to initiate formal action subject to Section 25.9 (Governing Law, Jurisdiction and Venue) herein.

17.3 Exclusion. The provisions of this Article 17 (Dispute Resolution) shall not apply to any disputes within the authority of an Independent Evaluator under Article 24 (Process for Addressing Revisions to Performance Standards) or under Section 9 (Dispute) of Attachment AA (Renewable Portfolio Standards).

## ARTICLE 18 - FORCE MAJEURE

18.1 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.

18.2 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 18.3(A) (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).

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

- (A) 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;
- (B) 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 caused by an event of Force Majeure as herein defined;
- (C) any full or partial reduction in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other conditions attributable to normal wear and tear;
- (D) changes in market conditions that affect the cost of the Seller’s supplies, or that otherwise render this Agreement uneconomic or unprofitable for the Seller;

(E) Seller's inability to obtain Governmental Approvals, Land Rights or approvals of any type for the construction, ownership, operation, or maintenance of the Facility and the Company-Owned Interconnection Facilities, or Seller's loss of any such Governmental Approvals or Land Rights once obtained;

(F) The lack of wind, sun or any other resource of an inherently intermittent nature;

(G) Seller's inability to obtain sufficient Fuel, power or materials to operate the Facility, except if Seller's inability to obtain sufficient Fuel, power or materials is caused by an event of Force Majeure as herein defined;

(H) 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 the Company pursuant to this Agreement;

(I) a forced outage except where such forced outage is caused by an event of Force Majeure as herein defined;

(J) litigation or administrative or judicial action relating to Seller's interest in this Agreement, the Site, Land Rights, the Facility, any Governmental Approvals, or the design, construction, ownership, maintenance or operation of the Facility, the Company-Owned Interconnection Facilities or the Company System; or

(K) any full or partial reduction in either the ability of the Facility to deliver its Demonstrated Firm Capacity or in the ability of the Company to accept the Demonstrated Firm Capacity which is caused by any action or inaction of a third party, including but not limited to any vendor or supplier of the Seller or the Company, except to the extent such action or inaction is caused by an event of Force Majeure as herein defined;

#### 18.4 Consequences of Force Majeure.

(A) Satisfaction of Certain Conditions. Section 18.5 (Effect of Force Majeure on Milestone Dates and Commercial Operation Date Deadline), Section 18.6 (Effect of Force Majeure on Other Events of Default) and Section 18.7 (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:

(1) The non-performing Party gives the other Party, within forty-eight (48) hours after the Force Majeure condition or event begins, written notice stating that such non-performing Party considers such condition or event to constitute a Force Majeure and describing the particulars of such Force Majeure condition or event;

(2) The non-performing Party gives the other Party, within fourteen (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;

(3) The suspension of performance is of no greater scope and of no longer duration than is required by Force Majeure;

(4) The non-performing Party proceeds with due diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end or minimize the effects of the Force Majeure and the anticipated duration of the Force Majeure; and

(5) When the non-performing Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect.

(B) Duty of Mitigate. The Party so excused shall make all reasonable efforts, to cure, mitigate or remedy such Force Majeure event. Any payments due as compensation for the obligation so excused shall also be excused for so long as the obligation is not performed due to Force Majeure. The burden of proof shall be on the Party claiming Force Majeure pursuant to this Article 18 (Force Majeure).

(C) Limited Relief. Other than as provided in Section 3.2 (A)(3) (Commercial Operation Date Deadline) and Section 18.6 (Effect of Force Majeure on Other 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 18.4(A) (Satisfaction of Certain Conditions) are satisfied.



18.5 Effect of Force Majeure on Milestone Dates and Commercial Operation Date Deadline.

A condition or event of Force Majeure affecting the achievement of a Milestone Date or the Commercial Operation Date Deadline shall not relieve Seller from liability for either, (1) any applicable Daily Delay Damages under Section 2.4(B)(3) (Daily Delay Damages and Termination Right) or (2) Termination Damages for early termination under Section 2.4(A)(1)(c) (Termination Right), although such a condition or event of Force Majeure shall, if and for so long as the conditions of Section 18.4(A) (Satisfaction of Certain Conditions) are satisfied, have the effect of deferring such liabilities to the extent of the applicable grace period (if any) provided in Section 2.4(A)(1)(b) (Milestone Delay Damages) or Section 2.4(B)(1) Commercial Operation Date Deadline and Grace Periods.

18.6 Effect of Force Majeure on Other Events of Default. If an occurrence of Force Majeure results in what would otherwise be deemed an Event of Default under Section 8.1 (Events of Default), no Event of Default shall be deemed to have occurred if and for so long as the conditions set forth in Section 18.4(A) (Satisfaction of Certain Conditions) are satisfied, as long as the condition or event that would otherwise be an Event of Default is cured within the lesser of (i) the duration of the Force Majeure plus any additional time reasonably necessary to remedy the effects of the Force Majeure or (ii) three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as noticed pursuant to Section 18.4(A)(1).

18.7 Effect of Force Majeure. Other than as provided in Section 18.5 (Effect of Force Majeure on Milestone Dates and Commercial Operation Date Deadline) and Section 18.6 (Effect of Force Majeure on Other 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 18.4(A) (Satisfaction of Certain Conditions) are satisfied.

18.8 Obligations Remaining After Event of Force Majeure. No monetary obligations of either Party which arose before the occurrence of an event of Force Majeure causing the suspension of performance shall be excused as a result of such occurrence. In the event of a Force Majeure which reduces or limits the Facility's capability to deliver capacity and/or energy, Company shall be obligated to pay for capacity and/or energy only to the extent such capacity and/or energy is made available by Seller. In the event of a Force Majeure which reduces or limits Company's capability to purchase energy, but does not reduce or limit Seller's ability to deliver energy, Company shall pay for such reduced energy as it may accept, but shall remain obligated to pay for capacity to the extent made available by Seller in accordance with this Agreement. 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, except as limited above) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

18.9 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 19 - ELECTRIC SERVICE SUPPLIED BY COMPANY

This Agreement does not provide for any electric services by Company to Seller. If Seller requires any electric services from Company, Company shall provide such service on a non-discriminatory basis in accordance with Company's applicable tariff schedule, as of the Execution Date, as amended or revised from time to time by Company or successors thereof.

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ARTICLE 20 - ASSIGNMENTS AND FINANCING DEBT

20.1 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).

20.2 Company's Acknowledgment. In connection with any assignment relating to the Financing Debt to which Company consents pursuant to Section 20.1 (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 Hawaii-law-governed documents as may be reasonably requested by the Financing Parties to acknowledge such assignment and/or pledge/mortgage and the right of the Financing Parties 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.

20.3 Financing Document Requirements. In connection with any Financing Debt to which Company consents pursuant to Section 20.1 (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 Financing Party 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 Financing Party 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 delivery of energy from 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 Financing Party pursuant to any other documents or as a matter of law.

(B) Each Financing Party shall agree: (i) to give written notice to Company of any event of default by Seller and any event known to such Financing Party 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 Financing Party in respect of such event of default during such cure period.

(C) Each Financing Party 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 Financing Party's interest under the Financing Documents.

(D) The Company shall have a lien and security interest subordinate (except for the Unsubordinated Claims) only to those of the Financing Party on any escrow accounts established in connection with the Financing Debt to secure all of Seller's obligations to Company under this Agreement, and Seller and the Financing Parties shall execute such documents as Company shall reasonably require to grant, establish and perfect such interest.

20.4 Grant of Security Interest. In the event that the Financing 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.

20.5 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 Financing Parties' 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 20.3(B) and Section 20.3(C) or any assumption of Seller's obligations under Section 20.3(C).

20.6 Assignment by Company. This Agreement shall not be assignable 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.

20.7 Binding on Assigns. This Agreement and all of its covenants, terms and provisions shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

20.8 Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of any interest in the Facility or in this Agreement made without fulfilling the requirements of the Agreement shall be null and void and shall constitute an Event of Default pursuant to Article 8 (Default).

ARTICLE 21 - SALE OF FACILITY BY SELLER

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 in accordance with terms and conditions of Attachment P (Sale of Facility by Seller) attached hereto and made a part hereof.

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ARTICLE 22 - SALE OF ENERGY TO THIRD PARTIES

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

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ARTICLE 23 - EQUAL EMPLOYMENT OPPORTUNITY

23.1 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 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.

23.2 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 24 - PROCESS FOR ADDRESSING REVISIONS TO PERFORMANCE  
STANDARDS

24.1 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 Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) may be revised: Section 3.g (Frequency Requirements); and Section 3.d (Ramp Rates). 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 and/or operation of the Company System, such as constraints imposed by the HERA Law or by the PUC under the HERA Law).

24.2 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 ninety (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.

24.3 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.

24.4 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 one hundred eighty (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 rates for purchase set forth in Article 5 (Rates for Purchase) in \$/kWh (for amendments to the Energy Charge) and/or \$/kW (for amendments to the Capacity Charge) 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 24.6 (PUC Performance Standards Revision Order).

24.5 Failure to Reach Agreement. If Company and Seller are unable to agree upon and execute a Performance Standards Revision Document within one hundred eighty (180) Days of Company's written notice to Seller pursuant to Section 24.4 (Performance Standards Revision 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 24.10 (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 24.4 (Performance Standards Revision Document).

24.6 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 24.6 (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall not be 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 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.

24.7 Company's Rights. The rights granted to Company under Section 24.4 (Performance Standards Revision Document) and Section 24.5 (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 24.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

24.8 Seller's Obligation. Notwithstanding any provision of this Article 24 (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.

24.9 Limited Purpose. This Article 24 (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 the 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 24 (Process for Addressing Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.

24.10 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 24.5 (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within twenty (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 twenty (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 thirty (30) Days of the application.

(A) Independent Evaluator. Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next fifteen (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) Decision. Within ninety (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 forty five (45) Days, to render a decision.



(C) Assistance. 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) Standard to be Applied in Rendering Decision. 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) Fees and Costs. 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.

24.11 HERA Law. The provisions of this Article 24 (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 25 - MISCELLANEOUS

25.1 Notices.

(A) Method of Delivery. Any written notice provided under this Agreement shall be delivered personally, sent by electronic mail (E-mail) (provided receipt thereof is confirmed via email or in writing by the recipient) or sent by registered or certified first class mail, with postage prepaid, to the other Party as follows (or to such other addresses or 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  
Attention: 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  
Attention: Director Energy Procurement

By E-mail to:

Hawaiian Electric Company, Inc.  
Attention: Director Energy Procurement  
Email: \_\_\_\_\_

**[AMEND AS APPROPRIATE FOR MECO AND HELCO]**

With A Copy To:

By Mail:

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

By E-mail to:

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

Seller:

By Mail:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Delivered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

By E-mail to:

\_\_\_\_\_

(B) Date of Delivery. Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth (5<sup>th</sup>) 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) E-mail Notice. Any notice delivered by electronic mail (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 and 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) Additional Means. 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.

25.2 Entire Agreement. This Agreement, including all Attachments, (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 representation (other than those set out in this Agreement) made or information supplied, by or on behalf of the other Party.

25.3 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.

25.4 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.

25.5 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.

25.6 Severability. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be 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.

25.7 No 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.

25.8 Modification or Amendment. No modification, amendment or waiver of all or any part of this Agreement shall be valid unless it is reduced to a paper writing and signed via manual signature by both Parties. Seller shall not modify or amend or consent to a modification or amendment to any of the Financing Documents or Project Documents without the prior written consent of Company. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Seller, such as changes to settings shown in Attachment E (Single-Line Diagram) and Attachment F (Relay List and Trip Scheme) and changes to numerical values in Section (3) Performance Standards of Attachment B (Facility Owned by Seller), shall not be considered amendments to this Agreement requiring PUC approval.

25.9 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.

25.10 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 electronic mail ("email") 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, email 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.

25.11 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.

25.12 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 to 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) The purchased power costs to be incurred by Company as a result of this Agreement are reasonable;
- (3) Company’s purchased power arrangements under this Agreement, pursuant to which Company will purchase energy and Demonstrated Firm Capacity from Seller, are prudent and in the public interest;
- (4) Company may include the power purchase costs incurred by Company pursuant to this Agreement, including Capacity Charge and Energy Charge (Fuel and variable O&M) in Company’s revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of Company’s rates during the Term of this Agreement.
- (5) The Fuel Component incurred by Company pursuant to this Agreement may be included in Company’s Energy Cost Adjustment Clause to the extent such costs are not included in base rates.
- (6) Increases and decreases in the Fuel Component incurred by Company pursuant to this Agreement may be included in Company’s Energy Cost Adjustment Clause during the Term of the Agreement; and
- (7) If approved by the PUC, the costs incurred as a result of the Capacity Charge and the Variable O&M Component may be included in the Purchased Power Adjustment Clause to the extent such costs are not included in base rates.

(B) Non-appealable PUC Approval Order. The term “Non-appealable PUC Approval Order” means a PUC Approval Order 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 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 Approval Order, Company shall provide Seller with a copy of such PUC Approval Order together with, or separately, a written statement as to whether the conditions set forth in Section 25.12(A) (PUC Approval Order) have been satisfied and the order constitutes a PUC Approval Order. If Company's written statement declares that the conditions set forth in Section 25.12(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 25.12 (C) (Company's Written Statement) to the effect that the conditions referred to in Section 25.12(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 (1) Day after the expiration of the 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 (1) 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 25.12(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 25.12(A) (PUC Approval Order).

25.13 Change in Standard System or Organization.

(A) Consistent With Original Intent. If, during the Term of this Agreement, 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 of this Agreement, 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.

25.14 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.

25.15 Definitions. Capitalized terms used in this Agreement not otherwise defined in the context in which they first appear are defined in the Article 1 (Definitions).

25.16 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.

25.17 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 Company 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 Company 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 requirements of Section 3.2(B) (Warranties and Guarantees of Performance), and Attachment Y (Operation and Maintenance of the Facility).

25.18 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.

25.19 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 17 (Dispute Resolution) of this Agreement.

25.20 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 the 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.

25.21 Attachments. Each attachment to this Agreement (the "Attachments") constitutes an essential and necessary part of this Agreement.

25.22 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 25.22 (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 be set at a rate of 4.712% so that the underlying payment will be net of such tax liability.

25.23 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 Milestone Delay Damages under Section 2.4(A) (Failure to Meet Milestone Dates);

(B) The obligation to pay Daily Delay Damages under Section 2.4(B)(3) (Daily Delay Damages and Termination Right);

(C) The obligation to deliver the Facility under Section 3.2(J) (Seller's Obligation to Deliver Facility);

(D) Seller's obligations under Section 8.2(B)(2) (Termination by Company);

(E) The obligation to pay Pre-COD Termination Damages under Section 9.3(A) (Pre-COD Termination Damages) and Section 9.3(B) (Post-COD Termination Damages);

(F) The requirements of Article 11 (Audit Rights);

(G) The indemnity obligations to the extent provided in Article 13 (Indemnification), Section 25.17 (Proprietary Rights) and in Attachment P (Sale of Facility by Seller);

(H) The requirements of Article 17 (Dispute Resolution);

(I) The limitation of damages under Article 14 (Consequential Damages);

(J) The obligations under Section 1 (d) (Right of First Refusal), Section 2 (d) (Right of First Refusal) and applicable provisions of Section 3 (Procedure to Determine Fair Market Value of the Facility), Section 4 (Purchase and Sale Agreement), Section 5 (PUC Approval) and Section 6 (Company's Option to Purchase Pursuant to Section 3.2(I)(5)(d)) of Attachment P (Sale of Facility by Seller);

(K) The provisions of Article 25 (Miscellaneous);

(L) Land restoration requirements under Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities); and

(M) 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.

25.24 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.

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

(A) The phrase "breach of a representation" includes a misrepresentation and the failure of a representation to be accurate.

(B) "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.

(C) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.

(D) When "Article," "Section" or "Attachment" is capitalized in this Agreement, it refers to an article, section or attachment to this Agreement.

