



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**

**FOR**

**VARIABLE RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

**FEBRUARY 2, 2018**

**Docket No. 2017-0352**

This Request for Proposals (“RFP”) is a DRAFT only. Maui Electric Company, Ltd. (“Maui Electric”) will employ a competitive bidding process to select renewable energy projects consistent with the State of Hawai‘i Public Utilities Commission’s (“PUC”) Competitive Bidding Framework. Under the Competitive Bidding Framework, Maui Electric has filed the initial draft RFP with the PUC. Maui Electric then sought input from prospective Proposers and other stakeholders through the RFP process and the PUC as well as from the Independent Observer as described in the draft RFP and has modified the draft RFP to the extent feasible to address input received in order to foster a robust competitive process. This proposed final RFP is being submitted to the PUC for approval and is subject to further revision based upon direction received from the PUC. After approval by the PUC, Maui Electric will issue the final RFP. The proposed schedule for the foregoing process is set forth in this draft RFP in Table 1.

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## **Chapter 1: Introduction and General Information**

Maui Electric Company, Ltd. (“Maui Electric” or the “Company”) seeks proposals for the supply of qualified variable renewable dispatchable generation to be delivered to the Maui Electric System in accordance with this Request for Proposals (“RFP”). The total amount of variable renewable dispatchable generation being solicited for Maui is the capability to provide 270,000 megawatt hours<sup>1</sup> (“MWh”) annually, over a preferred term of twenty (20) years.<sup>2</sup> The resources acquired through this RFP must have Guaranteed Commercial Operations Dates that are no later than December 31, 2022 with the intent being that successful Proposers will be able to take advantage of the 2019 investment tax credit. Guaranteed Commercial Operations Date is a Threshold Requirement for this RFP. See Section 4.3 of this RFP.

The Company intends to solicit renewable dispatchable generation in stages. In the event the Company does not procure all the variable renewable dispatchable generation needed to meet the Company’s requirements set forth in the PSIP in this first “Stage 1” of the procurement process, or if additional generation is needed as otherwise determined by the Company, then the Company intends to issue “Stage 2” of this RFP to procure such additional generation. For Stage 1 of this solicitation the Company will not be submitting a self-build and the Company will not be accepting any affiliate bids, however, the Company reserves the right to allow such options in Stage 2.

The Company intends to contract for variable renewable dispatchable generation projects under this RFP using its new Renewable Dispatchable Generation Power Purchase Agreement (“RDG PPA”), which treats variable resources as fully dispatchable. The Company has created two versions of its model RDG PPA. The photovoltaic version (“PV”) is attached as Appendix C1 to this RFP, and the wind version is attached as Appendix C2 to this RFP.<sup>3</sup> The Company plans to issue a separate RFP for renewable firm, dispatchable capacity and energy for Maui.

Each successful Proposer will provide variable renewable dispatchable generation to the Company pursuant to the terms of an RDG PPA to be negotiated between the Company and Proposer, which will also be subject to PUC review and approval. If the proposed Project is for a

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<sup>1</sup> The resource need for the island of Maui identified in the Companies’ Power Supply Improvement Plans Update Report: December 2016 (“PSIP”) identified 60 MW of grid-scale wind in 2020. As the RFP only contains an annual energy target, these megawatts were converted to MWh for this RFP. For simplicity, Maui Electric has described the energy target as the capability to provide 270,000 MWh per year.

<sup>2</sup> The Company’s preferred term of 20 years reflects the assumptions and planning horizon used in the PSIP Update Report: December 2016 for the variable renewable dispatchable generation. Also, one goal of the RFP is to obtain renewable dispatchable generation at a price that will lower bills for customers. In the Company’s experience, PPAs in the 20-year range have typically provided the overall best pricing for customers while also providing adequate revenue security for renewable energy developers, which in turn should lower a developer’s cost of capital and lead to lower PPA pricing. Further, the term of a PPA may also impact accounting treatment. On this point, issues relating to accounting treatment have traditionally increased when the term of a PPA extends beyond 20 years.

<sup>3</sup> Note that the RDG PPAs are not provided in Appendices C1 and C2 of this RFP. The body of the Companies’ RDG PPAs for both PV and wind are the same for all three Companies and are therefore not reproduced as part of this exhibit. Some of the attachments to the RDG PPA for both PV and wind are island specific and such island specific attachments for Maui are provided in Exhibit 7 of this transmittal filing. Where references are made in this RFP to Appendix C1 and C2, please refer to the Oahu RDG PPA provided in Exhibit 2 and to Attachment B provided in Exhibit 7 of this transmittal filing.

technology other than wind or PV and/or contains an energy storage component, then the terms of the RDG PPA will be modified to address the specific technology and/or to incorporate the storage component. Revisions to the RDG PPA will be necessary to incorporate storage and would be negotiated between the Companies and the Final Award Group for a Project that includes storage. Such revisions shall include, but shall not be limited to the RDG PPA sections listed in Appendix M attached to this RFP.

The Company will evaluate Proposals using the evaluation and selection process described in Chapter 4 of this RFP. The Company will evaluate and select Proposals based on both price and non-price factors that impact the Company, its customers, and communities affected by the proposed projects. The amount of generation that the Company may acquire from this RFP depends on, among other things, the quality of bids received in response to this RFP; economic comparison to other RFP responses; updates to the Company's forecasts; transmission availability; and changes to regulatory or legal requirements.

A detailed description of the technical requirements for Proposers is included in Chapter 2 of this RFP, in the Proposer's Response Package attached as Appendix B to this RFP, in the RDG PPAs attached as Appendices C1 and C2 to this RFP, and in the Electronic Procurement Platform described in Section 3.2 of this RFP.

All requirements necessary to submit Proposal(s) are provided in this RFP. All capitalized terms used in this RFP shall have the meaning set forth in the Glossary of defined terms attached as Appendix A to this RFP. Capitalized terms that are not included in Appendix A shall have the meaning ascribed in this RFP.

## **1.1 Authority and Purpose of the Request for Proposals**

- 1.1.1 This RFP is issued in response to Order No. 34856 issued on October 6, 2017 in Docket No. 2017-0352 as part of a procurement process established by the State of Hawai'i Public Utility Commission ("PUC").
- 1.1.2 This RFP is subject to Decision and Order ("D&O") No. 23121 in Docket No. 03-0372 (To Investigate Competitive Bidding for New Generating Capacity in Hawai'i), which sets forth the PUC's Framework for Competitive Bidding ("Framework" or "Competitive Bidding Framework").
- 1.1.3 All Proposals submitted in response to this RFP must utilize qualified Renewable Energy resource(s) as defined under the Hawai'i Renewable Portfolio Standards ("RPS").<sup>4</sup> By statute, "Renewable Energy" means energy generated or produced using the following sources: (1) wind; (2) the sun; (3) falling water; (4) biogas, including landfill and sewage-based digester gas; (5) geothermal; (6) ocean water, currents, and waves, including ocean thermal energy conversion; (7) biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste; (8) biofuels; and (9) hydrogen produced from renewable energy sources. HRS § 269-91.

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<sup>4</sup> RPS requirements in Hawai'i are codified in Hawai'i Revised Statutes ("HRS") §§ 269-91 through 269-95.

- 1.1.4 Proposers should thoroughly review the Hawaiian Electric Companies' Power Supply Improvement Plans ("PSIPs"), filed in Docket No. 2014-0183 on December 23, 2016 ("PSIP Update Report: December 2016").
- 1.1.5 Consistent with the PSIP Update Report: December 2016, the primary purpose of this RFP is to obtain Renewable Energy so that the Company can continue to transform Maui's power supply portfolio from fossil fuel-based generation to renewable-based generation and lower costs for customers. The Company does not have a predetermined preference for a particular renewable energy source or technology and acknowledges that the requirements of this RFP may be satisfied by a portfolio of generation resource options. The Company believes that this approach allows for flexibility and encourages Proposers to develop and submit a broad range of innovative Proposals.
- 1.1.6 This RFP is intended to elicit Proposals that will enable Maui Electric to obtain variable renewable dispatchable generation at a competitive, reasonable cost with reliability, viability and operational characteristics consistent with the Company's long-term planning and energy policy requirements.