(E) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.

(F) 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.

(G) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.

(H) Each Attachment to this Agreement is hereby incorporated by reference into this Agreement and is made a part of this Agreement as if set out in full in the first place that reference is made to it.

(I) Any reference to any statutory provision includes each successor provision and all applicable law as to that provision.

(J) Acknowledging that the Parties have participated jointly in the negotiation and drafting of this Agreement, if an ambiguity or question or intent or interpretation arises as to any aspect of this Agreement, then it will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

IN WITNESS WHEREOF, Company and Seller have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

Company: HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED

By: \_\_\_\_\_  
Name:  
Its:

By: \_\_\_\_\_  
Name:  
Its:

Seller: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Its:



**ATTACHMENT A**  
**FACILITY DESCRIPTION**

(See Section 2.1(B) (Facility Specifications) of the Agreement)

1. Name of Facility: \_\_\_\_\_
  - (a) Location: \_\_\_\_\_ (TMK No. \_\_\_\_\_)
  - (b) Site Plan and General Facility Arrangement Layout: \_\_\_\_\_ attached hereto as Exhibit A-1 (Site Plan and General Facility Arrangement Layout)
  - (c) Contact information for System emergencies:
    - (1) Telephone number: ( ) - \_\_\_\_\_
    - (2) Facsimile number: ( ) - \_\_\_\_\_
    - (3) Email 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 Hawaii Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-2 (Good Standing Certificates).

3. Operator: \_\_\_\_\_

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

(a) Mailing address: \_\_\_\_\_  
\_\_\_\_\_

(b) Hawaii 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 Firm 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
Full load			
Startup			
Generator:			
Type	_____		
Rated Power	___ kW		
Voltage	___ V, ___ phase		
Frequency	___ HZ		
Class of Protection	_____		
Number of Poles	_____		
Rated Speed	___ rpm		
Rated Current	___ A		
Uncorrected Power Factor	_____		
Corrected Power Factor	_____		
Corrected Current	___ A		

(c) Single or 3 phase: \_\_\_ phase

(d) Name of manufacturer:

(e) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Firm Capacity or (ii) Demonstrated Firm Capacity of the Facility as of the Commercial Operation Date.

(f) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Facility Description) ("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] [wind energy conversion facility using wind turbines]; (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 and the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS.

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 Section 3.2(A)(2) (Milestone Dates) and Section 3.2(A)(3) (Commercial Operation Date Deadline) 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):

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 Operation 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 Hawaii Department of Commerce and Consumer Affairs no later than the Commercial Operation 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 Hawaii Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-2 (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-3 (Ownership Structure of Seller, Owner and/or Operator).

10. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within thirty (30) Days thereof, a certified copy of a new certificate and a revised ownership structure.

**ATTACHMENT A  
FACILITY DESCRIPTION**

**EXHIBIT A-1  
SITE PLAN AND GENERAL FACILITY ARRANGEMENT LAYOUT**

DRAFT

**ATTACHMENT A  
FACILITY DESCRIPTION**

**EXHIBIT A-2  
GOOD STANDING CERTIFICATES**

DRAFT



**ATTACHMENT A  
FACILITY DESCRIPTION**

**EXHIBIT A-3  
OWNERSHIP STRUCTURE OF SELLER, OWNER AND/OR OPERATOR**

**ATTACHMENT B  
FACILITY OWNED BY SELLER**

1. The Facility.
  - a. Single-Line Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line diagram, 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 Diagram and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme). The protection schemes and trip settings shall conform with the requirements of Section 3.2(A)(6) (Facility Protection and Control Equipment) and Section 4 (Protective Equipment) of Attachment Y (Operation and Maintenance of the Facility). A final single-line diagram, interface block diagram, relay list, relay settings, and trip scheme of the Facility shall, after having obtained prior written consent from Company, be attached as labeled "Final" Attachment E (Single-Line Diagram and Interface Block Diagram) and "Final" Attachment F (Relay List and Trip Scheme) to this Agreement and made a part hereof on the Commercial Operation Date. After the Commercial Operation Date, no changes shall be made to the "Final" Attachment E (Single-Line Diagram and Interface Block Diagram) and "Final" Attachment F (Relay List and Trip Scheme) without the prior written consent of Seller and Company. The single-line diagrams shall expressly identify the Point of Interconnection of Facility to the 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. Seller agrees that no material changes or additions to

Facility as reflected in the final single-line diagram, interface block diagram, relay list, relay settings, and trip scheme shall be made without Seller first having obtained prior written consent from Company. If any changes in or additions to the Facility, records and operating procedures are required by Company, 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 the Company System. The Facility shall be accessible at all times to authorized Company personnel.

ii. The Facility shall include:

**[LIST OF THE FACILITY COMPONENTS]**

Examples may include, but not limited to:

Seller-Owned Interconnection Facilities

Substation

Control and monitoring facilities

Transformers

Generators and prime movers

“Lockable” cabinets or housing suitable for Company-Owned Interconnection Facilities

Relays and other protective devices

Leased communication lines and/or equipment to facilitate microwave communication

iii. The Facility will comply with the following **[INCLUDE EXCERPTS OF LANGUAGE THAT MAY BE REQUESTED BY COMPANY]**:

(A) Company will install as part of Company-Owned Interconnection Facilities to be constructed by Company and reimbursed by Seller, a manually operated, lockable, disconnect switch located on the pole adjacent to the Facility switching station. Company will install a [ ] kV drop into Seller-provided metering structure. Seller will install a [ ] kV disconnect switch and all other items for its switching station (relaying, control power transformers, high voltage circuit breaker). Bus connection will be made to a manually and automatically (via protective relays) operated high-voltage circuit breaker. The high-voltage circuit breaker will be fitted with bushing style current transformers for metering and relaying. Downstream of the high-voltage circuit breaker, a

structure will be provided for metering transformers. From the high-voltage circuit breaker, another bus connection will be made to another pole mounted disconnect switch, with surge protection.

- (B) Seller will provide within the Seller Owned Interconnection Facilities a separate, fenced area with separate access for Company. Seller will provide all conduits and accessories necessary for Company to install the Revenue Metering Package. Seller will 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 will also provide AC and DC source lines as specified later by Company. Seller will provide a telephone line for Company-owned meters. Seller will 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) The relay protection system will be configured to provide overpower protection to enable Facility to comply with the Allowed Capacity limitation.
- (E) Seller's equipment also shall provide at a minimum communications, telemetering and generator remote control equipment as required in Section 3 (Communications, Telemetering and Generator Remote Control Equipment) of Attachment Y (Operation and Maintenance of the Facility).
- (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 will be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller will 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 in connection with its submittal of the design drawings pursuant to Section 1(a) (Single-Line Diagram, Relay List, Relay Settings and Trip Scheme) of this Attachment B (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the first of the Acceptance Tests.

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

(b) 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 assessment.

(c) 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.

(d) 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 (a) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information, (b) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller, (c) cooperate with Company with respect to any such breach or unauthorized access or use; (d) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (e) 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 administer 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), provided that Company has provided reasonable notice to Seller and any such records of Seller's will be treated by Company as confidential.



- (H) The Facility shall be equipped with a voice communication system capable of contact with the Company during a Company System outage.
  - (I) Facility design and implementation shall be such as to avoid any single points of failure resulting in total loss of Facility power output.
- c. Design Drawings, List of Equipment, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, a list of equipment to be installed at the Facility (including, but not necessarily limited to, items such as relays, breakers, and switches), 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 Interconnection 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 the Company System requirements change.
- d. Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from the 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 furnish, install and maintain in accordance with Company's requirements all conductors, service switches, fuses, meter sockets, and instrument transformer housing and mountings, switchboard meter test buses, meter panels and similar devices required for service connections and meter installations at the Site.
- f. Maintenance Plan. Seller shall maintain Seller Owned Interconnection Facilities in accordance with the following maintenance plan:

Transmission line: \_\_\_\_\_  
[ ] kV Facility switching station: \_\_\_\_\_  
Relay protection equipment: \_\_\_\_\_  
Other equipment as identified: \_\_\_\_\_

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

- g. [RESERVED]
  - h. 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 4 (Suspension or Reduction of Deliveries) 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 thirty-six (36) months.
  - 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. 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).
  - f. 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]

- g. Operation of Synchronizing Breakers. Seller shall have the ability to trip and close its generator synchronizing breakers located at the Facility. Company will have trip control only and breaker status indication of the Facility generator synchronizing breakers. Seller shall notify Company of all operations of its generator synchronizing breaker in advance of such operation if practicable.
3. Performance Standards. Seller shall operate the Facility in the following manner to provide power to Company in accordance with this Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller).
- a. Voltage/Reactive Power Requirements. Electricity generated by the Seller shall be delivered to the Company at the Point of Interconnection in the form of 3-phase, 60 hertz (nominal) alternating current at the normal operating voltage of 69 kV. The actual operating voltage will be determined by the Company.
  - b. Reactive Power Control. Seller shall control its reactive power as required for the 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 specified by the Company System Operator to the extent allowed by the Facility generator capability curve and excitation equipment. The Facility generator must be capable of automatically adjusting reactive control to maintain the bus voltage at the Point of Interconnection to meet the scheduled voltage set point target specified by the Company System Operator. The voltage target will be specified remotely by the Company System Operator through the SCADA/EMS. The Facility's voltage set point target must reflect the Company voltage set point target issued from the SCADA/EMS, without delay. The generator should not normally operate on a fixed var or fixed power factor setting except during startup or shutdown or if agreed by Company. The voltage setpoint target, and present Facility minimum and maximum reactive power limits based on the Facility real power export and the unit capability curve shall be provided to the Company EMS through the RTU telemetry interface.
  - c. Reactive Amount.

    - i. Seller shall install sufficient equipment to have the ability to deliver reactive power to Company at output levels ranging from \_\_ kVARs (Seller delivering reactive power to Company while delivering real power to Company) to \_\_\_ kVARs (Seller receiving reactive power from Company while delivering real power to Company) per each \_\_ kW delivered from the Facility. [NOTE: THESE VALUES WILL BE BASED ON THE RESULTS OF THE INTERCONNECTION REQUIREMENTS STUDY.]
    - ii. Company will not be obligated to purchase reactive power from Seller.

- iii. 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.
- iv. If the Facility does not operate in accordance with Section 3(c)(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).
- d. Ramp Rates. The available ramp rate for dispatch during normal (non-emergency) system conditions shall be not less than \_\_\_\_\_ MW per minute or greater than \_\_\_\_\_ MW per minute between the Minimum Load Capability and the Demonstrated Firm Capacity. When requested by Company through its remote dispatch or by other means, under emergency conditions, Seller shall use reasonable efforts to maximize such ramp rates to the extent the Facility is capable of doing so within manufacturer's specifications and warranties. Seller shall inform Company of the maximum available ramp rate under remote control.
- e. Voltage Requirements.
  - i. The voltage target will be specified remotely by the Company System Operator through the SCADA/EMS. The Facility's voltage set point target must reflect the Company voltage set point target issued from the SCADA/EMS, without delay. The voltage set point target, and present Facility minimum and maximum reactive power limits based on the Facility real power export and the unit capability curve shall be provided to the Company EMS through the telemetry interface.
  - ii. The Facility shall have under-voltage and over-voltage ride through capability. The Facility shall behave as follows during under-voltage disturbances and over-voltage disturbances ("V" is the voltage of any of the three phases at the Point of Interconnection). For alarm conditions the Facility should not disconnect from the Company System. This is necessary in order to coordinate with the existing Company System: **[THIS SECTION MAY BE UPDATED BASED ON THE RESULTS OF THE IRS.]**



**Undervoltage Ride-Through**

Range ( % of Nominal)	Operating Mode	Duration (sec)	
		Ride Through	Trip
100 > V ≥ 88	Normal Operation	Indefinite	Indefinite
88 > V ≥ 70	Ride Through	20	21
70 > V ≥ 50	Ride Through	10-20*	11-21*
50 > V	Ride Through	0.5	0.5

\* May be adjusted within these ranges at manufacturer's discretion.

[FOR Maui Electric (Maui Island Only) and Hawaii Electric Light PROJECTS ONLY] 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 69 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 23kV 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.

**Overvoltage Ride-Through**

Range ( % of Nominal)	Operating Mode	Duration (sec)	
		Ride Through	Trip
V > 120	Cease to Energize	None	0.1667
120 ≥ V > 110	Ride Through	0.92	1
110 ≥ V > 100	Normal Operation	Indefinite	Indefinite

- f. Transient Stability Ride-Through. The Facility shall be designed to stay online for the following transient conditions on Company System: (1) three-phase fault located anywhere on the Company System and lasting up to thirty (30) cycles; and (2) a single line to ground fault located anywhere on the Company System



and lasting up to thirty (30) 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.]**

g. Frequency Requirements.

- i. Nominal system frequency is 60 Hz. Frequency will normally be controlled by the EMS. Company shall have the right to utilize the Facility to regulate frequency on the Company System consistent with this Attachment B (Facility Owned by Seller). The electrical frequency of electric energy delivered to Company by Seller shall not cause a variation of more than 0.05 Hertz from 60.00 Hertz.
- ii. Droop Characteristic. The Facility shall be equipped with a speed/load governing control that has a speed droop characteristic. The droop setting should permit a setting from 3 to 6%. This setting shall be changed upon Company's written request as necessary for grid droop response coordination. The droop setting shall be tunable and may be specified during commissioning, the nominal setting is 4%. The droop response shall be configured with no intentional deadband. If any deadband is present it shall not exceed  $\pm 0.0166$  Hz. The droop response shall provide 80-100% of expected (proportional) active power output at the end of a linear ramp change in frequency of 1% (0.6 Hz) over a 5 second period starting at the initial frequency deviation. 80% of the desired response has to be delivered within 2 seconds after disturbance, and full response must be deployed within an additional 3 seconds after an initial 2 seconds for a total response within 5 seconds after the disturbance. When operating in parallel with the Company System, the Facility shall operate with its speed governor control in automatic operation. Notification of changes in the status of the speed/load governing controls must be provided to the Company System Operator immediately preferably through SCADA.
- iii. [RESERVED]
- iv. The Facility shall be capable of operating in isochronous (zero droop) or droop mode. The mode of operation will be at the request of the Company System Operator and shall be capable of changing modes of operation while online. Mode of operation will be controlled remotely by Company System Operator and indication of mode provided through telemetry.
- v. The dynamic response and tuning of the Facility unit controls is critical to the assessment of the system impact in the Interconnection Requirements Study. The actual dynamic response of the units will be tested during commissioning and reflected in the transient stability performance during under-frequency and over-frequency events.
- vi. Performance during underfrequency events. The Facility is required to remain in continuous operation during and following under-frequency conditions as

described below. During these conditions the Facility is to remain connected and continue exporting power (with export reflecting the appropriate proportional droop response). The Facility shall, at a minimum, behave as follows during an under-frequency disturbance (“f” is the system frequency at the Point of Interconnection) : [THIS SECTION MAY BE UPDATED BASED ON THE RESULTS OF THE IRS]

**Underfrequency Ride-Through (Oahu, Maui, Hawaii islands)**

Range (Hz)	Operating Mode	Duration (sec)	
		Ride Through	Trip
$60.0 \geq f \geq 57.0$	Normal Operation	Indefinite	Indefinite
$57.0 > f \geq 56.0$	Ride Through	20	21
$56.0 > f$	Cease to Energize	None	0.1667

- vii. Performance during Over-frequency events: The Facility is required to remain in continuous operation during and following under-frequency conditions as described below. During these conditions the Facility is to remain connected and continue exporting power (with export reflecting the appropriate proportional droop response).

("f" is the Company System frequency at the Point of Interconnection):

**Overfrequency Ride-Through (Oahu, Maui, Hawaii islands)**

Range (Hz)	Operating Mode	Duration (sec)	
		Ride Through	Trip
$f > 64.0$	Cease to Energize	None	0.1667
$64.0 \geq f > 63.0$	Ride Through	20	21
$63.0 \geq f > 60.0$	Normal Operation	Indefinite	Indefinite

- viii. During a frequency disturbance, the power export during steady-state conditions prior to the frequency disturbance shall not override the export in power droop during sustained off-normal frequency conditions. The export of power shall continue at the pre-disturbance export (nominal 60 Hz) as modified by the proportional droop response for off-normal frequencies, unless the dispatch is intentionally adjusted. Intentional adjustments to dispatch level during off-normal frequency conditions may be made locally by the facility personnel or remotely by Company through the EMS only as directed by the Company System Operator. In the event of an emergency, intentional adjustments to dispatch level during off-normal frequency conditions may be made locally by the facility personnel without the direction of the Company System Operator, but Company System Operator is to be notified of the action taken immediately.

- ix. The Facility will return to the output levels (relative to nominal sixty (60) Hz, as adjusted by droop) following the under or over frequency conditions, unless directed otherwise by the Company System Operator (or if intentionally adjusted by local or remote dispatch.)
- x. The Company shall have the right to utilize the Facility generation for supplemental frequency control, in addition to economically dispatched load following, through dispatch under the Company EMS to regulate frequency on the Company System consistent with this Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller).
- h. Real Power Delivery.
  - i. The Seller shall deliver the electricity contracted for under this Agreement to the Company's System at the Point of Interconnection.
  - ii. During the Term, Seller shall deliver to Company for Company Dispatch the entire Net Electric Energy Output of the Facility. The Company may take up to the entire Demonstrated Firm Capacity of the Facility, subject to the terms and conditions of this Agreement.
  - iii. The Facility shall be subject to generator real-power dispatch by the Company's EMS through a single control interface. Remote dispatch shall be provided between the range of [ ] MW to the Demonstrated Firm Capacity for the purpose of system balancing and frequency control. The response of the Facility to Company Dispatch signals shall be immediate. The dispatch request shall reflect net MW from the Facility at the Point of Interconnection. The implementation of the remote dispatch control by Seller shall not result in overriding the Facility droop response as specified in Section 3.g. (Frequency Requirements) of this Attachment B (Facility Owned by Seller). Seller shall develop, in consultation with Company, the detailed interface design for the Automatic Generator Control (AGC), which shall be approved by Company prior to implementing the Seller's Centralized Control System.
  - iv. Refusal to comply with Company Dispatch shall result in an unreported derating, if the output is less than the dispatch request, from the time that such dispatch request was received until such time as Seller complies with such dispatch request.
  - v. The Facility may disable remote dispatch by Company for abnormal Facility operations such as equipment malfunctions, breakdowns, etc. The disabling of remote dispatch control by Seller shall be immediately indicated through a status provided to the Company through the telemetry interface to the EMS.

- i. Minimum Load Capability. The Facility shall allow for a net zero minimum load capability at Company's sole discretion as necessary due to system constraints, system balancing and frequency control.
- j. Harmonics Standards. 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.
- 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. Frequency Response. Seller Facility shall provide a frequency response reacting to system frequency fluctuations at the Point of Interconnection in both the overfrequency and underfrequency directions.
  - i. The Facility frequency response control shall adjust, without intentional delay, the Facility Net Electric Energy Output when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.
  - ii. No intentional frequency response deadband shall be included in the speed frequency governor control. If a frequency deadband is present in the governor control it shall be settable in the range from +/-0.01 Hz to +/- 0.0166 Hz with a default value of 0.01 Hz. The frequency droop shall be a settable parameter in the range of 0.1% to 10 % with a default value of 4%.
  - iii. 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.
- m. Inertia Constant. Synchronous Generator(s) inertia constant (H) will be [ ] MJ/MVA. [TO BE REVIEWED BY COMPANY FOLLOWING THE IRS]
- n. Generator Excitation System. The excitation system for the generator shall be designed for the following capabilities and attributes:
  - i. Ceiling Voltage. The excitation system ceiling voltage shall be at least [ ] percent of rated main generator field voltage.

- ii. Response Ratio. The excitation system response ratio shall be [ ] or higher.
  - iii. Excitation Source Immunity. The excitation source shall be immune to variations in system voltage as described under Section 3.a. (Voltage/Reactive Power Requirements).
  - iv. Field Forcing Ability. The excitation system shall have field forcing ability.
  - o. Short Circuit Ratio. The short circuit ratio shall be between [ ] and [ ] inclusive.
  - p. Open Circuit Transient Field Time Constant. The open circuit transient field time constant shall be [ ] seconds or less.
  - q. Generator Step-Up Transformer Impedance. The generator step-up transformer impedance shall be between [ ] percent and [ ] percent, inclusive, on transformer OA rating.
  - r. Control Systems. The power source for control systems will be designed to be immune from system transients in accordance with Section 3.2(A)(6) (Facility Protection and Control Equipment) to meet the performance during under/over voltage and under/over frequency conditions pursuant to Section 3.e.ii., Section 3.g.vi., and Section 3.g.vii. of this Attachment B (Facility Owned by Seller).
  - s. Cycling of Generating Units. The Facility generating unit(s) may be shut down and restarted as many times per day as deemed appropriate by Company pursuant to Company Dispatch.
  - t. Start-up Periods. The maximum time to full load under normal (non-emergency) system conditions shall be [ ] minutes when a generating unit has been off line for less than [ ] hours and [ ] hours for cold start-ups. When requested by Company under emergency conditions, Seller shall use commercially reasonable efforts to accelerate such start-up periods to the extent the Facility is capable of doing so within manufacturer's specifications and warranties. The minimum time to full load under normal (non-emergency) system conditions shall be no more than [ ] minutes.
4. Seller Tests of the Facility.
- a. Acceptance Test. The Seller shall conduct the following "Acceptance Tests" in the sequence listed in this Section 4.a. which demonstrate to Company's satisfaction that the Seller is capable of complying with the requirements of this Attachment B (Facility Owned by Seller) and other requirements of this Agreement.
    - i. Interconnection Acceptance Test. The Facility's compliance with the applicable standards in this Attachment B (Facility Owned by Seller) and other



criteria specified in accordance with Attachment N (Interconnection Acceptance Test General Criteria) shall be determined by the results of the Interconnection Acceptance Test developed in accordance with Attachment N (Interconnection Acceptance Test General Criteria). The Interconnection Acceptance Test shall be conducted within thirty (30) Days of completion of the Interconnection Facilities.

- ii. Generator Acceptance Test. The Facility's compliance with the applicable performance standards in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller) and any other criteria specified in accordance with Attachment BB (Generator Acceptance Test General Criteria) shall be determined by the results of the Generator Acceptance Test developed in accordance with Attachment BB (Generator Acceptance Test General Criteria). The Generator Acceptance Test shall be conducted within ten (10) Days of successful completion of the Interconnection Acceptance Test.
- iii. Control System Acceptance Test. The Control System Acceptance Test(s) shall be conducted on the centralized control system of the Facility as each generator is designated by Seller to be ready to generate and deliver electric energy to Company, before that generator is included in Facility. 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 successful completion of the Control System Acceptance Test, Company shall notify Seller in writing that the Control System Acceptance Test(s) has been passed and 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 Attachment A (Facility Description), 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. The Control System Acceptance Test shall be conducted within ten (10) Days of successful completion of the Generator Acceptance Test and within two (2) Days of successful completion of the Control System RTU Points List.
- iv. On-Line Acceptance Test. The Facility's compliance with Section 3.i. (Minimum Load Capability), Section 3.d (Ramp Rates), Section 3.g. (ii) (Droop Characteristic) of this Attachment B (Facility Owned by Seller), as well as the Facility's ability to hold the [ ] kV bus voltage based on the IRS and as the Company System conditions permit, and the Facility's operation and

response to Company Dispatch, shall be determined by the results of the On-Line Acceptance Test developed in accordance with Attachment T (On-line Acceptance Test General Criteria). The On-Line Acceptance Test shall be completed within ten (10) Days of successful completion of the Control System Acceptance Test.

- b. Capacity Test. After successful completion of the Acceptance Tests in Section 4.a. of this Attachment B (Facility Owned by Seller), Seller shall be permitted to conduct the Capacity Test pursuant to Section 5.1(D) (Capacity Test) in accordance with the procedures set forth in Attachment W (Capacity Test Procedures).

#### 5. Expedited Dispute Resolution.

- a. If there is a disagreement between Company and Seller regarding Seller's compliance with the standards set forth in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawaii (or by telephone conference) and attempt in good faith to settle the disagreement.
- b. 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 17 (Dispute Resolution) of this Agreement.

#### 6. Modeling.

- a. Seller's Obligation to Provide Models. Within thirty (30) Days of Company's written request, but no later than the Commercial Operation 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 inverter 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 thirty (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.

(1) 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. (Seller's Obligation to Provide Models) 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.

(2) 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:

- a. A receiver, trustee, or similar officer is appointed, pursuant to federal, state or applicable foreign law, for the Source Code Owner;
- b. 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
- c. Failure of the Source Code Owner to function as a going concern or operate in the ordinary course; or
- d. 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.

(3) 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.(2) (Release Conditions) of Attachment B (Facility Owned by Seller), and Company finds that Seller failed to 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.(1) (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 thirty (30) Days' notice from Company of a breach of Section 6.b.i.(1) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 8.1(A)(20) (Default by Seller) under the Agreement.

(4) 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.(2) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of \_\_\_\_\_, between \_\_\_\_\_, and Hawaiian Electric.

- (5) 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").
- (6) 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.

- (1) 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 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 deposit the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) into an escrow



account with the Monetary Escrow Agent under the Monetary Escrow Agreement.

- (2) Release Conditions. Company shall have the right to obtain from the Monetary Escrow Agent 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.
- (3) Seller's Obligation. If the funds in the monetary escrow are 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.
- (4) 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.
- (5) Certification. The Monetary 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.(2) (Release Conditions) of Attachment B (Facility Owned by Seller) of the Power Purchase Agreement dated as of \_\_\_\_\_, between \_\_\_\_\_, and Hawaiian Electric.

- (6) 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 United States Bankruptcy Code (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.



## ATTACHMENT C

### METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS SELECTED PORTIONS OF NERC GADS

#### EQUIVALENT AVAILABILITY FACTOR (EAF)

$$\text{EAF} = [(\text{AH} - \text{EPDH} - \text{EUDH})/\text{PH}] \times 100\%$$

Where:

Available Hours (AH) = Sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH)

Equivalent Planned Derated Hours (EPDH): Each individual Planned Derating (PD, DP) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC. Note: Includes Planned Deratings (PD) during Reserve Shutdowns (RS).

Equivalent Unplanned Derated Hours (EUDH): Each individual Unplanned Derating (D1, D2, D3, D4, DM) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC. Note: Includes Unplanned Derating (D1, D2, D3, D4, DM) during Reserve Shutdowns (RS).

Gross Maximum Capacity (GMC): The maximum capacity the unit can sustain over a specified period of time when not restricted by ambient conditions or deratings.

Maintenance Derating (D4): A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.

Maintenance Derating Extension (DM): An extension of a maintenance derate (D4) beyond its estimated completion date.

Net Maximum Capacity (NMC): Net Maximum Capacity is the unit's Gross Maximum Capacity (GMC) less any capacity (MW) utilized for that unit's station service or auxiliary load.

Period Hours (PH): The number of hours in the period being reported that the unit was in the active state. The period hours in each month or year are as follows:

<b>Month</b>	<b>Hrs/Mo</b>	<b>Hrs/Yr</b>	
January	744	8760*	*Add 24 hours during a leap year
February	672*		
March	744		
April	720		
May	744		
June	720		
July	744		
August	744		
September	720		
October	744		
November	720		
December	744		

**Planned Derating (PD):** A derating that is scheduled well in advance and is of a predetermined duration.

**Planned Derating Extension (DP):** An extension of a Planned Derate (PD) beyond its estimated completion date.

**Planned Outage (PO):** An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks, and occurs only once or twice a year. Turbine and boiler overhauls or inspections, testing, and nuclear refueling are typical Planned Outages.

**Reserve Shutdown (RS):** The state where the unit is available for load but is not synchronized due to lack of demand.

**Reserve Shutdown Hours (RSH):** Sum of all hours the unit was available to the system but not synchronized for economy reasons.

**Service Hours (SH):** Sum of all Unit Service Hours.

**Unit Service Hours:** Hours the unit was synchronized to the system. For units equipped with multiple generators, count only those hours when at least one of the generators was synchronized, whether or not one or more generators were actually in service.

**Unplanned (Forced) Derating – Immediate (D1):** A derating that requires an immediate reduction in capacity.

**Unplanned (Forced) Derating – Delayed (D2):** A derating that does not require an immediate reduction in capacity but requires a reduction within six hours.

**Unplanned (Forced) Derating – Postponed (D3):** A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.



### EQUIVALENT FORCED OUTAGE RATE (EFOR)

$$\text{EFOR} = [(\text{FOH} + \text{EFDH})/(\text{FOH} + \text{SH} + \text{EFDHRS})] \times 100\%$$

Where:

Equivalent Forced Derated Hours (EFDH): Each Individual Forced Derating (D1, D2, D3) is transformed into equivalent full outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC. Note: Includes Forced Deratings (D1, D2, D3) during Reserve Shutdowns (RS)

Equivalent Forced Derated Hours During Reserve Shutdowns (EFDHRS): Each individual Forced Derating (D1, D2, D3) or a portion of any Forced Derating which occurred during a Reserve Shutdown (RS) is transformed into equivalent outage hour(s). This is calculated by multiplying the actual duration of the derating (hours) by the size of the reduction (MW) and dividing by the Net Maximum Capacity (NMC). These equivalent hour(s) are then summed.

- (Derating Hours x Size of Reduction)/NMC.

Forced Outage Hours (FOH) = Sum of all hours experienced during Forced Outages (U1, U2, U3) + Startup Failures (SF)

Gross Maximum Capacity (GMC): The maximum capacity the unit can sustain over a specified period of time when not restricted by ambient conditions or deratings.

Net Maximum Capacity (NMC): Net Maximum Capacity is the unit's Gross Maximum Capacity (GMC) less any capacity (MW) utilized for that unit's station service or auxiliary load.

Reserve Shutdown (RS): The state where the unit is available for load but is not synchronized due to lack of demand.

Service Hours (SH): Sum of all Unit Service Hours.

Startup Failure (SF): An outage that results when a unit is unable to synchronize within a specified startup time following an outage or a Reserve Shutdown.

Unit Service Hours: Hours the unit was synchronized to the system. For units equipped with multiple generators, count only those hours when at least one of the generators was synchronized, whether or not one or more generators were actually in service.

Unplanned (Forced) Derating – Immediate (D1): A derating that requires an immediate reduction in capacity.

Unplanned (Forced Derating – Delayed (D2): A derating that does not require an immediate reduction in capacity but requires a reduction within six hours.



Unplanned (Forced) Derating – Postponed (D3): A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.

Unplanned (Forced) Outage – Immediate (U1): An outage that requires immediate removal of a unit from service, another Outage State, or a Reserve Shutdown state. This type of outage usually results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.

Unplanned (Forced) Outage – Delayed (U2): An outage that does not require immediate removal of a unit from the in-service state but requires removal within six hours. This type of outage can only occur while the unit is in service.

Unplanned (Forced) Outage – Postponed (U3): An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state beyond the end of the next weekend. This type of outage can only occur while the unit is in service.