## **1.2 Scope of the RFP**

- 1.2.1 Consistent with the resource needs for the Island of Maui in the Company's PSIP Update Report: December 2016, the Company is seeking Proposals for the capability to provide the supply of approximately 270,000 MWh per year ("MWh/year") of variable renewable dispatchable generation to be delivered to the Maui Electric System on the Island of Maui in the State of Hawai'i, under contract terms to be negotiated between the Company and the Proposer in an RDG PPA.
- 1.2.2 This RFP targets Projects that can satisfy the resource needs identified in the PSIP Update Report: December 2016. In the event the Company does not procure all the variable renewable dispatchable generation needed to meet the Company's requirements set forth in the PSIP in this first "Stage 1" of the procurement process, or if additional generation is needed as otherwise determined by the Company, then the Company intends to issue "Stage 2" of this RFP to procure such additional generation. System needs, including available hosting capacities, will be updated prior to the issuance of Stage 2 or any subsequent RFPs. The Company would consider Projects that cannot reach a Commercial Operations Date of December 31, 2022 in Stage 2 or in subsequent RFPs.
- 1.2.3 The Company is focused on helping Projects meet the 2019 investment tax credit, and is aiming to sign two (2) PPAs on Maui in Stage 1 of the procurement process. The Company believes that limiting the number of Projects during Stage 1 of the procurement process will help Projects selected to the Final Award Group move through contracting and PUC approval in a more timely manner and improve the prospects of meeting the aggressive timeline required to optimize benefits to customers. The targeted number of Proposals sought in Stage 1 was determined based on the Companies' desire to meet the ITC deadlines and the Company's required Commercial Operations Date of December 31, 2022. Several factors influence the speed of the selection, contracting, and

development of Projects. Projects that require extensive system upgrades to integrate into the system will take longer to complete studies for and to interconnect onto the system. Therefore, the Company considered factors such as the size of the largest contingency unit and available hosting capacity<sup>5</sup> on transmission-level circuits in its determination of how many projects to select in Stage 1. The Company also evaluated the time it is estimated to take to expedite Projects through the contracting and Interconnection Requirements Study phases. As noted in Section 1.2.2 of this RFP, if the Company is unable to procure all the variable renewable dispatchable generation needed to meet the Company's requirements in Stage 1, the remaining variable renewable dispatchable generation need will be sought in Stage 2 of this RFP. In Stage 2, the Companies will also use lessons learned in Stage 1 and reevaluate the storage options and requirements being sought to take advantage of advancements in technology and declining storage costs.

- 1.2.3.1 Of the two Proposals targeted to be awarded in Stage 1 of this Maui Variable RFP, the Company will select one (1) Project from a Company-owned Site, referred to as the Waena site, and one (1) Project elsewhere on Maui.

The Company acquired the Waena site years ago realizing the location offered attractive attributes for multiple purposes, including the siting of energy generation facilities. The property is located close to a transmission line that would allow for strategic interconnection. It is in a location that makes it more resilient to tsunamis or floods than other generation facilities. It is already zoned heavy industrial, making it a valuable resource on a land-limited island like Maui. And it has good solar exposure and is topographically attractive to site a PV generation facility.

The property is approximately sixty-six (66) acres, making it large enough to house several different functional facilities. To interconnect into the Company's electric system, a central switchyard would provide the most efficient, economical and flexible interconnection alternative. The Company is building this switchyard to allow either Company or privately-owned facilities to interconnect to this switchyard. This will offer Proposers a less costly and simpler interconnection, as the Proposer will just be responsible for its interconnection from its facility into the switchyard, both located on the Waena Site. The Company will offer the use of the Waena Site for nominal consideration. (More details are provided in Section 3.10.2 and Appendix K of this RFP.) Thus, by offering portions of the Waena site to Proposers within this RFP, and with plans to build a switchyard to interconnect to, the Company envisions attracting many viable and competitively priced Proposals.

More information on the Waena and Non-Waena sited Project configurations is provided in Section 1.2.12 of this RFP.

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<sup>5</sup> For context, each transmission-level circuit has a certain amount of "hosting capacity." This is the amount of power a conductor can safely carry within engineering limits. For the purposes of this RFP, the hosting capacity is expressed in megawatts ("MW"). The available hosting capacity on a given transmission-level circuit is the difference between the total hosting capacity and the amount of peak power already carried on a transmission circuit.



- 1.2.4 To avoid increasing the size of contingency events and to ensure system reliability requirements, no single point of failure from the Facility shall result in a decrease in net electrical output greater than 30MW. The current largest single contingency on the Company's system is the size of the largest generating unit on the System at any given time. The Facility planned outages should not exceed 20MW. These proposed renewable generation limits are Eligibility Requirements for this RFP. See Section 4.2 of this RFP. The minimum size of a Facility will be the threshold for a waiver from the Competitive Bidding Framework applicable to Maui. See Part II.A.3.f of the Framework.
- 1.2.5 Proposals that will require system upgrades, where the construction of which, in the judgment of the Company (in consultation with the IO), creates a significant risk that the Guaranteed Commercial Operations Date will not be met or the Project will not be able to capture the ITC) will not be considered in this RFP. Guaranteed Commercial Operations Date is a Threshold Requirement for this RFP. See Section 4.3 of this RFP.
- 1.2.6 Proposers will determine their Project Site. Proposers have the option of submitting a Proposal for any potential Company Offered Sites that may be offered as described in Section 3.10 of this RFP or for other Project Sites they determine and secure.
- In Stage 1, the Company will select one Project at the Waena Site and one Project elsewhere. Each Project will be evaluated and selected through a separate evaluation process, but each will follow the steps of Section 4 of this RFP.
- 1.2.7 For purposes of this RFP, the Company will only consider Proposals for Projects located on the Island of Maui. This is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.
- 1.2.8 Each Proposal submitted in response to this RFP must represent a Project that is capable of meeting the requirements of this RFP without having to rely on the completion or implementation of any other Project submitted in response to this RFP or any other RFP.
- 1.2.9 Successful Proposers will own and be responsible for the operation of the Facility during the term of the PPA and will be responsible for all costs, including Project development, completion of an Interconnection Requirement Study ("IRS"), land acquisition,<sup>6</sup> permitting, financing, construction of the facility and all Interconnection Facilities, and operations and maintenance.
- 1.2.10 PPAs for projects selected through this RFP will be based on the RDG PPA, as described in Section 3.8 of this RFP. Under the RDG PPA, the Company will maintain exclusive rights to fully direct the dispatch of the Facility.
- 1.2.11 The preferred Term of the PPA is twenty (20) years.
- 1.2.12 Proposal Configurations:

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<sup>6</sup> See Section 3.10 regarding results of the Land RFI.

1.2.12.1 For NON-WAENA Sited Projects only:

Proposals may be submitted in either of the following configurations:

- **Not coupled with energy storage:** Where a proposed Facility is not coupled with energy storage, the maximum output of the Facility must not exceed the transmission-level available hosting capacity of the transmission-level circuit to which the Facility will be interconnected.<sup>7</sup> Available Transmission Circuit Capacity is a Threshold Requirement for this RFP. See Section 4.3 of this RFP.
- **Coupled with energy storage:** Proposals may contain storage which may be charged during periods when full potential export is not being taken by the Company, and used to provide energy to the Company during periods when source energy is not available. While the Company maintains complete charging rights (limited to the periods during which the generator is generating) and dispatch rights over the entire Facility and may charge and dispatch the Facility at any time, the energy storage should be sized at a minimum to provide sufficient storage capacity equal to the greatest amount of projected energy produced from the Facility during the Facility's projected most productive continuous four hours at any period during the year and designed to provide one full discharge for every 24 hours. The Company will reserve the right to dispatch net energy available from the Facility, reflecting the combined available renewable and storage available capacity, at times that are beneficial to the system and for customers under the terms of the PPA. Flexibility in charging/discharging periods is necessary due to uncertainty in future demand profiles over the life of the contract. The proposed storage must be charged solely by the Facility and grid charging will not be allowed.

Proposers are encouraged to confer with the Company as described in Section 2.2.1 of this RFP should they have any questions about transmission-level or system-level available hosting capacity or excess energy concerns.

1.2.12.2 For WAENA Projects only:

- Proposals must be configured as PV coupled with energy storage only.
- Proposals must contain storage which may be charged during periods when full potential export is not being taken by the Company, and used to provide energy to the Company during periods when source energy is not available. While the Company maintains complete charging rights (limited to the periods during which the generator is generating) and dispatch rights over the entire Facility and may charge and dispatch the Facility at any time, the energy storage should be sized at a minimum to provide sufficient storage capacity equal to the greatest amount of projected energy produced from the Facility during the Facility's projected most productive continuous four

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<sup>7</sup> Proposers are advised that transmission circuit loadings may change in the future. This will reduce the available transmission-level hosting capacity.

hours at any period during the year and designed to provide one full discharge for every 24 hours. The Company will reserve the right to dispatch net energy available from the Facility, reflecting the combined available renewable and storage available capacity, at times that are beneficial to the system and for customers under the terms of the PPA. Flexibility in charging/discharging periods is necessary due to uncertainty in future demand profiles over the life of the contract. The proposed storage must be charged solely by the Facility and grid charging will not be allowed.

Proposers are encouraged to confer with the Company as described in Section 2.2.1 of this RFP should they have any questions about transmission-level or system-level available hosting capacity or excess energy concerns.