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**ATTACHMENT D**

**CONSULTANTS LIST -- QUALIFIED INDEPENDENT ENGINEERING COMPANIES**

(See Section 3.3(D)(2) of the Agreement)

**[COMPANY AND SELLER SHALL AGREE UPON A LIST OF MUTUALLY-  
AGREEABLE INDEPENDENT ENGINEERING COMPANIES.]**

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**ATTACHMENT E**  
**SINGLE-LINE DIAGRAM AND INTERFACE BLOCK DIAGRAM**

(See Section 1.a. of Attachment B of the Agreement)

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**ATTACHMENT F**

**RELAY LIST AND TRIP SCHEME**

(See Section 1.a. of Attachment B of the Agreement)

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## ATTACHMENT G

### COMPANY-OWNED INTERCONNECTION FACILITIES

**[MAY BE REVISED DEPENDING ON  
THE GENERATING TECHNOLOGY USED BY FACILITY]**

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 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 [REDACTED] kV drop into Seller-provided dead-end 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 and the infrastructure associated with the Revenue Metering Package as provided in Section 13 (Metering) of Attachment Y (Operation and Maintenance of the Facility);
    - 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 Operation 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. Responsibilities 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 E-1 (Substation Responsibilities) and Matrix E-2 (Telecom Responsibilities). [DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]

[DRAFTING NOTE: THE TYPICAL TIMEFRAMES 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 IS AS FOLLOWS:  
(i) 36 MONTHS FOR 138 kV FACILITIES.  
(ii) 30 MONTHS FOR 46 kV FACILITIES WITH MINOR INFRASTRUCTURE IMPROVEMENTS.]

- 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:
  - (1) The items identified in Matrix E-1 (Substation Responsibilities) and Matrix E-2 (Telecom Responsibilities) as being the responsibility of Seller to construct; and
  - (2) [ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER]. [NOTE: SUBPARTS "1" AND "2" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE]
- ii. Seller shall provide the necessary support for the Company's      kV overhead line extension work, which may include, but not limited to:
  - (1) 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.
  - (2) Staking of Company proposed poles and anchors by surveyor.
  - (3) Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
  - (4) Graded level pads to provide vehicle working areas around all Company poles and anchors.
  - (5) Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
  - (6) 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. Seller shall not commence construction of the Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) before the Company accepts in writing the Plans.
  - 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. Interconnection Acceptance Test Procedures.
    - i. Seller shall provide Company with at least fourteen (14) Days advance written notice of the Interconnection Acceptance Test, which shall be scheduled during normal business hours on a Business Day. No electric energy will be delivered from Seller to Company during this Interconnection Acceptance Test. No later than thirty (30) Days prior to conducting the Interconnection Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Interconnection Acceptance Test. Attachment N (Interconnection Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Interconnection Acceptance Test. Within fifteen (15) Business Days of successful completion of the Interconnection Acceptance Test and Company's receipt of the final report setting forth the results of the Interconnection Acceptance Test, Company shall notify Seller in writing whether the Interconnection Acceptance Test has been passed and, if so, the date upon which the Interconnection Acceptance Test was passed.
    - ii. Company will be present when the Interconnection Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Interconnection 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 completion of construction of the Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) and the acceptance of same by Company, Seller shall provide for Company review a set of the proposed as-built drawings. 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.
  - h. Commercial Operation Date Deadline. Construction of the Interconnection Facilities shall be completed and the Interconnection Facilities shall be demonstrated to operate in accordance with the requirements of this Attachment G and this Agreement by the Commercial Operation Date Deadline. In the event that Seller fails to complete the Interconnection Facilities by the Commercial Operation Date Deadline, and fails to comply with Section 5.1(G) (Commencement of Capacity Charge Payments), the Company shall have no obligation to make such Capacity Charge payments until such work is completed and the conditions of Article 5 (Rates for Purchase) are satisfied.
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) and Attachment Y (Operation and Maintenance of the Facility) (collectively, the "Engineering and Design Work"), and (cc) conducting the Interconnection Acceptance Test, the Generator Acceptance Test, Control System Acceptance Test and On-Line 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 THIS ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

- iii. 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 \$ [REDACTED].

- 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. Engineering and Design Work Payment: 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;

Company shall not be obligated to perform any Engineering and Design Work on 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. Procurement and Construction Payment: Upon the earlier of (y) 30 Days after the Effective Date or (z) [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.

Company shall not be obligated to 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 Operation Date, (ii) the date this



Agreement is declared null and void under either Section 2.2(C)(2) (Prior to Effective Date) or Section 2.2(C)(3) (Time Periods for PUC Submittal Date and PUC Approval Date), 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 a failure of Seller to respond to Company's request regarding disposition of interconnection equipment and materials. 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 Standby 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 2.2(C)(2) (Prior to Effective Date) or Section 2.2(C)(3) (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 2.2(C)(2) (Prior to Effective Date) or Section 2.2(C)(3) (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 2.2(C)(2) (Prior to Effective Date) or Section 2.2(C)(3) (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 2.2(C)(2) (Prior to Effective Date) or Section 2.2(C)(3) (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.



**ATTACHMENT H**

**FORM OF  
BILL OF SALE AND ASSIGNMENT**

THIS BILL OF SALE AND ASSIGNMENT (“Bill of Sale”), made as of the [REDACTED] day of [REDACTED], 20 [REDACTED], by [REDACTED] (“Transferor”) and [REDACTED] (“Transferee”).

WITNESSETH:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under that certain Power Purchase Agreement for Firm Capacity Renewable Dispatchable Generation dated [REDACTED], 20 [REDACTED] (the “Agreement”) and other good and valuable consideration paid to Transferor by Transferee, 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 Exhibit A (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 Agreement and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Exhibit B (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 tangible 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 Exhibit A (Description of Tangible Personal Property and Fixtures) and Exhibit B (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 on following page]**

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

\_\_\_\_\_,  
a \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

“Transferor”

\_\_\_\_\_, a  
Hawai‘i corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

“Transferee”

DRAFT

**ATTACHMENT H**

**FORM OF BILL OF SALE AND ASSIGNMENT  
EXHIBIT A**

**DESCRIPTION OF  
TANGIBLE PERSONAL PROPERTY AND FIXTURES**

DRAFT

**ATTACHMENT H**

**FORM OF BILL OF SALE AND ASSIGNMENT  
EXHIBIT B**

**DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY**

DRAFT

**ATTACHMENT I**  
**FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION**

LAND COURT SYSTEM	REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Tax Map Key Nos.:

Total pages: \_\_\_\_\_

**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, Hawai'i 968\_\_\_\_, hereinafter called the "Assignee".

**WITNESSETH:**

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 Exhibit A



(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 Exhibit A, together with all recorded amendments thereof, if any, whether or not listed in Exhibit A. 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.]**

DRAFT

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”

DRAFT

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, 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)

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawai'i

My commission expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:  
Assignment of Lease and Assumption  
Doc. Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_  
Jurisdiction: \_\_\_\_\_ Circuit

(Official Stamp or Seal)

\_\_\_\_\_  
Signature of Notary Date of Notarization and  
Certification Statement

\_\_\_\_\_  
Printed Name of Notary

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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)

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawai'i

My commission expires:

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:  
Assignment of Lease and Assumption  
Doc. Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_  
Jurisdiction: \_\_\_\_\_ Circuit

\_\_\_\_\_  
Signature of Notary Date of Notarization and  
Certification Statement

(Official Stamp or Seal)

\_\_\_\_\_  
Printed Name of Notary



**ATTACHMENT I**

**FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION**

**Exhibit A**  
Description of Lease  
[To Be Attached]

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**ATTACHMENT J**  
**ENERGY CHARGE AND**  
**CAPACITY CHARGE PAYMENT FORMULAS**

(See Section 5.1 (Capacity and Energy Purchased by Company) of the Agreement)

Section A (Energy Charge):

(1) Energy Charge Formula. The monthly Energy Charge shall be computed by the following formula:

$$\text{Energy Charge} = (\text{Fuel Component} + \text{Variable O\&M Component})$$

where:

Fuel Component = [\_\_\_ **INCLUDING, BUT NOT LIMITED TO** \_\_\_],  
[**DEPENDING ON THE NATURE OF THE PROJECT: COST OF FUEL, TAXES, TRANSPORTATION AND FUEL ADDITIVE. AS THIS AGREEMENT IS FOR ENERGY AND CAPACITY FROM RENEWABLE SOURCES, ANY PRICE ADJUSTMENTS TO THE FUEL COMPONENT SHALL NOT BE BASED ON PRICE ADJUSTMENTS OR INDEXING TO ANY FOSSIL FUEL.**], and

$$\text{Variable O\&M Component} = \text{Variable O\&M Component}_{\text{BASE}} \times \text{GDPIPD}_{\text{CURRENT}} / \text{GDPIPD}_{\text{BASE}}$$

(2) Variable O&M Component. The Facility's Variable O&M Component<sub>BASE</sub> shall consist of:

(a) A "Per kWh Variable Component" of [\$ \_\_\_] per kWh (in 201[\_\_\_] dollars) multiplied by the Net Electric Energy Output during the Calendar Month [**THE PER KWH VARIABLE COMPONENT MAY INCLUDE, WITHOUT LIMITATION, DEPENDING ON THE NATURE OF THE PROJECT, THOSE O&M COSTS THAT VARY WITH ENERGY OUTPUT OF THE GENERATING UNIT. THESE ITEMS INCLUDE CONSUMABLES SUCH AS CHEMICALS FOR WATER TREATMENT (SUCH AS WHEN WATER-INJECTION IS USED FOR NOX EMISSION ABATEMENT) AND TURBINE WASHING AS WELL AS LUBRICATING OILS THAT MAY BE CONSUMED IN THE NORMAL COURSE OF ENERGY PRODUCTION**],

(b) A "Per Hour Variable Component" of [\$ \_\_\_] per hour (in 201[\_\_\_] dollars) multiplied by the number of hours that a generating unit is operated during the Calendar Month [**THE PER HOUR VARIABLE COMPONENT MAY INCLUDE, WITHOUT LIMITATION, DEPENDING ON THE NATURE OF THE PROJECT, THOSE O&M COSTS THAT VARY WITH THE NUMBER OF HOURS THAT THE GENERATING**

**UNIT IS OPERATED. THIS COMPONENT INCLUDES ITEMS SUCH AS LUBRICATING OILS THAT ARE REPLACED AFTER A GIVEN NUMBER OF OPERATING HOURS ACCORDING TO THE MANUFACTURER'S RECOMMENDATIONS]**

$GDPIPD_{CURRENT} = GDPIPD$ , as adjusted, in effect at the time the energy is delivered

$GDPIPD_{BASE}$  = The "Third" estimate of the GDPIPD for the Third Quarter of the year prior to the Reference Year.

The Reference Year for base year purposes is 20[xx].

Section B (Capacity Charge):

**[THE METHOD OF DETERMINING THE CAPACITY CHARGE SET FORTH IN THIS SECTION MAY BE REFINED DEPENDING ON THE NATURE OF THE PROJECT.]**

(1) Capacity Charge Formula. The Capacity Charge (monthly) shall, on or after the Commercial Operation Date, be computed by the following formula:

Capacity Charge = (Demonstrated Firm Capacity x Available Capacity Factor) x (Capacity Charge Rate + Fixed O&M Component Rate).

(2) Fixed O&M Component Rate. Fixed O&M Component Rate shall be [\$ per kW per month] (in 201[ ] dollars) and shall be escalated annually by the factor of  $GDPIPD_{CURRENT} / GDPIPD_{BASE}$ . **[THE FIXED O&M COMPONENT MAY INCLUDE, WITHOUT LIMITATION, BASE COST OF LABOR REQUIRED TO RUN THE FACILITY (I.E., THOSE LABOR COSTS THAT ARE INDEPENDENT OF THE AMOUNT OF ENERGY GENERATED BY THE FACILITY OR THE RUN-HOURS OF THE FACILITY OR BY THE NUMBER OF STARTS OF THE FACILITY), LEASE RENT IF SITE IS LEASED BY SELLER, PROPERTY TAXES IF SITE IS OWNED BY SELLER AND ADMINISTRATIVE AND GENERAL INDIRECT COSTS].**

The Reference Year for base year purposes is 20[xx].

(3) Capacity Charge Rate: \$ per kW per month.

(4) Available Capacity Factor Formula. Available Capacity Factor shall be determined as follows:

During the month for which the Capacity Charge is computed, the total Service Hours minus the total of Equivalent Forced Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS)), Equivalent Planned Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Performance

Standards/Selected Portions of NERC GADS)), and Equivalent Unplanned Derated Hours (as defined in Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS)) during the prior month (other than those excluded pursuant Section 4.2 (No Obligation to Accept Energy)), divided by Period Hours (as defined in Attachment C (Methods and Formulas for Measuring Performance Standards/Selected Portions of NERC GADS)).

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**ATTACHMENT K**  
**GUARANTEED PROJECT MILESTONES**

(See Section 2.4(A)(1) and Section 3.2(A)(2) of the Agreement)

**[THE FOLLOWING ARE EXAMPLES. COMPANY AND SELLER WILL DISCUSS OTHER REPORTING MILESTONES THAT WOULD BE APPROPRIATE FOR A SPECIFIC PROJECT.]**

<u>EVENT</u>	<u>MONTHS AFTER NON-APPEALABLE PUC APPROVAL ORDER DATE</u>
1. Issuance of Preparation Notice for Environmental Impact Study	
2. Agency Acceptance of Environmental Impact Statement	
3. Receipt of Final (appeals exhausted) Covered Source Air Permit	
4. Financial Closing	
5. Turbine/Generator Delivered to Site	
6. Commercial Operation Date	



## ATTACHMENT L

### REPORTING MILESTONES

(See Section 2.4(A)(2) and Section 3.2(A)(2) of the Agreement)

**[THE FOLLOWING ARE EXAMPLES. COMPANY AND SELLER WILL DISCUSS OTHER REPORTING MILESTONES THAT WOULD BE APPROPRIATE FOR A SPECIFIC PROJECT.]**

<u>EVENT</u>	<u>MONTHS AFTER NON-APPEALABLE PUC APPROVAL ORDER DATE</u>
1. Obtains control of all lands and rights-of-way comprising the Site	
2. Application for all Construction Governmental Approvals Filed	
3. Fuel Supply Contract Signed	
4. All Construction Governmental Approvals Received	
5. Construction Start (pour foundation for new turbine/generator)	

**ATTACHMENT M**

**FORM OF STANDBY LETTER OF CREDIT**

(See Section 7.1(E))

**[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**

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 ("**Beneficiary**"), to draw at sight on **[BANK'S NAME]**.

Subject to the terms and conditions hereof, this Letter of Credit secures **[ACCOUNT PARTY]**'s certain obligations to Beneficiary under the Power Purchase Agreement dated as of \_\_\_\_\_ between **[ACCOUNT PARTY]** and Beneficiary.

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

This Letter of Credit may be drawn upon under the following conditions, 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 must 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 Electric Company, 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 Agreement [for draw relating to lapse of the Letter of Credit while credit support is still required]].

The amounts of any drafts drawn under this credit are to be endorsed on the reverse side hereof. Such drafts must bear the clause “Drawn under **[BANK'S NAME AND LETTER OF CREDIT NUMBER \_\_\_\_\_ AND DATE OF LETTER OF CREDIT.]**”

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 **[NAME AND ADDRESS OF BENEFICIARY'S PURCHASED POWER GROUP CONTACT]**, and to **[NAME AND ADDRESS OF FINANCE DEPARTMENT CONTACT]**.

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  
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]**

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## ATTACHMENT N

### INTERCONNECTION ACCEPTANCE TEST GENERAL CRITERIA

(See definition of Control System Acceptance Test in Article 1 (Definitions))

**[THIS ATTACHMENT MAY 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 Interconnection Acceptance Test in accordance with the Agreement. The Interconnection Acceptance Test shall include, but not be limited to, 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 the Company System – must open and close locally using the local controls.
- (B) 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 Diagram) and Attachment F (Relay List and Trip Scheme) of the Agreement for the Facility.
- (C) 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).
- (D) 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.
- (E) 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.

- (F) 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 someone on-site when Seller performs any testing dealing with Seller's protection schemes such as any under/over voltage, under/over frequency, or fault protection schemes to ensure that the Facility's [REDACTED] kV breaker (which connects the Facility to the Company System) opens correctly for each protective device and 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 always communicate with the Company System Operator during normal and emergency conditions.