- 1.2.13 Consistent with the assumptions in the PSIP Update Report: December 2016, Proposers shall pursue all available applicable federal and state tax credits, and Proposal pricing must be set to incorporate the benefit of such tax credits or to pass the benefit of the tax credits to the Company's customers. See Attachment J, Section 5 of the RDG PPA, attached as Appendix C1 and Appendix C2 to this RFP.
- 1.2.14 Payments under the RDG PPA will be made by the Company to the Seller as described in the RDG PPA, attached as Appendix C1 and Appendix C2 to this RFP.
- 1.2.15 The Project will interconnect to the Company's grid at the 69kV level. Interconnection Requirements and the IRS process are described in Section 2.3 and Section 5.1 of this RFP.
- 1.2.16 A Proposer's proposed Interconnection Facilities shall be compatible with the Company System and must meet the requirements set forth in the IRS and the PPA, as may be revised to reflect the results of the IRS. Proposer shall take responsibility for all costs related to the design and installation of all Interconnection Facilities. The communications and control requirements will be determined during the Interconnection Requirements review and will define telemetry, control, and communications facilities provided by the Proposer to the Point of Interconnection. Alternate control will be required.
- 1.2.17 Storage systems that are coupled with a Facility must be charged only by Renewable Energy generated by the Facility (and not delivered from the grid). This is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.
- 1.2.18 Supplemental equipment to generating resources such as power electronics and storage systems may be utilized by the Seller, at the Seller's discretion, to meet the Performance Standards for energy delivery specified in the RDG PPA, in addition to consideration of storage to supply Dispatchable energy during periods where the source Renewable Energy from the Facility is not available as described in Section 1.2.12. Where supplemental equipment and/or storage are utilized, the functionality and characteristics of the storage must be maintained throughout the term of the PPA.

- 1.2.19 If selected, Proposers shall take responsibility for the decommissioning of the Project and the restoration of the Site upon the expiration of the PPA, as described in Attachment G, Section 7 of the RDG PPA.

### **1.3 Competitive Bidding Framework**

Consistent with the Framework, this RFP outlines the Company's requirements in relation to the resources being solicited and the procedures for conducting the RFP process. It also includes information and instructions to prospective Proposers participating in and responding to this RFP.

### **1.4 Role of the Independent Observer**

- 1.4.1 Part III.C.1 of the Framework sets forth the circumstances under which an Independent Observer is required in a competitive bidding process. The PUC has retained an Independent Observer both to advise and monitor the process for this RFP. All phases of the RFP process will be subject to the Independent Observer's oversight, and the Independent Observer will coordinate with PUC staff throughout the RFP process to ensure that it is undertaken in a fair and unbiased manner. In particular, the Company will review and discuss with the Independent Observer all decisions regarding the evaluation, disqualification, non-selection, and selection of Proposals prior to notifying Proposers of such decisions.

- 1.4.2 The role of the Independent Observer, as described in the Framework, will include but is not limited to:

- Monitor all steps in the competitive bidding process
- Monitor communications (and communications protocols) with Proposers
- Monitor adherence to the Company's Code of Conduct
- Submit comments and recommendations, if any, to the PUC concerning the RFP
- Review the utility's Proposal evaluation methodology, models, criteria, and assumptions
- Review the utility's evaluation of Proposals
- Advise the utility on its decision-making
- Participate in dispute resolution as set forth in Section 1.10 of this RFP
- Monitor contract negotiations with Proposers
- Report to the PUC on monitoring results during each stage of the competitive bidding process
- Provide an overall assessment of whether the goals of the RFP were achieved

- 1.4.3 The Independent Observer for this RFP is **Navigant Consulting, Inc.**

### **1.5 Communications Between the Company and Proposers – Procedures Manual**

- 1.5.1 Communications and other procedures under this RFP are governed by the "Procedures Manual," developed by the Company as required by the Framework, which describes: (1) the protocols for communicating with prospective Proposers and others; (2) the

evaluation process in detail and the methodologies for undertaking the evaluation process; (3) the documentation forms, including logs for any communications with bidders; and (4) other information consistent with the requirements of the RFP process. The Company's Code of Conduct Procedures Manual is attached as Appendix D to this RFP.

- 1.5.2 Pursuant to the Procedures Manual, all pre-Proposal communication with prospective Proposers will be conducted via the Company's website, Electronic Procurement Platform and/or electronic mail ("Email") as specified in the Procedures Manual. Any Email to the Company must be sent to the address specified in Section 1.6 of this RFP (the "RFP Email Address"). Any correspondence sent to any other Email address will not receive a response. Frequently asked questions submitted by prospective Proposers and the answers to those questions may be posted on the Company website or sent through the Electronic Procurement Platform to registered individuals. The Company reserves the right to respond only to comments and questions it deems are appropriate and relevant to the RFP.
- 1.5.3 After submission of Proposals, all contacts between the Company and Proposers will be coordinated by the Energy Contract Manager identified in Section 1.6 of this RFP. During this post-Proposal submission period, the Company may have communications and meetings with individual Proposers for purposes of clarifying Proposals.
- 1.5.4 Each Proposer must execute a Mutual Confidentiality and Non-Disclosure Agreement ("NDA") attached as Appendix F to this RFP. The full execution of agreements or other documents required is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP. All confidential information will be transmitted to the requesting party via the RFP email address and/or the Electronic Procurement Platform only after receipt of such fully executed NDA. Notwithstanding the execution of a NDA by a requesting party, the Company reserves the right, in its sole discretion, not to disclose certain confidential information.
- 1.5.5 Except as expressly permitted and in the manner prescribed in the Procedures Manual, any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP is prohibited.

## 1.6 Company Contact for Proposals

The Energy Contract Manager and primary contact for this RFP is:

Sarie Uechi  
Energy Contract Manager  
Hawaiian Electric Company, Inc.  
Central Pacific Plaza Building, Suite 2100  
220 South King Street  
Honolulu, Hawai'i 96813

RFP Email Address: [mauivariablerfp@hawaiianelectric.com](mailto:mauivariablerfp@hawaiianelectric.com)

## 1.7 Proposal Submittal Requirements

- 1.7.1 Detailed requirements regarding the form and organization of the Proposal are set forth in Chapter 3 of this RFP. Proposals must be submitted in the format specified in the Electronic Procurement Platform and must include all of the information in the Proposer's Response Package attached as Appendix B to this RFP.
- 1.7.2 In submitting a Proposal in response to this RFP, each Proposer certifies that the Proposal has been submitted in good faith and without fraud or collusion with any other person or entity. The Proposer shall complete and submit with each Proposal, a Certificate of Non-Collusion in the form provided on the Electronic Procurement Platform. Signature and certification are Eligibility Requirements for this RFP. See Section 4.2 of this RFP.
- 1.7.3 Proposals must be submitted via the Electronic Procurement Platform by 2:00 pm Hawai'i Standard Time (HST) on the date shown in the RFP Schedule in Section 3.1, Item 10 of this RFP. Incomplete Proposals will not be accepted. No hard copies of the Proposals will be accepted.

## 1.8 Proposal Fee

- 1.8.1 Proposers are required to tender a non-refundable Proposal Fee of \$10,000 for each Proposal submitted. The Proposal Fee submission deadline is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.
- 1.8.2 Proposers may submit multiple Proposals for projects. If such Proposals are on different Sites or for different generation technologies, a separate Proposal Fee must be paid for each Proposal, except that a Proposer may submit a Proposal for a Project with and without a storage option for a Project on the same Site for a single Proposal Fee, as described in Section 1.2.12 of this RFP. Proposers may submit up to three (3) Proposals with minor variations (i.e., pricing terms, size) (for with and without storage) on the same Site using the same generation technology without having to pay a separate Proposal Fee

for these three (3) variations.<sup>8</sup> The method of submitting multiple Proposals within this RFP is described in Section 3.2 and Appendix E. Whether or not a separate Proposal Fee is required each variation of a Proposal, no matter how minor such variation is, should be submitted separately through PowerAdvocate, including separate entries for a proposal with storage and without.

- 1.8.3 The Proposal Fee must be in the form of a cashier's check made payable to Maui Electric Company, Ltd. and must be delivered and received by the Company's Energy Contract Manager by 2:00 pm (HST) on the date shown in the RFP Schedule in Section 3.1, Item 10 of this RFP. Proposers are strongly encouraged to utilize a delivery service method that provides proof of delivery to validate delivery date and time.

If the Proposal Fee is to be delivered by U.S. Postal Service (with registered, certified, receipt verification), the Proposer shall use:

Sarie Uechi  
Energy Contract Manager  
Hawaiian Electric Company, Inc.  
Mail Code CP21-IU  
PO Box 2750  
Honolulu, HI 96840

If the Proposal Fee is to be delivered in person, or via an alternative registered, certified delivery service, the Proposer shall use the address specified in Section 1.6.

## 1.9 No Self-Build or Affiliate Options

The Competitive Bidding Framework allows the Company the option to offer a Proposal in response to this RFP ("Self-Build Option"). However, the Company will NOT be providing a Self-Build Option in response to this Stage 1 of the RFP but reserves the right to do so in Stage 2 or in future solicitations. Therefore, the Company will follow certain procedures designed to safeguard against and address concerns associated with preferential treatment or preferential access to information to agents of the Company who may participate in the development of a future Self-Build Option (the "Self-Build Team"). The procedures of the Company's Code of Conduct and the Procedures Manual submitted to the PUC in Docket No. 2017-0352 on October 23, 2017 are in place to safeguard against and address concerns associated with preferential treatment or preferential access to information. A copy of the Procedures Manual is attached as Appendix D to this RFP.