## ATTACHMENT O

### CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

(See definition of Control System Acceptance Test in Article 1 (Definitions))

**[THIS ATTACHMENT MAY BE MODIFIED  
BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

**[NOTE: IT MAY BE NECESSARY TO REPEAT  
SOME OFF-LINE TESTS WITH THE FACILITY ON-LINE.]**

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 (CSAT) 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 active power limit controls and Seller's Centralized Control System, as described in Section 2 (Control of Facility) of Attachment Y (Operation and Maintenance of the Facility), which interfaces with the Company's EMS are working properly. Test is generally conducted by setting different active power limit setpoints and observing the proper limiting of the Facility's real power output.
3. Voltage Regulation Control Test 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 Section 3(b) (Reactive Power Control) and Section 3(c) (Reactive Amount) of Attachment B (Facility Owned By Seller).

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 of the frequency reference setting and verifying by observation that the Facility respond per the 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 eight-five percent (85%) of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.

B. The recorded solar energy resource at the Facility is above 600 W/m<sup>2</sup> for at least eight (8) hours in any continuous 48-hour CSAT period. **[FOR APPLICABLE SOLAR ENERGY RESOURCES]**

C. Fourteen (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 Operation, 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.

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**ATTACHMENT P**

**SALE OF FACILITY BY SELLER**

(See Article 21 (Sale of Facility by Seller) of the Agreement)

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 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) of this Attachment P (Sale of Facility by Seller). (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 to purchase the Facility under Section 2(a) (Option to Purchase Facility) 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 (Company's Option to Purchase Pursuant to Section 3.2(I)(5)(d)) (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 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 Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, 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 Hawaii, Intermediate Court of Appeals of the State of Hawaii, or the Supreme Court of the State of Hawaii, 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 3.2(I)(5)(d). Once Company has given Seller notice of Company's preliminary interest in purchasing the Facility pursuant to Section 3.2(I)(5)(d) of the Agreement, 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**  
**SECURITY AGREEMENT**

(All Personal Property)  
(See Section 3.1(E)(1))

THIS SECURITY AGREEMENT ("Agreement") dated as of \_\_\_\_\_, 20\_\_ is between \_\_\_\_\_, a \_\_\_\_\_ (the "Debtor"), and Hawaiian Electric Company, Inc., a Hawai'i corporation (the "Secured Party").

**Recitals:**

(a) The Debtor intends to build, own and operate a renewable firm capacity facility located at \_\_\_\_\_, State of Hawai'i.

(b) The Debtor and Security Party have entered into a Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (as amended and in effect from time to time, the "Power Purchase Agreement"), pursuant to which the Secured Party has agreed to purchase the electric output from the Facility.

(c) Pursuant to Section 3.1(E) (Company Security Documents) of the Power Purchase Agreement and in consideration of the Secured Party's agreements under the Power Purchase Agreement, the Debtor has agreed to grant the Secured Party a security interest in the Facility and other collateral to secure the Debtor's obligations under the Power Purchase Agreement and in respect of the Facility.

**Agreements:**

NOW, THEREFORE, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All capitalized terms used this Agreement without definitions shall have the respective meanings provided for such terms in the Power Purchase Agreement. For the purposes of this Agreement, the following terms have the meanings specified in this *Section 1*.

"Event of Default" means the failure of the Debtor to pay or perform any of the Obligations as and when due to be paid or performed under the terms of the Power Purchase Agreement and this Agreement.

"Obligations" means all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the Power Purchase Agreement, any other instruments or agreements executed and delivered pursuant to or in connection with the Power Purchase Agreement, or this Agreement.

“State” means the State of **[DEBTOR'S JURISDICTION OF ORGANIZATION]**. All terms defined in the Uniform Commercial Code of the State and used in this Agreement shall have the same definitions as specified in the Uniform Commercial Code of the State. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9.

2. Grant of Security Interest. The Debtor hereby grants to the Secured Party, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to the Secured Party the following properties, assets and rights of the Debtor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (collectively, the “Collateral”):

All personal and fixture property of every kind and nature including without limitation all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort Claims **[INCLUDE SPECIFIC DESCRIPTION OF COMMERCIAL TORT CLAIMS EXISTING AT EXECUTION OF SECURITY AGREEMENT]**, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including all payment intangibles).

The Secured Party acknowledges that the attachment of its security interest in any additional commercial tort claim as original collateral is subject to the Debtor's compliance with Section 4.7 (Commercial Tort Claims) of this Agreement.

3. Authorization to File Financing Statements. The Debtor hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that:

(a) Indicate the Collateral (i) as all assets of the Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and

(b) Provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Debtor is an organization, the type of organization and any organizational identification number issued to the Debtor and, (ii) in the case of a financing statement

filed as a fixture filing, a sufficient description of real property to which the Collateral relates.

The Debtor agrees to furnish any such information to the Secured Party promptly upon the Secured Party's request. The Debtor also ratifies its authorization for the Secured Party to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date of this Agreement.

4. Other Actions. To further the attachment, perfection and priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in the Collateral, and without limitation on the Debtor's other obligations in this Agreement, the Debtor agrees, in each case at the Debtor's expense, to take the following actions with respect to the following Collateral:

4.1 Promissory Notes and Tangible Chattel Paper. If the Debtor at any time holds or acquires any promissory notes or tangible chattel paper, the Debtor shall forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

4.2 Deposit Accounts. For each deposit account that the Debtor at any time opens or maintains, the Debtor shall, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either:

(a) Cause the depository bank to comply at any time with instructions from the Secured Party to such depository bank directing the disposition of funds from time to time credited to such deposit account, without further consent of the Debtor, or

(b) Arrange for the Secured Party to become the customer of the depository bank with respect to the deposit account, with the Debtor being permitted, only with the consent of the Secured Party, to exercise rights to withdraw funds from such deposit account.

(c) The Secured Party agrees with the Debtor that the Secured Party shall not give any such instructions or withhold any withdrawal rights from the Debtor, unless an Event of Default has occurred and is continuing, or would occur, if effect were given to any withdrawal not otherwise permitted by the Power Purchase Agreement.

(d) The provisions of this subsection shall not apply to (i) any deposit account for which the Debtor, the depository bank and the Secured Party have entered into a cash collateral agreement specially negotiated among the Debtor, the depository bank and the Secured Party for the specific purpose set forth in such agreement, (ii) a deposit account for which the Secured Party is the depository bank and is in automatic control, and (iii) deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Debtor's salaried employees.



4.3 Investment Property.

(a) If the Debtor at any time holds or acquires any certificated securities, the Debtor shall forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

(b) If any securities now or hereafter acquired by the Debtor are uncertificated and are issued to the Debtor or its nominee directly by the issuer of such securities, the Debtor shall immediately notify the Secured Party of such fact and, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (i) cause the issuer to agree to comply with instructions from the Secured Party as to such securities, without further consent of the Debtor or such nominee, or (ii) arrange for the Secured Party to become the registered owner of the securities.

(c) If any securities, whether certificated or uncertificated, or other investment property now or hereafter acquired by the Debtor are held by the Debtor or its nominee through a securities intermediary or commodity intermediary, the Debtor shall immediately notify the Secured Party of such fact and, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either:

(i) cause such securities intermediary or (as the case may be) commodity intermediary to agree to comply with entitlement orders or other instructions from the Secured Party to such securities intermediary as to such securities or other investment property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Secured Party to such commodity intermediary, in each case without further consent of the Debtor or such nominee, or

(ii) in the case of financial assets or other investment property held through a securities intermediary, arrange for the Secured Party to become the entitlement holder with respect to such investment property, with the Debtor being permitted, only with the consent of the Secured Party, to exercise rights to withdraw or otherwise deal with such investment property.

(d) The Secured Party agrees with the Debtor that the Secured Party shall not give any such entitlement orders or instructions or directions to any such issuer, securities intermediary or commodity intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by the Debtor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Power Purchase Agreement, would occur.

(e) The provisions of this subsection shall not apply to any financial

assets credited to a securities account for which the Secured Party is the securities intermediary.

4.4 Collateral in the Possession of a Bailee. If any Collateral is at any time in the possession of a bailee, the Debtor shall promptly notify the Secured Party of such fact and, at the Secured Party's request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party, and that such bailee agrees to comply, without further consent of the Debtor, with instructions from the Secured Party as to such Collateral. The Secured Party agrees with the Debtor that the Secured Party shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Debtor with respect to the bailee.

4.5 Electronic Chattel Paper and Transferable Records.

(a) If the Debtor at any time holds or acquires an interest in any electronic chattel paper or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Debtor shall promptly notify the Secured Party of such fact and, at the request and option of the Secured Party, shall take such action as the Secured Party may reasonably request to vest in the Secured Party control, under Section 490:9-105 of the Uniform Commercial Code, of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record.

(b) The Secured Party agrees with the Debtor that the Secured Party will arrange, pursuant to procedures satisfactory to the Secured Party and so long as such procedures will not result in the Secured Party's loss of control, for the Debtor to make alterations to the electronic chattel paper or transferable record permitted under UCC Section 490:9-105 or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Debtor with respect to such electronic chattel paper or transferable record.

4.6 Letter-of-Credit Rights. If the Debtor is at any time a beneficiary under a letter of credit, the Debtor shall promptly notify the Secured Party of such fact and, at the request and option of the Secured Party, the Debtor shall, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (i) arrange for the issuer and any confirmer or other nominated person of such letter of credit to consent to an assignment to the Secured Party of the proceeds of the letter of credit, or (ii) arrange for the Secured Party to become the transferee beneficiary of the letter of credit, with the

Secured Party agreeing, in each case, that the proceeds of the letter to credit are to be applied as provided in the Power Purchase Agreement.

4.7 Commercial Tort Claims. If the Debtor at any time holds or acquires a commercial tort claim (in addition to any listed in Section 2 (Grant of Security Interest) of this Agreement, the Debtor shall immediately notify the Secured Party in a writing signed by the Debtor of the particulars of the claim and grant to the Secured Party in such writing a security interest in the claim and in the proceeds of the claim, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

4.8 Other Actions as to Any and All Collateral. The Debtor further agrees, at the request and option of the Secured Party, to take any and all other actions the Secured Party may determine to be necessary or useful for the attachment, perfection and priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in any and all of the Collateral, including, without limitation:

(a) Executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that the Debtor's signature thereon is required therefore.

(b) Causing the Secured Party's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral.

(c) Complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral.

(d) Obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Secured Party, including, without limitation, any consent of any licensor, lessor or other person obligated on the Collateral.

(e) Obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Secured Party.

(f) Taking all actions under any earlier versions of the Uniform Commercial Code or under any other law, as reasonably determined by the Secured Party to be applicable in any relevant Uniform Commercial Code or other jurisdiction, including any foreign jurisdiction.

5. Relation to Other Security Documents. The provisions of this Agreement supplement the provisions of any real estate mortgage granted by the Debtor to the Secured Party which secures the payment or performance of any of the Obligations. Nothing contained in any such real estate mortgage shall derogate from any of the rights or remedies of the Secured Party

under this Agreement.

6. Representations and Warranties Concerning Debtor's Legal Status. The Debtor represents and warrants to the Secured Party as follows:

(a) The Debtor's exact legal name is that indicated in the first paragraph and on the signature page of this Agreement.

(b) The Debtor is an organization of the type, and is organized in the jurisdiction set forth in the first paragraph of this Agreement.

(c) The Debtor's state issued organizational identification number is:

\_\_\_\_\_.

(d) The Debtor's place of business or, if more than one, its chief executive office, is at the address set forth in Section 25.1 (Notices) of the Power Purchase Agreement.

7. Covenants Concerning Debtor's Legal Status. The Debtor covenants with the Secured Party as follows: (a) without providing at least 30 Days prior written notice to the Secured Party, the Debtor will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if the Debtor does not have an organizational identification number and later obtains one, the Debtor shall forthwith notify the Secured Party of such organizational identification number, and (c) the Debtor will not change its type of organization, jurisdiction of organization or other legal structure.

8. Representations and Warranties Concerning Collateral, etc. The Debtor further represents and warrants to the Secured Party as follows:

(a) The Debtor is the owner of the Collateral, free from any right or claim of any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement and other liens permitted by the Power Purchase Agreement.

(b) None of the Collateral constitutes, or is the proceeds of, "farm products" as defined in Section 490:9-102(a) of the Uniform Commercial Code of the State.

(c) None of the account debtors or other persons obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or like federal, state or local statute or rule in respect of such Collateral.

(d) The Debtor holds no commercial tort claim except as follows:

\_\_\_\_\_.

(e) The Debtor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the

control, shipment, storage or disposal of hazardous materials or substances.

9. Covenants Concerning Collateral, etc. The Debtor further covenants with the Secured Party as follows:

(a) The Collateral, to the extent not delivered to the Secured Party pursuant to Section 4 (Other Actions) of this Agreement, will be kept at the Facility or in other locations disclosed to the Secured Party in writing from time to time, and the Debtor will not remove the Collateral from such locations without providing at least thirty Days prior written notice to the Secured Party.

(b) Except for the security interest granted in this Agreement and liens permitted by the Power Purchase Agreement, the Debtor shall be the owner of the Collateral free from any right or claim of any other person, lien, security interest or other encumbrance, and the Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests in the Collateral adverse to the Secured Party.

(c) The Debtor shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person, other than the Secured Party except for liens permitted by the Power Purchase Agreement.

(d) The Debtor will keep the Collateral in good order and repair and will not use the same in violation of Law or any policy of insurance thereon.

(e) As provided in the Power Purchase Agreement, The Debtor will permit the Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located.

(f) The Debtor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of the Collateral or incurred in connection with this Agreement.

(g) The Debtor will continue to operate, its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of hazardous materials or substances.

(h) The Debtor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except for (i) sales in the ordinary course of business and (ii) so long as no Event of Default has occurred and is continuing, sales or other dispositions of obsolescent items of equipment consistent with past practices or permitted by the Power Purchase Agreement.

10. Contracts.

10.1 Included in Collateral. Included in the Collateral are, to the extent



applicable, the following contracts and agreements, now owned or hereafter acquired or arising (the “Contracts”):

- (a) the Power Purchase Agreement;
- (b) the Operation and Maintenance Agreement;
- (c) the Fuel Supply Agreement;
- (d) the Back-up Fuel Supply Contract;
- (e) the Construction Contract;
- (f) the Debtor's insurance policies including policies insuring against loss of revenues by reason of interruption of the operation of the Facility and all loss proceeds and other amounts payable to the Debtor under such policies;
- (g) all other agreements, including vendor warranties and payment and performance bonds, relating to the construction or acquisition of the Facility;
- (h) any lease or sublease agreements relating to the Facility or any ancillary facilities to which the Debtor may become a party;
- (i) any other agreements to which the Debtor may become a party relating to the construction or operation of the Facility or any part of the Facility;
- (j) all Governmental Approvals in respect of the Facility and the PUC Approval Order;
- (k) all rights to terminate, amend, supplement, modify or waive performance under the Contracts, to perform under the Contracts, and to compel performance and otherwise exercise remedies under the Contracts; and
- (l) all amendments, supplements, substitutions and renewals of any of the Contracts.

10.2 Copies of Contracts. The Debtor has delivered to the Secured Party, or is concurrently with this Agreement delivering to the Secured Party, a true and complete executed copy of each Contract. The Debtor will deliver to the Secured Party an executed copy of each future Contract, and any amendments or supplements to any Contract, promptly upon the execution of such future Contracts or the amendments to the Contracts.

10.3 Consent to Future Contracts. The Debtor will not enter into any future Contract or other material agreement relating to the Facility, without the prior written consent of the Secured Party, which will not be unreasonably withheld.

10.4 Compliance with Contracts. The Debtor will perform and comply, in all

material respects, with all obligations and conditions on its part to be observed and performed under each of the Contracts.