The Competitive Bidding Framework also allows affiliates of the Company to submit Proposals to RFPs issued by the Company. However, for this Stage 1 of the RFP, the Company will not accept any Proposals from affiliates but reserves the right to do so in Stage 2 or in future solicitations.

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<sup>8</sup> To the extent that Proposers submit Proposals with and without storage, a total of up to (6) six variations may be submitted for a single Proposal Fee, 3 for the with storage Proposal and 3 for the without storage Proposal.

## 1.10 Dispute Resolution Process

- 1.10.1 If disputes arise under the RFP, the provisions of Section 1.10 of this RFP and the dispute resolution process established in the Framework will control. See Part V of the Framework.
- 1.10.2 Proposers who challenge or contest any aspect of the RFP process must first attempt to resolve their concerns with the Company and the Independent Observer (“Initial Meeting”). The Independent Observer will seek to work cooperatively with the parties to resolve any disputes or pending issues and may offer to mediate the Initial Meeting to resolve disputes prior to such issues coming before the PUC.
- 1.10.3 Any and all disputes arising out of or relating to the RFP which remain unresolved for a period of twenty (20) days after the Initial Meeting takes place may, upon the agreement of the Proposer and the Company, be submitted to confidential mediation in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (“DPR”) (or its successor) or, in its absence, the American Arbitration Association then in effect (“Mediation”). The Mediation will be administered by DPR. If the parties agree to submit the dispute to Mediation, the Proposer and the Company shall each pay fifty percent (50%) of the cost of the Mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own Mediation costs and attorney’s fees.
- 1.10.4 If settlement of the dispute is not reached within sixty (60) days after commencement of the Mediation, or if after the Initial Meeting, the parties do not agree to submit any unresolved disputes to Mediation, then as provided in the Framework, the Proposer may seek a determination of the issue by the PUC.
- 1.10.5 In accordance with the Framework, the PUC will serve as the arbiter of last resort for any disputes relating to this RFP involving Proposers. The PUC will use an informal expedited dispute resolution process to resolve the issue within thirty (30) days, as described in Parts III.B.8 and V of the Framework.<sup>9</sup> There will be no right to hearing or appeal from this informal expedited dispute resolution process.
- 1.10.6 If any Proposer initiates a dispute resolution process for any dispute or claim arising under or relating to this RFP, other than that permitted by the Framework and Section 1.10 of this RFP (e.g. arbitration or court proceeding), then such Proposer shall be responsible for any and all attorney’s fees and costs that may be incurred by the Company or the PUC in order to resolve such claim.

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<sup>9</sup> The informal expedited dispute resolution process does not apply to PUC review of contracts that result from the RFP. See Decision and Order No. 23121 at 34-35. Further, the informal expedited dispute resolution process does not apply to the Framework’s process relating to issuance of a draft and final RFP, and/or to the PUC approval of the RFP because: (1) the Framework (and the RFP) set forth specific processes whereby interested parties may provide input through the submission of comments; and (2) the Framework’s dispute resolution process applies to “Bidders” and there are no “Bidders” at this stage in the RFP process.



**1.11 No Protest or Appeal**

Subject to Section 1.10 of this RFP, no Proposer or other person will have the right to protest or appeal any award of a Project made by the Company.

**1.12 Modification or Cancellation of the Solicitation Process**

- 1.12.1 Unless otherwise expressly prohibited, the Company may, at any time up to the final award, in consultation with the Independent Observer, postpone, withdraw and/or cancel any requirement, term or condition of this RFP, including deferral of the award of any contract, and/or cancellation of the award all together, all of which will be without any liability to the Company.
- 1.12.2 The Company may modify this RFP subject to requirements of the Framework, whereby the modified RFP will be reviewed by the Independent Observer and submitted to the PUC thirty (30) Days prior to its issuance, unless the PUC directs otherwise. See Framework Part IV.B.10. The Company will follow the same procedure with regard to any potential postponement, withdrawal or cancellation of the RFP or any portion thereof.

**Chapter 2: Resource Needs and Requirements**

**2.1 Performance Standards**

Proposals must meet the attributes set forth in this RFP and the Performance Standards identified in the RDG PPA. This RFP and the RDG PPA set forth the minimum requirements that all Proposals must satisfy to be eligible for consideration in this RFP. Attributes and Performance Standards are Threshold Requirements for this RFP. See Section 4.3 of this RFP. Additional Performance Standards may be required based on the results of the IRS.

**2.2 Transmission System**

- 2.2.1 Company information regarding an initial assessment of potential MW capacity of 69 kV transmission circuits providing possible points of interconnection has been developed for sites included in the Land RFI as described in Section 3.10 of this RFP and will be made available to Proposers only after execution of a Non-Disclosure Agreement. Non-confidential information has been published in the Companies' December 23, 2016 PSIP Update Report beginning on page N-57 of Appendix N. Proposers should perform their own evaluation of project locations, and the Company does not guarantee any project output or ability to connect based on such information. Proposers are strongly encouraged to meet with the Company prior to submitting a Proposal to discuss specific questions regarding a particular Proposal. Please direct inquiries to Interconnection Services at [Interconnection.services@hawaiianelectric.com](mailto:Interconnection.services@hawaiianelectric.com).
- 2.2.1.1 The objective of the analysis was to determine the available capacity of the transmission lines that are in close proximity to the Land RFI parcels. Load flow analyses were performed by adding a generating unit at select locations and

increasing its MW output until the thermal limit of the transmission line was met. For each line analysis, existing generators were dispatched to maximize load flow for the line under investigation. Normal and single line outage (N-1 contingency) conditions were analyzed assuming existing transmission system infrastructure and distributed generation resources. Individual load flow simulations did not take into account potential impacts of additional generating projects added to the transmission system.

2.2.2 Developers may inquire as to viability of proposed real Project locations. Hypothetical Projects and location strategies will be addressed only in general terms.

2.2.3 Additional site-specific information will be provided in the IRS process.

### **2.3 Interconnection to the Company System**

2.3.1 The means of interconnection between a proposed Facility and the Company System is a critical consideration for all Proposers. All Proposals should include a description of the respondent's plan to transmit power from the Facility to the Company System. The Proposers' proposed Interconnection Facilities must be compatible with the Company System. In the design, Projects must adequately consider Company requirements to address impacts on the performance and reliability of the Company System. In addition to the Performance Standards and findings of the Interconnection Study, the design of the Interconnection Facilities, including power rating, Point(s) of Interconnection with the Company System, and scheme of interconnection, must meet Company standards and be designed such that, with the addition of the Facility, the Company system can meet all relevant Transmission Planning Criteria<sup>10</sup> and any amendments thereto. The Company will provide its construction standards and procedures to the Proposer if requested via email upon the execution of an NDA as specified in Section 1.6.

2.3.2 The Interconnection Facilities includes both: (1) Seller-Owned Interconnection Facilities; and (2) Company-Owned Interconnection Facilities.

2.3.3 Tariff Rule No. 19, a copy of which is attached as Appendix J to this RFP, establishes provisions for Interconnection and Transmission Upgrades. The tariff provisions are intended to simplify the rules regarding who pays for, installs, owns, and operates interconnection facilities in the context of competitive bidding. Proposers may propose to build the Company-Owned Interconnection Facilities except for any work to be done in the Company's existing facilities. Construction of Company-Owned Interconnection Facilities by the Proposer must comply with industry standards, laws, and license information, as well as the Company's specific construction standards and procedures that the Company will provide upon request. (See Section 2.3.1.) The Company uses the breaker-and-a-half scheme for its transmission switching station as shown in Attachment A of Tariff Rule No. 19. Proposers should follow this scheme for purposes of their estimates.

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<sup>10</sup> Transmission Planning Criteria are further described in the Companies' December 23, 2016 PSIP Update Report beginning on page O-11 of Appendix O.

- 2.3.4 The Proposer shall be responsible for all costs required to interconnect a Project to the Company System, including all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities.
- 2.3.5 Proposers are required to include in their pricing proposal all costs for interconnection and transmission upgrades or distribution upgrades expected to be required between their Facility and their proposed Point of Interconnection. See Appendix I to this RFP. Selected Proposers will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities, whether or not such costs exceed the costs set forth in a Proposer's Proposal. No adjustments will be allowed to the offered price in a Proposal if actual costs for Interconnection Facilities exceed the amounts Proposed.
- 2.3.6 All Projects will be screened for general readiness to comply with the requirements for interconnection. Proposals selected to the Final Award Group will be subject to further study in the form of an Interconnection Requirements Study. The IRS process is further described in Section 5.1 of this RFP. The IRS will provide information on including, but not limited to, a power systems analysis and identification of equipment, costs, and schedule to evaluate the upgrades necessary to interconnect the proposed Project into the Company System, individually or on a portfolio basis. The results of the completed IRS, as well as any mitigation measures identified, will be incorporated into the terms and conditions of a final executed PPA. The Proposer must provide all Proposal information required to complete the IRS with the Proposal, as described in Appendix B to this RFP. Any additional information required must be provided no later than fifteen (15) days after request by the Company.

### **Chapter 3: Instructions to Proposers**

#### **3.1 Schedule for the Proposal Process**

Table 1 sets forth the schedule for the proposal process (the "RFP Schedule"). This schedule is designed to provide Proposers the opportunity to safe harbor tax credits. The Company reserves the right to revise the RFP Schedule as necessary. Changes to the RFP Schedule will be posted to the RFP website.

**Table 1  
RFP Schedule**

<b>Milestone</b>	<b>Schedule Dates</b>
(1) PUC Opens RFP Docket	October 6, 2017
(2) Draft RFP is filed	October 23, 2017
(3) Technical Conference Webinar	November 3, 2017
(4) Stakeholder Comments submitted to PUC	November 13, 2017
(5) Companies' Response to Stakeholder Comments filed	December 20, 2017
(6) PUC Order Providing Guidance	January 12, 2018
(7) Proposed Final RFPs filed	February 2, 2018
(8) Completion of Commission review period of Proposed Final RFPs	No later than February 19, 2018
(9) Final RFP is issued	5 business days after (8) <sup>11</sup>
(10) Proposals due	60 days after (9) at 2:00 pm HST
(11) Selection of Short List	30 days after (10)
(12) BAFOs due	5 business days after (11)
(13) Selection of Final Award Group <sup>12</sup>	105 days after (12)
(14) Contract Negotiations Start	2 business days after (13)

### 3.2 Company RFP Website/Electronic Procurement Platform

3.2.1 The Company has established a website for general information to share with potential Proposers. The website is located at the following link:

[www.mauielectric.com/competitivebidding](http://www.mauielectric.com/competitivebidding)

The Company will provide general notices, updates, schedules and other information on the RFP website throughout the process. Proposers should check the website frequently to stay abreast of any new developments. This website will also contain the link to the Electronic Procurement Platform employed by the Company for the receipt of Proposals. The Company will send updates posted on the website through the Electronic Procurement Platform.

“Sourcing Intelligence” developed by PowerAdvocate is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP. Proposers who do not already have an existing account with PowerAdvocate and who intend to submit a Proposal for this RFP will need to register as a “Supplier” with PowerAdvocate.

<sup>11</sup> Subsequent dates are dependent on the procedural schedule set by the PUC.

<sup>12</sup> If the quantity and complexities of the Proposals allow for a quicker evaluation period, the Final Award Group will be announced sooner to allow more time for subsequent steps.

- 3.2.2 There are no license fees, costs, or usage fees to Proposers for the use of the PowerAdvocate Platform.

See [Appendix E](#) to this RFP for registration, user information and instructions on PowerAdvocate's Sourcing Intelligence procurement platform.

- 3.2.3 Proposals will be accepted only through the PowerAdvocate Platform.

- 3.2.4 Proposals must be submitted through Sourcing Intelligence by 2:00 pm Hawai'i Standard Time (HST) on the date shown in the RFP Schedule in [Section 3.1](#) of this RFP. Sourcing Intelligence will not accept the submittal of late information for this RFX event. The Proposal submission deadline via the PowerAdvocate Platform is an Eligibility Requirement for this RFP. See [Section 4.2](#) of this RFP.

- 3.2.5 All Proposals must be prepared in accordance with the procedures and format specified in the RFP and the RFX event. Proposers also are required to respond to all questions and provide all information requested in the RFP and the RFX event, as applicable. This process is intended to provide an orderly, consistent and fair evaluation of the Proposals.

### 3.3 Technical Conference

The Company held a webinar ("Technical Conference Webinar") in accordance with the Competitive Bidding Framework for prospective Proposers and other stakeholders to discuss the provisions and requirements of this and other RFPs being offered in parallel. The Technical Conference Webinar allowed stakeholders to submit questions and was intended to help them better understand the Companies' proposed competitive bidding process and draft documents.

This Technical Conference Webinar was held on November 3, 2017. An electronic version of the Technical Conference Webinar is available on demand via the RFP website listed in [Section 3.2.1](#). Prospective Proposers may submit written questions regarding the RFP to the RFP Email Address set forth in [Section 1.6](#). The Company will endeavor to address all questions that will be helpful to prospective Proposers via a Q&A section on the RFP website. Once the PowerAdvocate RFX event has been opened and the RFP is open for bid submissions, Proposer questions should be directed through PowerAdvocate's messaging feature.

The Company also prepared a webinar to introduce the concepts and provisions of the new RDG PPA ("RDG PPA Webinar"). The Company encourages any party interested in submitting a Proposal to view the RDG PPA Webinar as well. This RDG PPA Webinar is available on-demand on the Company website listed in [Section 3.2.1](#) of this RFP. Parties interested in submitting questions regarding the RDG PPA Webinar may send them to the email address set forth in [Section 1.6](#) of this RFP.

### 3.4 Preparation of Proposals

- 3.4.1 Each Proposer shall be solely responsible for reviewing the RFP (including all attachments and links) and for thoroughly investigating and informing itself with respect

to all matters pertinent to this RFP, the Proposer's Proposal, and Proposer's anticipated performance under the PPA.

- 3.4.2 Proposers shall rely only on official information provided by the Company in this RFP when preparing their Proposal. The Company will rely only on the information included in the Proposals and additional information from Proposers solicited by the Company to evaluate the Proposals received.
- 3.4.3 Each Proposer shall be solely responsible for and shall bear all of its costs incurred in the preparation of its Proposal and/or its participation in this RFP, including, but not limited to, all costs incurred with respect to the following: (1) review of the RFP documents; (2) meetings with the Company; (3) Site visits; (4) third-party consultant consultation; and (5) investigation and research relating to its Proposal and this RFP. Any such costs associated with the same will not be reimbursed by the Company to any Proposer, including the selected Proposer(s).
- 3.4.4 Each Proposal must contain the full name and business address of the Proposer and must be signed by an authorized officer or agent<sup>13</sup> of the Proposer. Signature and certification are Eligibility Requirements for this RFP. See Section 4.2 of this RFP.

### **3.5 Organization of the Proposal**

Appendix E to this RFP provides information for submitting Proposal information through the PowerAdvocate Platform.

Each Proposer shall agree to the use of electronic signature within the PowerAdvocate Platform or on other appropriate certification forms for the Proposal.

### **3.6 Proposal Limitations**

Proposers expressly acknowledge that Proposals are submitted subject to the following limitations:

The RFP does not commit or require the Company to award a contract, pay any costs incurred by a Proposer in the preparation of a Proposal, or procure or contract for products or services of any kind whatsoever. The Company reserves the right, in consultation with the Independent Observer, to accept or reject, in whole or in part, any or all Proposals submitted in response to this RFP, to negotiate with any or all Proposers eligible to be selected for award, or to withdraw or modify this RFP in whole or in part at any time.

- The Company reserves the right, in consultation with the Independent Observer, to request additional information from any or all Proposers relating to their Proposals

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<sup>13</sup> Proposer's officer or agent must be authorized to sign the Proposal. Such authorization must be in writing and may be granted via Proposer's organizational documents (i.e., Articles of Incorporation, Articles of Organization, By-laws, etc.), resolution, or similar documentation.

or to request that Proposers clarify the contents of their Proposals. Proposers who are not responsive to such information requests may be eliminated from further consideration upon consultation with the Independent Observer.

- The Company reserves the right, in consultation with the Independent Observer, to solicit additional Proposals from Proposers after reviewing the initial Proposals. Other than as provided in this RFP, no Proposer will be allowed to alter its Proposal or add new information to a Proposal after the due date for submission of Proposals.
- All material submitted in response to this RFP will become the sole property of the Company, subject to the terms of the NDA.

### **3.7 Proposal Compliance and Bases for Disqualification**

Proposers may be deemed non-responsive and/or Proposals may not be considered for reasons including, but not limited to, the following:

- Any unsolicited contact by a Proposer or prospective Proposer with personnel of the Company pertaining to this RFP as described in Section 1.5.5.
- The Proposal does not meet one or more of the Eligibility Requirements specified in Section 4.2.
- The Proposal does not meet one or more of the Threshold Requirements specified in Section 4.3.
- The Proposal is deemed to be unacceptable through a fatal flaws analysis as described in Section 4.4.2.
- The Proposer does not respond to the Company's request for additional information to clarify the contents of its Proposal.