10.5 Amendments and Waivers of Contracts. Without the prior written consent of the Secured Party, which will not be unreasonably withheld, the Debtor will not (i) modify, amend, terminate, waive or supplement any provision of any Contract, (ii) fail to exercise promptly and diligently each and every material right which the Debtor may have under each Contract (other than the Power Purchase Agreement, **THE BACK-UP FUEL SUPPLY CONTRACT**, \_\_\_\_\_,] and any right of termination), or (iii) fail to deliver to the Secured Party a copy of each demand, notice or document received or given by the Debtor relating in any way to any of the Contracts.

10.6 Representations Regarding Contracts. The Debtor represents and warrants to the Secured Party that each Contract in effect on the date of this Agreement (i) has been duly authorized, executed and delivered by all parties to the Contract (other than the Secured Party), (ii) has not been amended or otherwise modified, (iii) is in full force and effect, (iv) is binding upon and enforceable against all parties to the Contract (other than the Secured Party) in accordance with its terms, and (v) there exists no defaults under the Contract by the Debtor, or to the best knowledge of the Debtor, by the other parties to the Contract.

10.7 Consents to Security Interest. Except as disclosed to the Secured Party in writing, the Debtor has obtained all necessary consents to this Agreement (including specifically the Secured Party's cure rights set forth in Section 10.8(b) below) from each of the parties to the Contracts. The Debtor agrees to use its commercially reasonable efforts to obtain the consent of any party to a Contract from which consent has not been obtained, and from each future or successor party to a Contract.

10.8 Notice of Defaults; Right to Cure.

(a) The Debtor shall promptly notify the Secured Party of any material default under any of the Contracts, or any event which with the giving of notice or the passage of time or both might become a material default under any Contract, of which the Debtor has knowledge or as to which the Debtor has received notice.

(b) The Secured Party shall, at its option, have the right (but not the obligation) to remedy any such default by giving written notice of such intent to the Debtor and to the parties to each Contract in default. The Secured Party shall have 60 Days after its receipt of notice of such default to cure the default. In the event the default (except monetary defaults) cannot be cured within such 60-Day period, the parties to such Contracts shall not exercise any remedies under the Contracts if the Secured Party shall, within such 60-Day period, initiate action to cure such default and proceed diligently to cure the default.

(c) Any cure by the Secured Party of any default by the Debtor under any of the Contracts shall not be construed as an assumption by the Secured Party of any obligation, covenant or agreement of the Debtor under such Contracts, and

the Secured party shall not incur any liability to the Debtor or any other person as a result of any actions undertaken by the Secured Party in curing or attempting to cure any such default.

11. Insurance.

11.1 Maintenance of Insurance. The Debtor will maintain with respect to the Collateral and its business insurance in such amounts, upon such terms, in such forms and for such periods as required by the Power Purchase Agreement.

11.2 Insurance Proceeds. The proceeds of any casualty insurance in respect of any casualty loss of any of the Collateral shall, subject to the rights, if any, of other parties with an interest having priority in the property covered thereby,

(a) So long as no Default or Event of Default has occurred and is continuing and to the extent that the amount of such proceeds is less than \$[\_\_\_\_\_], be disbursed to the Debtor for direct application by the Debtor solely to the repair or replacement of the Debtor's property so damaged or destroyed, and

(b) In all other circumstances, be held by the Secured Party as cash collateral for the Obligations.

The Secured Party may, at its sole option, disburse from time to time all or any part of such proceeds so held as cash collateral, upon such terms and conditions as the Secured Party may reasonably prescribe, for direct application by the Debtor solely to the repair or replacement of the Debtor's property so damaged or destroyed, or the Secured Party may apply all or any part of such proceeds to the Obligations.

11.3 Continuation of Insurance. All policies of insurance shall provide for at least thirty (30) Days prior written cancellation notice to the Secured Party. In the event of failure by the Debtor to provide and maintain insurance as provided in this Agreement, the Secured Party may, at its option, provide such insurance and charge the amount thereof to the Debtor. The Debtor shall furnish the Secured Party with certificates of insurance and policies evidencing compliance with the foregoing insurance provision.

12. Collateral Protection Expenses; Preservation of Collateral.

12.1 Expenses Incurred by Secured Party. In the Secured Party's discretion, if the Debtor fails to do so, the Secured Party may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, maintain any of the Collateral, make repairs thereto and pay any necessary filing fees or insurance premiums. The Debtor agrees to reimburse the Secured Party on demand for all expenditures so made. The Secured Party shall have no obligation to the Debtor to make any such expenditures, nor shall the making of such expenditures be construed as the waiver or cure of any Event of Default.

12.2 Secured Party's Obligations and Duties. Anything in this Agreement to

the contrary notwithstanding, the Debtor shall remain obligated and liable under each contract or agreement comprised in the Collateral to be observed or performed by the Debtor thereunder. The Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the Collateral, nor shall the Secured Party be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Secured Party or to which the Secured Party may be entitled at any time or times. The Secured Party's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession, under Section 490:9-207 of the Uniform Commercial Code of the State or otherwise, shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account.

13. Securities and Deposits. The Secured Party may at any time following and during the continuance of an Event of Default, at its option, transfer to itself or any nominee any securities constituting Collateral, receive any income thereon and hold such income as additional Collateral or apply it to the Obligations. Whether or not any Obligations are due, the Secured Party may following and during the continuance of a Event of Default demand, sue for, collect, or make any settlement or compromise which it deems desirable with respect to the Collateral. Regardless of the adequacy of the Collateral or any other security for the Obligations, any deposits or other sums at any time credited by or due from the Secured Party to the Debtor may at any time be applied to or set off against any of the Obligations.

14. Notification to Account Debtors and Other Persons Obligated on Collateral. If an Event of Default shall have occurred and be continuing, the Debtor shall, at the request and option of the Secured Party, notify account debtors and other persons obligated on any of the Collateral of the security interest of the Secured Party in any account, chattel paper, general intangible, instrument or other Collateral and that payment thereof is to be made directly to the Secured Party or to any financial institution designated by the Secured Party as the Secured Party's agent therefor, and the Secured Party may itself, if an Event of Default shall have occurred and be continuing, without notice to or demand upon the Debtor, so notify account debtors and other persons obligated on Collateral. After the making of such a request or the giving of any such notification, the Debtor shall hold any proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Debtor as trustee for the Secured Party without commingling the same with other funds of the Debtor and shall turn the same over to the Secured Party in the identical form received, together with any necessary endorsements or assignments. The Secured Party shall apply the proceeds of collection of accounts, chattel paper, general intangibles, instruments and other Collateral received by the Secured Party to the Obligations, such proceeds to be immediately credited after final payment in cash or other immediately available funds of the items giving rise to them.

15. Power of Attorney.

15.1 Appointment and Powers of Secured Party. The Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent of Secured Party, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Debtor or in the Secured Party's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of the Debtor, without notice to or assent by the Debtor, to do the following:

(a) Upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Collateral in such manner as is consistent with the Uniform Commercial Code of the State and as fully and completely as though the Secured Party were the absolute owner of such Collateral for all purposes, and to do, at the Debtor's expense, at any time, or from time to time, all acts and things which the Secured Party deems necessary or useful to protect, preserve or realize upon the Collateral and the Secured Party's security interest in the Collateral, in order to effect the intent of this Agreement, all at least as fully and effectively as the Debtor might do, including, without limitation, (i) the filing and prosecuting of registration and transfer applications with the appropriate federal, state, local or other agencies or authorities with respect to trademarks, copyrights and patentable inventions and processes, (ii) upon written notice to the Debtor, the exercise of voting rights with respect to voting securities, which rights may be exercised, if the Secured Party so elects, with a view to causing the liquidation of assets of the issuer of any such securities, and (iii) the execution, delivery and recording, in connection with any sale or other disposition of any Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Collateral; and

(b) To the extent that the Debtor's authorization given in Section 3 (Authorization to File Financing Statements) of this Agreement is not sufficient, to file such financing statements with respect to this Agreement, with or without the Debtor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Secured Party may deem appropriate, and to execute in the Debtor's name such financing statements and amendments thereto and continuation statements which may require the Debtor's signature.

15.2 Ratification by Debtor. To the extent permitted by law, the Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this Agreement. This power of attorney is a power coupled with an interest and is irrevocable.

15.3 No Duty on Secured Party. The powers conferred on the Secured Party under this Agreement are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be



responsible to the Debtor for any act or failure to act, except for the Secured Party's own gross negligence or willful misconduct.

16. Rights and Remedies. In addition to all other rights and remedies, and without any other notice to or demand upon the Debtor, if an Event of Default shall occurred and be continuing, the Secured Party shall have, in any jurisdiction in which enforcement of this Agreement is sought, the rights and remedies of a secured party under the Uniform Commercial Code of the State and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which the Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the Secured Party may, so far as the Debtor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove such Collateral from such premises. The Secured Party may in its discretion require the Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Debtor's principal office(s) or at such other locations as the Secured Party may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall give to the Debtor at least five Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Debtor hereby acknowledges that five Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Party's rights and remedies under this Agreement, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

17. Standards for Exercising Rights and Remedies. To the extent that applicable Law imposes duties on the Secured Party to exercise remedies in a commercially reasonable manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Secured Party:

(a) To fail to incur expenses reasonably deemed significant by the Secured Party to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition.

(b) To fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of.

(c) To fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral.

(d) To exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists.

- (e) To advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature.
- (f) To contact other persons, whether or not in the same business as the Debtor, for expressions of interest in acquiring all or any portion of the Collateral.
- (g) To hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature.
- (h) To dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets.
- (i) To dispose of assets in wholesale rather than retail markets.
- (j) To disclaim disposition warranties.
- (k) To purchase insurance or credit enhancements to insure the Secured Party against risks of loss, collection or disposition of Collateral or to provide to the Secured Party a guaranteed return from the collection or disposition of Collateral.
- (l) To the extent deemed appropriate by the Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Secured Party in the collection or disposition of any of the Collateral.

The Debtor acknowledges that the purpose of this Section 17 (Standards for Exercising Rights and Remedies) is to provide non-exhaustive indications of what actions or omissions by the Secured Party would fulfill the Secured Party's duties under the Uniform Commercial Code or other law of the State or any other relevant jurisdiction in the Secured Party's exercise of remedies against the Collateral and that other actions or omissions by the Secured Party shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 17 (Standards for Exercising Rights and Remedies). Without limitation upon the foregoing, nothing contained in this Section 17 (Standards for Exercising Rights and Remedies) shall be construed to grant any rights to the Debtor or to impose any duties on the Secured Party that would not have been granted or imposed by this Agreement or by applicable Law in the absence of this Section 17 (Standards for Exercising Rights and Remedies).

18. No Waiver by Secured Party, etc. The Secured Party shall not be deemed to have waived any of its rights or remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Secured Party. No delay or omission on the part of the Secured Party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Secured Party with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Secured Party deems expedient.

19. Suretyship Waivers by Debtor. The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of credit extended, Collateral received or delivered or other action taken in reliance on this Agreement and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Secured Party may deem advisable. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining to the Collateral beyond the safe custody of the Collateral as set forth in Section 12.2 (Secured Party's Obligations and Duties). The Debtor further waives any and all other suretyship defenses.

20. Marshalling. The Secured Party shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies under this Agreement and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of the Secured Party's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment of the Obligations is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws.

21. Proceeds of Dispositions; Expenses. The Debtor shall pay to the Secured Party on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Secured Party in protecting, preserving or enforcing the Secured Party's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Secured Party may determine or in such order or preference as is provided in the Power Purchase Agreement, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 490:9-608(a)(1)(C) or 490:9-615(a)(3) of the Uniform Commercial Code of the State, any excess shall be returned to the Debtor. In the absence of final payment and satisfaction in full of all of the Obligations, the Debtor shall remain liable for any deficiency.

22. Overdue Amounts. Until paid, all amounts due and payable by the Debtor under this Agreement shall be a debt secured by the Collateral and shall bear, whether before or after judgment, simple interest at the Prime Rate.

23. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by,

and construed in accordance with, the laws of the State of Hawai'i. The Debtor agrees that any action or claim arising out of, or any dispute in connection with, this Agreement, any rights, remedies, obligations, or duties under this Agreement, or the performance or enforcement of this Agreement, may be brought in the courts of the State of Hawai'i or any federal court sitting in the State of Hawai'i and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor by mail at the address specified in Section 25.1 (Notices) of the Power Purchase Agreement. The Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

24. Waiver of Jury Trial. The Debtor waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement, any rights, remedies, obligations, or duties under this Agreement, or the performance or enforcement of this Agreement. Except as prohibited by law, the Debtor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Debtor (i) certifies that neither the Secured Party nor any representative, agent or attorney of the Secured Party has represented, expressly or otherwise, that the Secured Party would not, in the event of litigation, seek to enforce the foregoing waivers or other waivers contained in this Agreement, and (ii) acknowledges that, in entering into the Power Purchase Agreement, the Secured Party is relying upon, among other things, the waivers and certifications contained in this Section 24 (Waver of Jury Trial).

25. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions the sections. This Agreement and all rights and obligations under this Agreement shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms of this Agreement shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included in this Agreement. The Debtor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the Debtor and the Secured Party have caused this Agreement to be duly executed as of the date first above written.

\_\_\_\_\_, a  
\_\_\_\_\_

**HAWAIIAN ELECTRIC COMPANY, INC.,**  
a Hawai'i corporation

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

**Debtor**

By \_\_\_\_\_  
Its

**Secured Party**

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**ATTACHMENT R**  
**REQUIRED INSURANCE**

(See also Article 15 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include worker's compensation and other similar insurance required by applicable Hawai'i 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 limits of liability indicated below and shall include coverage for:

- (a) Premises, operations, and mobile equipment,
- (b) Products and completed operations,
- (c) Owners and contractors protective liability,
- (d) 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.

(ii) "Claims made" policies are not acceptable. Limits of liability for such coverage, which may be provided with umbrella and/or excess insurance coverage, shall be:

Bodily Injury & Property Damage	\$10,000,000 combined single limit per occurrence and \$20,000,000 annual aggregate
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3. Automobile Liability Insurance. This insurance shall include coverage for owned, leased and non-owned automobiles. The 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.

4. Builders All Risk Insurance. This insurance shall include coverage for earthquake and flood perils including transit (excluding ocean transit), testing, incidental storage, structures, buildings, improvements and temporary structures used in construction, or part of the permanent Facility from the start of construction through the earlier of the Commercial Operation 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, and the sublimits for earthquake and flood perils shall be 40% of replacement costs at such time up to Twenty Million Dollars (\$20,000,000), if such insurance amounts are available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits including, but not limited to, One Million Dollars (\$1,000,000) for transit and Five Million Dollars (\$5,000,000) 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 sixty (60) Days' prior written notice to Seller, provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller five (5) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Financing Parties, Seller or Company shall thereupon have the right to pay such premium directly to the insurer. Such cancellation notice to Seller shall be disclosed to Company within two (2) Business Days of receipt.

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 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) and the sublimits for earthquake and flood perils shall be no less than Twenty Million Dollars (\$20,000,000), if such insurance amounts are 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 sixty (60) Days' prior written notice to Seller, provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Financing Parties, Seller or Company shall thereupon have the right to pay such premium directly to the insurer. Such cancellation notice to Seller shall be disclosed to Company within two (2) Business Days of receipt.

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 be adequately protected against project liability errors and omissions on account of negligent actions or inactions of architects, engineers, contractors and subcontractors involved in the 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.

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**ATTACHMENT S**  
**FORM OF MONTHLY PROGRESS REPORT**

(See Section 3.2(A)(7) of the Agreement)

**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 Firm Capacity Renewable Dispatchable Generation by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Seller**"), and **Hawaiian Electric Company, Inc.**, a Hawai'i corporation, dated \_\_\_\_\_, (the "**Agreement**").