### 3.8 Power Purchase Agreement

- 3.8.1 The Power Purchase Agreement for Proposers selected under this RFP will be in the form of the Company's RDG PPA<sup>14</sup>, attached as Appendix C1 and Appendix C2 to this RFP.
- 3.8.2 In general, under the RDG PPA, payment to the Seller contains two parts: a Lump Sum Payment component to cover the fixed costs of the Project and an Energy Payment (\$/MWh component) to cover variable operations and maintenance costs (if applicable, depending on the resource). In return, the Seller shall guarantee minimum availability metrics to ensure that the Facility is maintained and available for production, as well as provide an indication of the available energy available in near real-time for the Company's dispatch.
- 3.8.3 Proposers may propose modifications to the RDG PPA but are encouraged to accept the model provisions set forth in the RDG PPA in order to expedite the overall RFP process and potential PPA negotiations. As a component of their Proposals, Proposers who elect to propose modifications shall provide a red-line version of the RDG PPA identifying their requested modifications as well as a detailed explanation and supporting rationale for each modification. Such modifications will be evaluated as a non-price evaluation criteria as further described in Section 4.4 and Appendix L. In order to facilitate this process, the Company will make available electronic versions of the RDG PPA. Any proposed modifications to the RDG PPA will be subject to negotiation between the Company and the Final Award Group. Certain provisions of the RDG PPA, such as the calculation of availability and payment terms, may be administratively burdensome to endeavor if they differ between selected Projects. Therefore, the Company will endeavor to negotiate similar provisions across the Final Award Group for such provisions.

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<sup>14</sup> As directed by the PUC in the Kuia Solar (2015-0224) and South Maui Renewable Resources (2015-0225) dockets, the Company has been exploring alternative contract structures that better address the growing issue of curtailment of excess energy as the Company progresses towards 100% renewable energy. Additionally, as generation resources continue to shift from primarily centralized, utility-owned facilities to more distributed facilities owned by independent power producers, greater operational flexibility is required to ensure the safe, reliable, and cost-effective operation of the grid. As described in the whitepaper prepared for the Companies in December 2016 by the Smart Electric Power Association Alliance ("SEPA") and ScottMadden Inc. filed in Dockets 2015-0224 and 2015-0225, "as the islands evolve to ever-increasing levels of renewable energy, the ability to treat any type of energy as 'must-take' [as under the RAP or As-Available PPA models] is increasingly limited." Moreover, such "must-take" models "fail to allocate curtailment risk in a way that is equitable to all parties, transparent to all stakeholders, and sustainable in the future with increasing need to control energy production to match demand." Consistent with meeting the future needs of the grid, the expectation is that all generation resources, whether utility, IPP or customer owned, will contribute to maintaining system stability. As a result, the Company is looking to move away from the traditional, intermittent renewable energy model of payments for energy and is seeking to select Projects based on the RDG PPA where payments are instead based on a Facility's availability and performance for a measured level of available solar or wind resource. This eliminates the revenue uncertainty associated with curtailment for IPPs while also providing the Company's system operators with the ability to dispatch resources as required to meet load and to address reliability needs through their use as ancillary services. The proposal evaluation methods and contract provisions for this approach are further described in Appendices L and C1 and C2, respectively, to this RFP.



3.8.4 Proposals that do not include proposed revisions to the attached RDG PPA will be deemed to have accepted the RDG PPA terms.

### 3.9 Pricing Formula Requirements

3.9.1.1 NON-WAENA: Proposers may submit pricing for one or both options, as described in Section 1.2.12.1 of this RFP. Please also refer to Section 1.8:

- Proposal without a storage component
- Proposal with a storage component

3.9.1.2 WAENA: Proposers must submit pricing with a storage component as described in Section 1.2.12.2 of this RFP.

3.9.2 Proposer's Response Package must include the following prices for each option:

- **Lump Sum Payment (\$/year):** Payment amount for full availability. Payment will be made in monthly increments. No escalation of the Lump Sum Payment over time will be allowed. A Proposal's Lump Sum Payment will be compared to other Proposals on a \$/MWh basis based on the NEP RFP Projection, which is the annual estimated Net Energy Production (MWh) of the Facility for the term of the PPA as described further in Section 3.11.2 of this RFP.
  - Estimated Total Interconnection Costs (See Appendix I to this RFP): Proposers are required to include in their pricing proposal all costs for interconnection and transmission upgrades or distribution upgrades expected to be required between their Facility and their proposed Point of Interconnection. (See Attachment A to Tariff Rule No. 19.)
- **Energy Payment Price (\$/MWh):** Payment for delivery of Net Energy.
- **Interconnection Costs Savings Rate (\$/year):** Amount per \$100,000 (lower than the estimate) of actual interconnection costs.
  - The intent of the Interconnection Costs Savings Rate is to include a shared savings mechanism between Projects selected in the Final Award Group and the Company's customers. Proposers should include a downward adjustment to their Lump Sum Payment for every \$100,000 in savings Proposers achieve based on their actual interconnection costs as compared to the proposed interconnection costs set forth in their Proposal. The Lump Sum Payment will automatically be reduced by the Interconnection Cost Savings Rate in increments if a Proposer in the Final Award Group achieves at least \$100,000 in savings between its proposed Estimated Total Interconnection Costs and its actual total interconnection costs. Savings will be rounded to the nearest \$100,000. The Final Award Group will be required to submit evidence of their actual total Interconnection Costs (i.e. invoices, purchase orders) to the Company upon the

Commercial Operations Date. For Example: Assume a selected Proposal includes a Lump Sum payment of \$5,000,000/year and an Interconnection Costs Savings Rate of \$2,000/year per \$100,000 and the Total Estimated Interconnection Costs set forth in the Proposal are \$1,000,000. Further assume that the evidence submitted by the selected Proposer reflected actual total interconnection costs of \$725,000. The actual interconnection costs would be rounded to \$700,000 and there would be a savings to the developer of \$275,000 in Interconnection Costs. Rounding the savings to nearest \$100,000 brings us to \$300,000, so the Interconnection Costs Savings rate would be multiplied by 3. In such case the Lump Sum Payment due the selected Proposer would be reduced by \$6,000 (3 x \$2,000) to \$4,994,000/year. The savings realized by the Company's customers and the selected Proposer would be as follows:

- Customers = \$120,000 (\$6,000 x 20 years) in savings
- Selected Proposer = \$155,000 (\$275,000-\$120,000) in savings

3.9.3 All Proposal information must be independent of changes to state or federal investment tax credit policies. The requirement that Proposals must not be contingent upon changes to laws or regulations is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.

### **3.10 Sites Identified by the Company**

3.10.1 As an alternative to a site identified by the Proposer, the Company has identified potential Sites where landowners have expressed a willingness to negotiate a lease or purchase of the land to support a renewable energy project. These Sites were identified through a Land Request for Information ("Land RFI"). Proposers will be responsible for working directly with the land owner and must secure site control with such land owner prior to submitting a Proposal. Site Control is a Threshold Requirement for this RFP. See Section 4.3 of this RFP. Additional information about the Sites identified in the Land RFI was provided to interested parties who signed Land RFI NDAs. Land RFI information remains available to other interested parties who sign the Land RFI NDA. The Land RFI is further described in Appendix G to this RFP. Proposers are not required to select a site identified in the Land RFI and as noted above may propose any site. A Proposer may meet with the Company as set forth in Section 2.2.1 if it would like to obtain similar hosting capacity information for its site as identified for the Land RFI parcels.

3.10.2 Additionally, a Company-owned Site, referred to as the Waena Site, is being offered to Proposers for their consideration. The Company Site is currently vacant land owned by the Company. Up to 33.2 acres (approximate – the final acreage is subject to change) will be available, provided that any Proposer shall only be permitted to lease as much acreage as is necessary for its Project. Additional acreage will not be available, and Proposers shall use the available land only for its Project and for no other uses. Only one variable Facility will be allowed at the Waena Site. The Waena Site is further described in Appendix G to this RFP.

The Company is offering use of the Waena Site for nominal consideration. Any Proposer proposing to use the Waena Site shall be required to execute a lease for the Waena Site coterminous with the term of the PPA. A draft copy of the proposed form of lease is attached as Appendix K to this RFP. Terms of the lease shall be negotiable. Additionally, a non-exclusive access easement for access to the Company Site from Pulehu Road will be provided. The Waena Site is currently part of two adjoining parcels owned by the Company. The current plan anticipates that the Waena Site will be subdivided from the rest of the Company land upon identification of the land requirements for the winning Proposal.

Upfront costs to the Proposer associated with the Waena Site lease include the following: (1) tenant's share of the expenses incurred by the Company to subdivide the Waena Site; (2) a baseline assessment of the Waena Site, either a Phase 1 or Phase 2 environmental assessment; (3) design, implementation and maintenance of the required landscape buffer area as required by applicable land use conditions described in the lease; (4) applicable conveyance tax for the lease; and (5) required security deposit. Ongoing costs are customary and specified in the lease (taxes, real property taxes, insurance costs, security costs, etc.) but also include, specific to this lease, tenant's share of the operating and maintenance costs and other charges for the access road and any other services provided as part of the lease. See Appendix K for details on these upfront and ongoing lease costs.