In addition to the remedial action plan requirement set forth in Section 2.3(B)(1) of the Agreement, Seller shall review the status of each Condition Precedent and Milestone of the 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 Conditions Precedent and 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 Permit, 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 Permit, 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 Condition Precedent or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition Precedent or Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Condition Precedent or 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 Condition Precedent or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition Precedent or Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Condition Precedent or 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 Condition Precedent or 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 Condition Precedents from Section 2.3(A) of the Agreement and Guaranteed Project Milestones from Attachment K and Reporting Milestones from Attachment L, if needed]

2.1.2 Financing

2.1.3 Development Governmental Approvals

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 Condition Precedents from Section 2.3(A) of the Agreement and Guaranteed Project Milestones from Attachment K and Reporting Milestones from Attachment L, if needed]**

2.2.2 Financing

2.2.3 Development Government Approvals

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 Condition Precedents from Section 2.3(A) of the Agreement and Guaranteed Project Milestones from Attachment K and Reporting Milestones from Attachment L, if needed]**

2.3.2 Financing

2.3.3 Development Government Approvals

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 Government 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 Conditions Precedent and Milestones**

**3.1 Condition Precedent and Milestone schedule**

Please list all Conditions Precedent specified in Section 2.3(A) of the Agreement and all Guaranteed Project Milestones specified in Attachment K and Reporting Milestones specified in Attachment L and state the current status of each.

<b>Condition Precedent / Milestone</b>	<b>Condition Precedent / Milestone Date Specified in the Agreement</b>	<b>Status</b> (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 Conditions Precedent or Milestones and all subsequent Conditions Precedent and Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Condition Precedent or Milestone
- 3.2.2 Explain plans to achieve missed Condition Precedent or Milestone
- 3.2.3 Explain plans to achieve subsequent Conditions Precedent and 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 Conditions Precedent or Milestones

**4 Financing**

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

<b>Activity</b> (e.g., obtain \$xx for yy stage from zz)	<b>Completion Date</b> (expected / actual)
	/ / (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 Development Government Approvals, 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)



**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).

<b>Activity</b>	<b>Completion Date</b>
	/ / (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).

<b>Activity</b>	<b>Completion Date</b>
	/ / (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 that 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

### ON-LINE ACCEPTANCE TEST GENERAL CRITERIA

(See definition of On-Line Acceptance Test in Article 1 (Definitions))

**[THIS ATTACHMENT MAY BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY]**

**[NOTE: THE ON-LINE ACCEPTANCE TEST MAY INCLUDE THE CAPACITY TEST]**

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the On-Line Acceptance Test in accordance Good Engineering and Operating Practices and with the terms of this Agreement. The On-Line Acceptance Test shall, at a minimum, determine the Facility's compliance with the following requirements:

1. Minimum Generation Capability. **[TO BE DETERMINED]**
2. Maximum Generation Capability. **[TO BE DETERMINED]**
3. Minimum EMS Generation Capability. **[TO BE DETERMINED]**
4. Maximum EMS Generation Capability. **[TO BE DETERMINED]**
5. Ramp Rates. **[TO BE DETERMINED]**
6. Droop. **[TO BE DETERMINED]**
7. Voltage regulation testing - Based on the IRS, test the Facility to hold the [ ] kV bus voltage as the Company System conditions permit.
8. Company Dispatch Tests: With the Facility online, testing may include the operation and response to Company Dispatch. Detailed testing steps and procedures will be agreed to by Company and Seller prior to said testing. As an example, Company may use the analog setpoint function to dispatch the Facility at or between the Facility's Minimum and Maximum EMS Generation Capabilities. Company may verify that the Facility's Firm Capability did not degrade while the Facility is generating at or between the Minimum and Maximum EMS Generation Capabilities.
9. With the Facility on-line, repeat any or all of the test steps in the Control System Acceptance Test, at Company's option.



**ATTACHMENT U**  
**ADJUSTMENT OF CHARGES**

(See Section 5.1 of Attachment J, and Section 9.4 of the Agreement)

1. Charges subject to adjustment based on GDPIPD will be adjusted by the following formula:

$$\text{New Charge} = \text{Base Charge} \times \text{GDPIPD}_{\text{CURRENT}} / \text{GDPIPD}_{\text{BASE}}$$

Where

New Charge	=	adjusted charge
Base Charge	=	charge (in Dollars) calculated per this Agreement
GDPIPD <sub>CURRENT</sub>	=	GDPIPD, as adjusted, in effect at the time the electric energy is delivered
GDPIPD <sub>BASE</sub>	=	The “Third” estimate of the GDPIPD for the Third Quarter of the calendar year prior to the Reference Year.

2. An adjustment shall be made on each January 1 equal to one hundred percent (100%) of the percentage change between the “Third” estimate of the GDPIPD of the calendar year prior to the Reference Year (“GDPIPD<sub>BASE</sub>”) and the previous calendar year’s “Third” estimate of the GDPIPD value.
3. In calculating the percentage change between the GDPIPD<sub>BASE</sub> and the previous calendar year’s “Third” estimate of the GDPIPD value, both the GDPIPD<sub>BASE</sub> and the previous calendar year’s “Third” estimate of the GDPIPD value shall be selected from the same Bureau of Economic Analysis publication release.
4. When adjusting the charges subject to adjustment based on GDPIPD, the adjustment shall first apply to the electric energy delivered by Seller to Company in the month of the adjustment date (January 1) and then invoiced for payment in the following month.
5. For purposes of this Attachment U (Adjustment of Charges), the term “Reference Year” refers to the base year specifically referred to within the Agreement as the starting point for escalation.

**ATTACHMENT V**

**SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED**

**IN PRIOR CALENDAR YEAR**

(See Section 7 of Attachment Y)  
(EXAMPLE)

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-----

**ATTACHMENT W**  
**CAPACITY TEST PROCEDURES**

(See Section 5.1(E) of the Agreement)

1. When the Facility is ready for the Capacity Test, Seller shall notify Company at least seven (7) Days prior to such test and shall coordinate with Company. Seller shall perform and Company shall monitor such test no earlier than seven (7) Days after Company's receipt of such notice.
2. The Capacity Test shall be performed as follows:
  - (i) The test shall last for forty-eight (48) hours and shall be scheduled on the start-up plan provided by Seller to Company in accordance with Section 5.1.(B) (Seller's Start-up Plan).
  - (ii) During the test period, the Facility shall operate in accordance with the dispatch instructions of the Company System Operator, subject in all cases to Good Engineering and Operating Practices, Seller's permit limits, and the safety and design limits of the Facility as specified by the applicable equipment manufacturers. The Company System Operator may specify a lower level of electric output for portions of the forty-eight (48) hour test period and the Demonstrated Firm Capacity may still be declared without taking into account the reduction specified by the Company System Operator if the Facility thereafter returns to the declared level during the test period or the level requested by the Company System Operator, whichever is lower.
  - (iii) During the test period, Seller shall be exporting thermal energy in the amount and quality it would be typically exporting during normal operations. **DELETE IF SELLER WILL NOT BE EXPORTING THERMAL ENERGY.**
  - (iv) If Seller and Company are satisfied with the Capacity Test, Demonstrated Firm Capacity shall be designated by Seller up to the minimum average capacity level that the Facility is able to sustain over a fifteen (15) minute interval in which the Facility is being dispatched at maximum capacity; provided that Seller may not set the Demonstrated Firm Capacity at a level in excess of the Contract Firm Capacity nor less than ninety percent (90%) of the Contract Firm Capacity in accordance with the terms of this Agreement.
  - (v) If either Seller or Company reasonably believes that an abnormal condition occurred which may have adversely impacted the Capacity Test, such Capacity Test shall be deemed to be invalid and a re-test shall be done.
  - (vi) If, following two re-tests, the Parties cannot agree that such Capacity Test produced accurate and reliable results, the Parties shall hire a Qualified Independent Engineer, from the list set forth in Attachment D (Consultants List - Qualified Independent Engineering Companies), pursuant to Section 3.3(C)(1)(b) (Implementation of Independent Engineering Assessment) to the Agreement, to observe a third test and declare the Demonstrated Firm

Capacity. The cost of such Qualified Independent Engineer shall be shared equally by the Parties.

(vii) The Parties shall not hire a Qualified Independent Engineer if following two or more re-tests both Parties agree that such Capacity Test produced inaccurate or unreliable results; provided that the provisions regarding the hiring of a Qualified Independent Engineer shall apply if the Parties fail to agree to the results of any subsequent test.

3. If Seller's capacity test under its construction contract includes the requirements set forth for the Capacity Test provided hereby, and Company has an adequate opportunity to monitor such test, the Facility shall, upon passing such capacity test, be deemed to have passed the Capacity Test provided herein, without the need to conduct a separate test.

DRAFT

**ATTACHMENT X**  
**UNIT INCIDENT REPORT**

(See Section 6.c. of Attachment Y)

Date: \_\_\_\_\_ No. \_\_\_\_\_

	ST
Start	
End	
Duration	
Derating	

- |   |
|---|
| <input type="checkbox"/> Unit Trip        |
| <input type="checkbox"/> Test             |
| <input type="checkbox"/> Forced Outage    |
| <input type="checkbox"/> Failure to Start |
| <input type="checkbox"/> Risk Condition   |
| <input type="checkbox"/> Force Majeure    |
| <input type="checkbox"/> Other            |
| <input type="checkbox"/> Derating         |

The on-duty Control Room Operator is responsible for the completion of this report each time a unit experiences an unplanned Shutdown, Start Failure or Derating. Attach Trip Log and Sequence of Events Log to this report for unit trips or when appropriate. Before resetting alarms and relays, verify that all alarms and protective relay actions are listed on the printout. If not listed, record them and attach to report.

Unit Status Prior to Incident:  Start-Up Load: \_\_\_\_\_  
 On-Line Voltage: \_\_\_\_\_

Load:  Constant Type of Fuel:  Coal  
 Increasing  Diesel  
 Decreasing

Cause of Incident:  Boiler Trip \_\_\_\_\_  
 Turbine Trip \_\_\_\_\_  
 Generator Trip \_\_\_\_\_

Brief Explanation of Incident:

Control Room Operator: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Corrective Action Taken:

\_\_\_\_\_  
 (Plant Manager)



## ATTACHMENT Y

### OPERATION AND MAINTENANCE OF THE FACILITY

1. Standards.

a. Operation and Maintenance. Seller shall operate the Facility in accordance with the terms of this Agreement, including the operating procedures in this Attachment Y (Operation and Maintenance of the Facility), and Section 2 (Operating Procedures) and Section 3 (Performance Standards) of Attachment B (Facility Owned By Seller). After the Commercial Operation Date, Seller agrees that no changes or additions to the Facility shall be made without the prior written approval by Company and, as necessary, amendment to the Agreement and/or any of the Attachments. Subject to those standards, Seller shall deliver to Company the available Net Electric Energy Output of the Facility under Company Dispatch and shall operate the Facility in a manner that maximizes the overall reliability of the Company System.

2. Trip Setting. The Facility shall not trip for an electrical fault or transient condition in the Company System of less than thirty (30) cycles duration for a three-phase fault located anywhere on the Company System or a trip of less than thirty (30) cycles duration for a single line to ground fault located anywhere on the Company system, or a resulting trip shall be considered a Unit Trip which shall count towards the number of allowable Unit Trips under Section 3.2(B)(5) (Unit Trips) and shall count against Seller's availability for both the EAF and EFOR. An electrical fault and subsequent clearing of such a fault shall be considered one transient event.

**[THE NUMBER OF CYCLES WILL BE DETERMINED BY THE IRS.]**

a. Seller's Centralized Control System. Seller shall provide and maintain in good working order all equipment, computers and software necessary to send telemetry data and place the Facility under the secure control, as approved by the Company, of Company's Energy Management System ("EMS"). Such Seller equipment, computers and software shall be referred to as the "Seller's Centralized Control System". Company shall review and provide prior written approval of the design for Seller's Centralized Control System to ensure security and compatibility with Company's Supervisory Control And Data Acquisition ("SCADA"), EMS and/or similar Company control devices. If at any time Seller materially changes the approved design of Seller's Centralized Control System, such changes will also require Company's review and prior written approval. Seller's Centralized Control System shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's Remote Terminal Unit ("RTU") or other specified interface, located in Company's portion of the Facility switching station, which shall provide the control signals to Facility and send feedback status to Company's EMS. Seller's Centralized Control System must, at a minimum:

- (1) Interface with Company's RTU (or other specified device):
  - a. monitor and control both the capacity and the energy output of the Facility consistent with this Agreement;
  - b. as required for the Company System Operator to dispatch the Facility as specified and approved by Company;

- c. for telemetry of electrical quantities such as gross MW, gross MVAR, net MW, net MVAR, power factors, voltages and currents and other quantities as identified by Company;
- d. monitor and control equipment such as circuit breakers and switches and other equipment as identified by Company.

3. Communications, Telemetry and Generator Remote Control Equipment.

a. At Seller's expense, Company shall purchase, install and own such communications, telemetry, remote control equipment, and all equipment related thereto as may reasonably be required in order to allow Company to dispatch the electric energy from the Facility as required to optimize economic and reliable operation of the Company System.

b. In addition, at Seller's expense, Company shall purchase, install and own communications, telemetry, and other related equipment, as Company deems appropriate, so Company can access information from Seller's operation including, but not limited to, the information necessary for Company to utilize its EMS and information on breaker position, the number of generating units on line, the amperage produced by each generator, the voltage produced by each generator, the kW's produced by each generator, and the kVAr produced by each generator to insure that Seller maximizes the overall reliability of the Company System.

c. All equipment in this Section 3 (Communications, Telemetry and Generator Remote Control Equipment) shall meet Company's reasonable specifications for transmission of data to locations specified by Company. Seller shall reimburse Company for its reasonable engineering, procurement, installation, equipment testing, and maintenance costs for installing and maintaining such communications, telemetry and remote control equipment (including but not limited to the remote terminal unit, generator control unit, and generator control panel). Seller shall install transducers as specified by Company, metering equipment as described in Section 12 (Metering), Company specified test switches for transducers and metering, AC and DC sources, telephone lines and/or microwave communication, and interconnecting wiring with proper identification for supervisory and communications equipment at no cost to Company. Subsequent to the Commercial Operation Date, Company may purchase and install additional communications, telemetry, and remote control equipment and may require Seller to install, any reasonably necessary additional transducers, test switches, AC and DC sources, telephone lines and interconnecting wiring at any time during the Term. If Company requires Seller to install additional communications, telemetry, and remote control equipment through no fault of the Seller, Seller's installation of such equipment shall be at the Company's expense.

4. Protective Equipment. Seller shall operate the Facility with all applicable installed system protective equipment in service whenever the generator(s) is connected to or is operated in parallel with the Company System, except for normal testing purposes in accordance with Good Engineering and Operating Practices. Seller shall have qualified personnel test and calibrate all protective equipment at regular intervals not to exceed one (1) calendar year. A unit functional trip test (which shall include an overspeed trip test on a steam turbine) shall be

performed annually in accordance with industry standards. Following a Major Generating Equipment Overhaul, a functional trip test shall be performed and shall simulate abnormal trip conditions separately at each primary element that initiates a trip and shall demonstrate that the trip system produces the appropriate equipment response. In no event shall any trip test conducted pursuant to this Section 4 (Protective Equipment) constitute a Unit Trip. If at any time Company has reason to doubt the integrity of the Facility's protective equipment and reasonably suspects that such purported loss of integrity would jeopardize the reliability of Company's supply of electric energy to its customers, Seller shall be required to reasonably demonstrate to Company's satisfaction the correct calibration and operation of the equipment in question. Company shall not be liable for any damage to Seller's equipment resulting from the failure of Facility protective equipment.

5. Personnel and System Safety. As required by the IRS, Seller shall provide, at a location approved by Company, a manual disconnect device which provides a visible break to electrically separate the Facility from the Company System. Such disconnect device shall be lockable in the OPEN position and accessible to Company personnel at all times. Notwithstanding any other provision of this Agreement, if at any time Company determines that the continued operation of the Facility (i) is likely to endanger the safety of persons and/or property, (ii) is likely to endanger the integrity of the Company System or (iii) is likely to have an adverse effect on the equipment of Company's customers, then in each case (i) through (iii), Company shall have the right to disconnect the Facility from the Company System as provided in Section 4.1(A) (Safety of Persons and/or Property) of the Agreement.

6. 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 individual generator unit, and using definitions provided by, and/or consistent with, NERC GADS 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 unit 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 Financing Parties 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. Notification of Forced Outages. Seller shall notify Company of the existence, nature, start time, and expected duration of the forced outage as soon as practicable, but in no event later than one (1) hour after the forced outage occurs. Seller shall immediately inform Company of changes in the expected duration of the forced outage unless relieved of this obligation by Company for the duration of each forced outage. In addition, Seller shall provide Company with subsequent written confirmation any time Seller experiences a Unit Trip or other unplanned outages or deratings. Such written confirmation shall contain information in sufficient detail for Company to analyze the incident, including the date and time of occurrence as well as the cause of the Unit Trip, if such cause is known. Attachment X (Unit Incident Report) is an example of a written confirmation. Company shall have the right to request reasonable additional information if necessary to evaluate the incident.

d. Additional Data Requests By Company. In addition, if so requested by Company, Seller shall by 9:00 a.m. HST of each Day provide Company with hourly, electric output data for the prior Day. Correction of any errors in this data shall be provided to Company by noon HST of the following Day.

e. 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.

7. Maintenance Records.

a. Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit, or make available 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) 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 fifteen (15) 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, a Qualified Independent Engineering Company will be chosen from the Qualified Independent Engineers List pursuant to Section 3.3(D)(1)(b) (Implementation of Independent Engineering Assessment) and the Qualified Independent Engineering Company will make a recommendation to remedy the situation pursuant to such Independent Engineering Assessment. Seller shall abide by the Qualified Independent Engineering Company's recommendation contained in such Independent Engineering Assessment. Both Parties shall equally share in the cost for the Independent Engineering Assessment. However, Seller shall pay all costs associated with implementing the recommendation contained in such Independent Engineering Assessment.

8. Schedule of Outages.

a. 60-Month Schedule. Prior to July 1 of each year, Seller shall submit for review and comment by Company an initial schedule of expected electric energy delivery periods for the sixty (60) month period beginning with January of the following calendar year (the "60-Month Schedule"). The 60-Month Schedule shall supersede any previous 60-Month Schedule and state the periods of operation, the dates and duration of all scheduled shutdowns, reductions of output, and scheduled maintenance, and the reasons therefor, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility. Seller shall (i) revise such 60-Month Schedule to accommodate reasonable requests made by Company no later than December 1 of the calendar year preceding the calendar year in which a scheduled revision is requested to take place; provided that, if the requested revision is one of timing, the revised date(s) shall be within the same calendar year as scheduled, so long as such revised schedule is consistent with Good Engineering and Operating Practices and does not, or is not reasonably likely to, have a material adverse effect on the performance of the Facility; and (ii) use commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such 60-Month Schedule (either delaying or advancing such 60-Month Schedule) reasonably requested by Company in the event that Company is experiencing or expecting to experience a short-term shortage of supply of energy, capacity or both or any other operational or electrical problems with the Company System.

b. Company's Replacement Costs. If the actual duration of a planned outage for the Facility exceeds the scheduled time planned for such outage, Seller shall pay to Company the difference between Company's costs for the unscheduled replacement energy and the energy costs, including but not limited to Fuel costs, that would have been incurred if the Facility had produced the energy for the entire time the unscheduled replacement energy was necessary. Replacement costs in these cases will be for the specific equipment which Company designates as having produced such replacement energy. This provision shall not apply in the event that Seller demonstrates that the extension is due to the discovery and prompt reporting to Company of a major equipment problem which Seller could not have reasonably anticipated prior to beginning the outage, provided that, following the discovery Seller makes commercially reasonable efforts (to include, but not be limited to, supplemental manpower, extended overtime,



expedited work by service shops, and expedited shipment of parts and material) to take measures which will return the Facility to service as soon as possible.

c. Normal Annual Maintenance Requirements. The normal annual maintenance requirements for the Facility are the equivalent of [ ] weeks of full plant outage. Notwithstanding the foregoing, Seller shall not take units down for maintenance such that the capability the Facility falls below [ ] MW at any given time, except with the Company's approval.

d. Approval By Company. Seller shall not schedule any maintenance not listed on the 60-Month Schedule that will reduce or eliminate electric output of the Facility without coordination with and approval of Company, which approval shall not be unreasonably withheld, delayed or conditioned, and shall use commercially reasonable efforts to provide Company with as much advance notice as is practicable prior to removing the Facility from service for such maintenance. Such removal from service will be treated as a forced outage if so required under NERC GADS.

e. Duration of Planned Outage. If the actual duration of a planned outage for the Facility is shorter than the scheduled time planned for such outage, Seller shall not be allowed to restart the Facility and be synchronized to Company System prior to the scheduled time without the prior consent of the Company System Operator. If, in the Company System Operator's sole discretion, Seller is allowed to restart the Facility and be synchronized to Company System prior to the scheduled time, Seller shall be compensated for the energy produced by the Facility and delivered to Company as provided in Section 5.1(C) (Energy Charge). However, the Facility's production and delivery of energy prior to the scheduled ending date of the planned outage shall have no effect on the calculation of EAF, EFOR or the Capacity Charge.

9. 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.

10. Facility Personnel. Prior to the Commercial Operation Date, personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility or capable of being at the Facility on no more than thirty (30) minutes notice, and shall be continuously reachable by phone or pager. Prior to the Commercial Operation Date, if Company notifies Seller of a period of potentially critical turbine starts at least thirty (30) minutes prior to the beginning of such period, then personnel capable of starting, running, and stopping the Facility shall be continuously available at the Facility during such identified critical period. Beginning with the date that Seller achieves the Commercial Operation Date, personnel capable of starting, operating, and stopping the Facility shall be continuously available at the Facility twenty-four (24) hours a day, seven (7) days a week.

11. Seller's Obligation to Maintain Workforce. If Seller experiences a work stoppage, work slowdown or walkout as a result of a labor dispute with its employees, or between any entity

with which Seller has subcontracted or to which Seller or any affiliate of Seller has assigned its rights and obligations, pursuant to the operation and maintenance contract between Seller and any affiliate of Seller, and the employees of such entity, Seller shall provide an adequate, qualified workforce to operate and maintain the Facility within ninety-six (96) hours after such stoppage, slowdown or walkout begins. If Seller experiences a work stoppage, work slowdown or walkout as a result of a storm, casualty or other catastrophic event, Seller shall provide an adequate, qualified workforce to operate and maintain the Facility within twenty-four (24) hours after such event ends and it is reasonably safe to restore operations and maintenance of the Facility. If Seller fails to meet either of these obligations, it shall pay to Company pursuant to Section 9.2(D) (Damages in the Event Seller Fails to Maintain Workforce) the sum of \$5,000 for each Day or partial Day during which such adequate, qualified workforce was not provided and there is a reduction in output below the level called for by normal Company Dispatch. Seller shall provide prompt written notice to Company as to the date and time at which it has met this obligation. If, at any time after the aforesaid ninety-six (96) hour period or twenty-four (24) hour period, as applicable, has expired, but during the continuation of Seller work stoppage, slowdown or walkout, the Facility is experiencing a reduction in output below the level called for by normal Company Dispatch, it shall be presumed that such reduction is the result of a lack of an adequate, qualified workforce unless Seller proves to Company's satisfaction, or, in the event of a dispute pursuant to Article 17 (Dispute Resolution), Seller proves in such an arbitration, that such reduction is attributable to other causes.

12. 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.

13. Metering.

a. Meters.

(1) Seller shall furnish, install and maintain in accordance with Company's requirements and at no charge to Company, all conductors, service switches, fuses, meter sockets and cases, switchboard meter test switches, meter panels, steel structures and similar devices required for service connection and meter installations. Attachment B (Facility Owned by Seller) shall identify in greater detail the equipment and devices to be furnished by Seller and the specifications and performance standards for such equipment and devices.

(2) Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of Net Electric Energy Output from the Facility sold to Company in kilowatts and kilowatthours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovarhours. 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 and install, own and maintain the infrastructure associated with the Revenue

Metering Package, including but not limited to the meter sockets, meter panel, junction boxes, pull boxes, duct lines, PT/CT structures, and pads, subject to Company's review and approval. Company shall test such revenue meter prior to installation and shall test such revenue meter annually. Seller shall reimburse Company for all reasonably incurred costs for procurement, installation, maintenance and testing work associated with the Revenue Metering Package (including applicable Hawai'i General Excise Taxes). **DEPENDING ON THE NATURE OF THE FACILITY AND THE GENERATING TECHNOLOGY EMPLOYED, COMPANY MAY REQUIRE REVENUE METER TESTS AS A PART OF CONTROL SYSTEM ACCEPTANCE TEST AND THE ON-LINE ACCEPTANCE TEST.** Seller may, at its own expense, monitor (by electronic means or otherwise) any meters described in this Section 13.a.(1)(Meters) of this Attachment Y (Operation and Maintenance of the Facility).

b. Meter Testing. Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the metering or telemetering equipment. Seller shall have the right to have a representative present during each such test. Either Party may request additional tests in addition to the annual test provided for in Section 13.a.(2)(Meters) of this Attachment Y (Operation and Maintenance of the Facility) and shall pay the cost of such additional test. If any of the metering equipment is found to be inaccurate at any time, Company shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as the estimate for correct meter readings, shall be determined in accordance with Section 13.c.(Corrections) of this Attachment Y (Operation and Maintenance of the Facility).

c. Corrections. If any test of metering equipment conducted by Company indicates that its meter readings are in error by one percent (1%) or more, the meter readings from such equipment shall be corrected as follows: (i) determine the error by testing the meter at approximately ten percent (10%) of the rated current (test amperes) specified for the meter; (ii) determine the error by testing the meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the meter; (iii) the average meter error shall then be computed as the sum of one-fifth (1/5) the error determined in (i) and four-fifths (4/5) the error determined in (ii). The average meter error shall be used to adjust the bills for the amount of electric energy supplied to Company for the previous six (6) months from the Facility, unless Company's or Seller's records conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error, except as specified in Section 6.4 (Adjustments) of the Agreement.

#### 14. Fuel and Other Materials.

a. Fuel. Seller shall be responsible for acquiring, transporting and storing at the Facility adequate supplies of Fuel and other materials used in the operation of the Facility during the Term. An adequate supply of Fuel at the Facility shall include sufficient Fuel to operate the Facility at full load for at least thirty (30) days, which shall be determined by Seller in good faith based upon (i) the average level of Company Dispatch during the previous six (6) months and (ii) the expected level of Company Dispatch during the following month as indicated by Company.

b. Fuel Report. Seller shall be responsible for providing Company with a Fuel Report in a format acceptable to Company pursuant to Section 2.3(A)(2)(ii) (Fuel Report) which demonstrates the Seller's ability to support the operation of the Facility pursuant to the terms and conditions of the Agreement for the Term of the Agreement. If Company determines in its sole discretion that the Fuel Report fails to demonstrate Seller's ability to support the operation of the Facility, Company shall have the right to direct Seller to modify its Fuel Report and take all actions required to ensure that Seller has the ability to support operation of the Facility as set forth in this Agreement.

c. Audit Rights for Inspection of Fuel Storage. Company shall have the right throughout the Term, upon reasonable prior notice, to (i) inspect the Fuel stored at the Facility, and (ii) audit the books and records of Seller to verify Seller's compliance with Section 14.a (Fuel) of this Attachment Y (Operation and Maintenance of the Facility). Seller shall make such records available at its offices in Hawai'i during normal business hours.

d. Low Fuel Supply. A finding of partial unavailability calculated pursuant to EAF shall be made at the end of the current Contract Year if Company determines in its sole discretion that Company must lower its dispatch due to Seller's failure to maintain an adequate Fuel supply.

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**ATTACHMENT Z**  
**CRITICAL SPARE PARTS**

(See Section 3.2(F) of the Agreement)

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**ATTACHMENT AA**  
**RENEWABLE PORTFOLIO STANDARDS**

(See also Section 2.1(G) of the Agreement)

1. Definitions.

(a) “PUC RPS Order” – Shall have the meaning set forth in Section 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards).

(b) “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.

(c) “RPS Modifications Document” – Shall have the meaning set forth in Section 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards).

(d) “RPS Pricing Impact” – Any adjustment in Energy Charge and/or Capacity Charge 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 (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.

2. Renewable Portfolio Standards. Pursuant to Section 2.1(G) of the Agreement, Seller shall develop Seller’s RFP Modifications Proposal in the event that as a result of any RPS Amendment, the electric energy delivered from the Facility should no longer qualify as “renewable electrical energy”.

3. 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).

4. 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 Energy Charge and Capacity Charge 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 6 (PUC RPS Order) of this Attachment AA (Renewable Portfolio Standards) ("PUC RPS Order").
5. 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 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards), 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 9 (Dispute) of this Attachment AA (Renewable Portfolio Standards). 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 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards).
6. 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 6 (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). Neither Company or Seller shall be required to implement any RPS Modification without a PUC RPS Order and the Agreement shall remain in effect in its current form at the time until such PUC RPS Order is received.

7. Company's Rights. The rights granted to Company under Section 4 (RPS Modifications Document) of this Attachment AA (Renewable Portfolio Standards) and Section 5 (Failure to Reach Agreement) of this Attachment AA (Renewable Portfolio Standards) 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 9 (Dispute) of this Attachment AA (Renewable Portfolio Standards), as a result of a failure to agree upon and execute any RPS Modifications Document.
8. Limited Purpose. This Attachment AA (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 the Agreement. Revisions to the Agreement in accordance with the provisions of this Attachment AA (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default.
9. 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 5 (Failure to Reach Agreement) of this Attachment AA (Renewable Portfolio Standards), 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.
  - (a) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 days:
    - i. 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;

- ii. How Seller would implement such measures;
  - iii. 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;
  - iv. The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and
  - v. 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 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.
  - (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.

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## ATTACHMENT BB

### GENERATOR ACCEPTANCE TEST GENERAL CRITERIA

(See definition of Generator Acceptance Test in Section 1 (Definitions))

**[THIS ATTACHMENT MAY 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 Generator Acceptance Test in accordance with Good Engineering and Operating Practices and with the terms of this Agreement. The Generator Acceptance Test shall, at a minimum, determine the Facility's compliance with the following requirements in Attachment B (Facility Owned by Seller):

1. Section 3.a. (Voltage/Reactive Power Requirements).
2. Section 3.g. (Frequency Requirements).
3. Section 3.c. (Reactive Amount).
4. Section 3.j. (Harmonics Standards).
5. Section 3.m. (Inertia Constant).
6. Section 3.o. (Short Circuit Ratio).
7. Section 3.p. (Open Circuit Transient Field Time Constant).
8. Section 3.q. (Generator Step-Up Transformer Impedance).
9. Section 3.n.ii. (Response Ratio).
10. Section 3.n.i. (Ceiling Voltage).
11. Section 3.n.iii. (Excitation Source Immunity).
12. Section 3.n.iv. (Field Forcing Ability).
13. Section 3.g.ii. (Droop Characteristic).
14. Section 3.g.vi. (Performance during underfrequency events).
15. Section 3.g.vii. (Performance during overfrequency events).
16. Section 3.g.iii. (Droop Response).

17. Section 3.s. (Cycling of the Generating Units).
18. Section 3.t. (Start-up Periods).
19. Section 3.d (Ramp Rates).

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