The specified costs above are not exhaustive and the Proposer is encouraged to review the lease to determine all associated lease costs. Proposers should perform their own evaluation and account for all possible costs and should not rely solely on the identified costs noted above. Proposer also shall be responsible, at its sole cost and expense, for all site improvements, utilities, permits, and other required infrastructure and regulatory requirements that are necessary for use of the Waena Site for Proposer's Project. See Appendix K to this RFP.

On January 10, 2018, the Company offered potential Proposers the opportunity to visit the Waena Site. The Company is amenable to scheduling another Site tour, if there is sufficient interest.

### **3.11 Project Description**

3.11.1 Proposers must agree to provide all information pertaining to the design, development and construction of the Interconnection Facilities as specified in Appendix B to this RFP, including, but not limited to, the following:

- Facility size ( $MW_{AC}$  and  $MW_{DC}$ ), available capacity factor;
- Proposed interconnection point;
- Site Plan, including any line extension;
- Permitting Plan;
- Single line and three line diagrams with a wet stamp by a registered Professional Engineer in Hawai'i;

- Details of major equipment, including, but not limited to, name of manufacturer, models, key metrics, characteristics of the equipment, and performance specifications;
- Projected hourly annual energy production profile<sup>15</sup> of the Facility (8760 hours/year);
- High-level cost information including costs for equipment, construction, engineering, Seller-Owned Interconnection Facilities, Company-Owned Interconnection Facilities, Land, and Annual O&M; and
- Weather profile (e.g., solar resource information, wind resource information, etc.) used in arriving at Net Energy Potential information.

Each Proposer must also agree to provide Project financial information, including a proposed Project finance structure in the form in Appendix B, attached to this RFP. Such information will be used to evaluate the non-price criteria, Financial Strength and Financing Plan, set forth in Attachment L of this RFP and the Financial Viability of Proposer which is a Threshold Requirement for this RFP. See Section 4.3 of this RFP. Upon selection, the Final Award Group may be requested to provide further detailed cost information if requested by the PUC or the Consumer Advocate as part of the PPA approval process. If requested such information would be provided to the PUC and Consumer Advocate pursuant to a protective order in the docket.

- 3.11.2 Proposers must also provide the following information in their Proposer's Response Package template:

**NEP RFP Projection:** Estimated annual Net Energy Production (MWh) of the Facility for the term of the PPA, including relevant supporting information and assumptions used, such as resource measurements, energy production studies, warranted levels of annual degradation, and related information. If a Proposal is selected to the Final Award Group and a PPA is executed between the Company and the Proposer, the NEP RFP Projection will be further evaluated at several steps throughout the process as set forth in the RDG PPA, and adjustments to the Lump Sum Payment will be made accordingly. After the Facility has achieved commercial operations, baseline performance metrics will be established. The performance of the Facility will be assessed on a continuing basis.

- 3.11.3 The Proposer agrees that no material changes or additions to Facility from what is submitted with this Proposal will be made without the Proposer first having obtained prior written consent from the Company. Material omissions are not allowed and are an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.

### 3.12 Confidentiality

- 3.12.1 Each prospective Proposer must submit an executed NDA in the form attached as Appendix F to this RFP by the due date for Proposals specified in the RFP Schedule in

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<sup>15</sup> The projected hourly annual energy production profile is the projected output from the generating facility without curtailment and before any energy is directed to an energy storage facility, if one will be provided.

Section 3.1. The form of the NDA is not negotiable. Information designated as confidential by the Company will be provided on a limited basis, and only those prospective Proposers who have submitted an executed NDA will be considered. The full execution of agreements or other documents required is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.

- 3.12.2 Proposers must clearly identify all confidential information in their Proposals. However, Proposers should take care to designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The Company discourages the practice of marking confidential each and every page of a Proposal. The Company will make reasonable efforts to protect any such confidential information that is clearly marked confidential. The Company reserves the right to share any information, even if marked confidential, to its agents, contractors, or the Independent Observer for the purpose of evaluating the Proposal, as set forth in the NDA.
- 3.12.3 The Company will request that the PUC issue a Protective Order to protect confidential information provided by Proposers to the Company. A copy of the Protective Order, once issued by the PUC, will be provided to Proposers. Proposers should be aware that the Company may be required to share certain confidential information contained in Proposals with the PUC, the Division of Consumer Advocacy, State of Hawai‘i Department of Commerce and Consumer Affairs, and the parties to any docket instituted by the PUC, provided that recipients of confidential information have first agreed in writing to abide by the terms of the Protective Order. Notwithstanding the foregoing, no Proposer will be provided with Proposals from any other Proposer, nor will Proposers be provided with any other information contained in such Proposals or provided by or with respect to any other Proposer.

### **3.13 Credit Requirements Under the PPA**

- 3.13.1 Proposers with whom the Company concludes PPA contract negotiations are required to post Development Period Security and Operating Period Security as set forth in the RDG PPA. Credit/Collateral Requirements are Threshold Requirements for this RFP. See Section 4.3 of this RFP.
- 3.13.2 The Development Period Security and Operating Period Security identified in the RDG PPA are minimum requirements.
- 3.13.3 Each Proposer shall be required to provide a satisfactory irrevocable standby letter of credit in favor of the Company to secure Proposer’s payment of all Company-Owned Interconnection Facilities costs that are payable to Company as described in Appendix G to the RDG PPA.
- 3.13.4 Proposers may be required to fund a monetary escrow account in lieu of the required Source Code Escrow required under Attachment B to the RDG PPA.

## **Chapter 4: Evaluation Process and Evaluation Criteria**

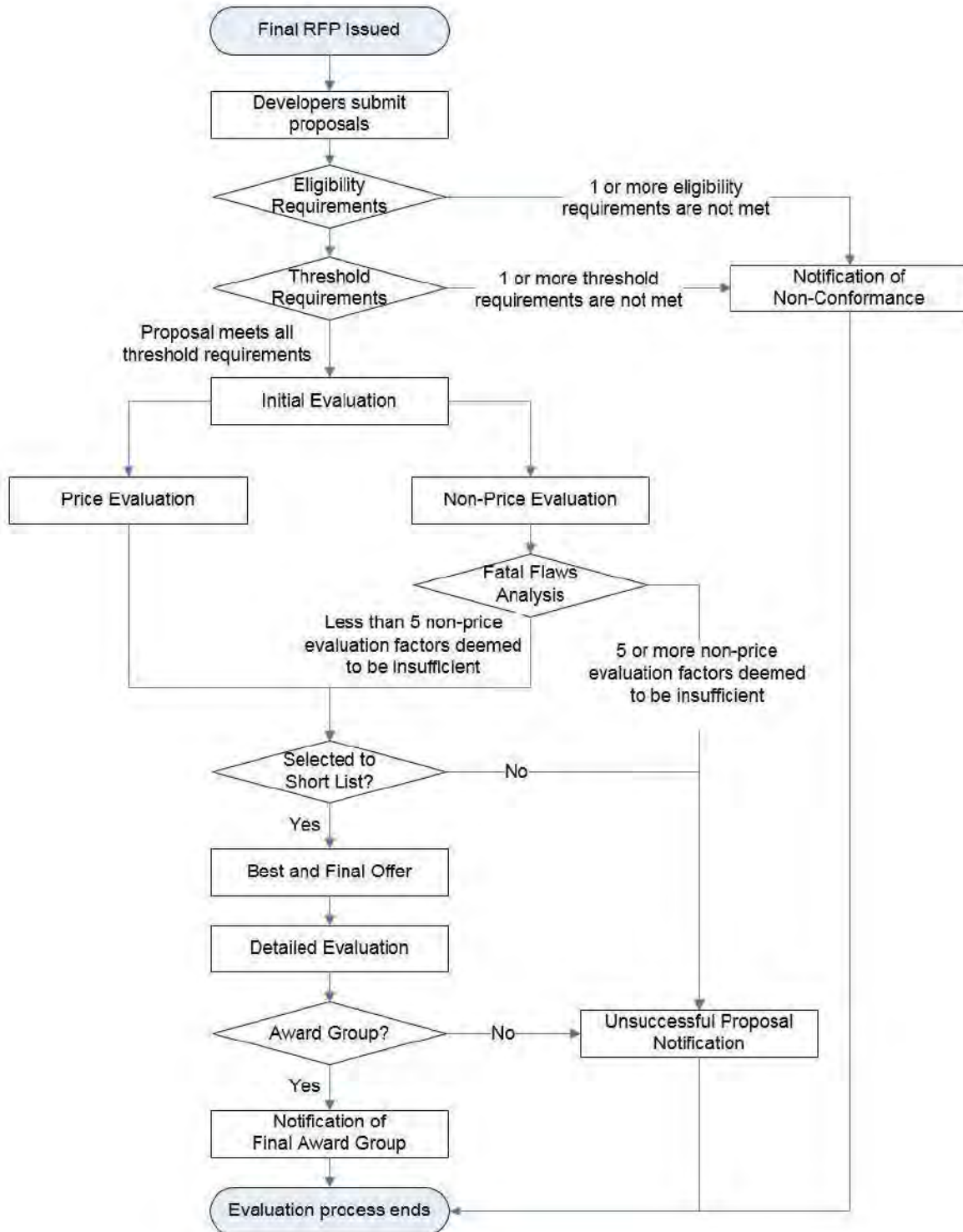
### **4.1 Proposal Evaluation and Selection Process**

The Company will employ a multi-step evaluation process. Once the Proposals are received, the Proposals will be subject to a consistent and defined review, evaluation, and selection process. This Chapter provides a description of each step of the process, along with the requirements of Proposers at each step. Further details of the steps in the process are provided in Appendix L to this RFP. Figure 1 sets forth the flowchart for the Proposal evaluation and selection process.

Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility Requirements, and if so, will review the Proposals to ensure that the Threshold Requirements have been met. Proposals that have successfully met the initial eligibility and threshold criteria will then enter a two-phase process for Proposal evaluation, which includes the development of a Short List and then an evaluation of the selected Short List Proposals based on Best and Final Offers.

Proposals will be separated into the Non-Waena Sited Projects and Waena Projects. Although the groups will be evaluated separately, both groups will employ the same evaluation process outlined in Sections 4.1 through 4.8.

**Figure 1 – Evaluation Workflow**



## 4.2 Eligibility Requirements

Upon receipt of the Proposals, each Proposal will be reviewed to ensure that it meets the following Eligibility Requirements.

- The Proposal must be received on time via the PowerAdvocate Platform.
- The non-refundable Proposal Fee must be received on time.
- The Proposal must not contain material omissions.
- The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
- There must not have been, in the Company's sole determination, illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal review process.
- The Proposal must not contain misrepresentations.
- The Proposers must fully execute the agreements or other documents required pursuant to this RFP.
- The Proposer must provide a certificate of good standing from the State of Hawai'i Department of Commerce and Consumer Affairs.
- The Proposer must provide Federal and State tax clearance certificates for the Proposer.
- The Proposal must not be contingent upon changes to existing county, state or federal laws or regulations.
- The proposed Project must be located on the Island of Maui.
- No single point of failure from the Facility shall result in a decrease in net electrical output greater than thirty (30) MW.
- The Facility planned outages should not exceed twenty (20) MW.
- Storage systems that are coupled with a Facility must only be charged by the renewable energy generated by the Facility and not delivered from the grid.

The Company in coordination with the Independent Observer will determine if a Proposer is allowed to cure any aspect of its Proposal or whether the Proposal would be eliminated based on failure to meet Eligibility Requirements. If a Proposer is provided the opportunity to cure any aspect of its Proposal, the Proposer shall be given three (3) business days to cure from the date of notification to cure.

## 4.3 Threshold Requirements

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out Proposals that are insufficiently developed, lack demonstrated technology, or will impose unacceptable execution risk for the Company. This section describes the minimum requirements that all Proposals must satisfy to be eligible for further consideration in Stage 1 of the RFP Process. Proposers should provide explanations and supporting information as to how and why they believe the Project they are proposing meets each of the Threshold Requirements. Proposals that



fail to meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer. The Threshold Requirements for this RFP are the following:

- **Site Control:** The Proposal must demonstrate that the Proposer has Site Control for all real property required for the successful implementation of a specific Proposal at a Site not controlled by the Company, including any Interconnection Facilities for which the Proposer is responsible. The need for a firm commitment is necessary to ensure that Proposals are indeed realistic and can be relied upon as the Company moves through the remainder of the RFP process. To meet this Site Control requirement, Proposers have either: (1) an existing legally enforceable right to use and control the Site that will be required for the construction, operation and maintenance of the project; or (2) an executed letter of intent or memorandum of understanding with the Site owner which sets forth the general terms of a transaction that would grant the Proposer the required legally enforceable right to use and control the Site that will be required for the construction, operation and maintenance of the project. For example::
  - Provide documentation confirming that the Proposer owns 100% of the fee interest in the Site on which the Project will be situated;
  - Provide documentation confirming that the Proposer holds a leasehold interest in the Site for a term at least equal to the term of the PPA as specified in the Proposer's Proposal (taking into account the timelines set forth in this RFP for selection, negotiation, and execution of a PPA and PUC approval of a PPA); or
  - Provide documentation confirming that the Proposer has an executed option agreement to purchase the Site or to lease the Site for a term at least equal to the term of the PPA as specified in the Proposer's Proposal. This option agreement does not need to be exclusive to the Proposer at the time the Proposal is submitted, but may be contingent upon selection of the Proposal to the Final Award Group.

Where government or publicly-owned lands are part of the Site or are required for the successful implementation of the Proposal, the Proposer must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary Site Control for the Proposal, including securing necessary and appropriate permits, approvals, rights-of-way, access, and other appurtenances necessary for the project, including but not limited to evidence of sufficient progress toward approval by the government agency or other body vested with the authority to grant such approval (as demonstrated by records of the agency).

If the Threshold Requirement for Site Control is met, Site Control will be further evaluated as a part of the Non-Price evaluation. See Section 4.4 of this RFP.

- **Performance Standards:** The proposed Facility must be able to meet the attributes identified in this RFP and the Performance Standards identified in the RDG PPA. The Company will review the Proposal information received, including

the design documents and operating procured materials provided in the Proposal, and will make a determination on whether the Project as designed is able to meet the Performance Standards identified in the RDG PPA and in this RFP. Proposals should provide the information required to make such a determination in an organized manner to ensure this evaluation can be completed on a timely basis.

- **Proven Technology:** This criterion is intended as a check to ensure that the technology proposed is viable and can reasonably be relied upon to meet the objectives of this RFP. The Company will only consider Proposals utilizing technologies that have successfully reached commercial operations in multiple commercial applications (i.e., a PPA) at the scale being proposed. Technologies proposed in this RFP should be considered mature energy technologies at the scale proposed. Proposals should include any supporting information for the Company to assess the commercial and financial maturity of the technology being proposed.
- **Experience of the Proposer:** The Proposer, its affiliated companies, partners, and/or contractors and consultants on the Proposer's Project team must have experience in the development and operation of at least one (1) electricity generation project similar in size, scope, technology, and structure to the Project being proposed by Proposer. The Company will consider a Proposer to have reasonably met this Threshold Requirement if the Proposer can provide sufficient information to demonstrate that the member of the project team whose experience is being identified to meet this threshold criterion has a firm commitment to provide services to the Proposer.
- **Credit/Collateral Requirements:** Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.13 of this RFP.
- **Available Transmission Circuit Capacity:** The output capacity of the Proposed project must not exceed the available capacity of the transmission-level circuit to which it will interconnect. Transmission circuit available capacity information should be confirmed with the Company during project-specific discussions regarding interconnection feasibility prior to Proposal submittal.
- **Financial Viability of Proposer:** Proposers must provide a basic financial plan for the project with details on the sources of debt and equity, capital structure, etc. Evidence is provided of general support for the project financing (i.e. interest in financing the project). Participants are reasonably strong financially. Proposer has adequate financial strength. The proposer, its affiliate or credit support provider has a moderate net worth based on its financial statements and an investment grade credit rating (BBB- and above) and has financed projects of similar magnitude.

- **Guaranteed Commercial Operations Date:** The project's Guaranteed Commercial Operations Date must be no later than December 31, 2022. This date will be a Guaranteed Milestone in Attachment K to the RDG PPA.

#### 4.4 Initial Evaluation – Price and Non-Price Analysis

Proposals that meet the Threshold Requirements will then be subject to a price and non-price assessment. The results of the price and non-price analysis will be a relative ranking and scoring of all eligible proposals. Price-related criteria will account for sixty percent (60%) of the total score and non-price-related criteria will account for forty percent (40%) of the total score. This 60% price-related criteria/40% non-price-related criteria weighting is consistent with previous RFPs.<sup>16</sup> The criteria and methodology for applying the criteria are explained in Appendix L, attached to this RFP.

Appendix L provides the components of the price and non-price evaluation criteria that will be included in the initial evaluation.

The Company will employ a closed-bidding process for this solicitation in accordance with Part IV.H.3 of the Framework where some of the price and non-price evaluation models to be used will not be provided to Proposers. However, the Company will provide the Independent Observer with all necessary information to allow the Independent Observer to understand the evaluation models and to enable the Independent Observer to observe the entire analysis in order to ensure a fair process. The evaluation models will be finalized prior to the receipt of Proposals. The detailed modeling assumptions used by the Company in their models can be found in Appendix J (Modeling Assumptions Data) to the PSIP.<sup>17</sup> The Company will review and discuss with the Independent Observer all decisions regarding the evaluation, disqualification, non-selection, and selection of Proposals, as further discussed in Section 1.4 of this RFP.

##### 4.4.1 Initial Evaluation of the Price Related Criteria

For the price analysis, a levelized cost of energy (\$/MWh) will be calculated for each Proposal, which represents the cost of energy that is produced by the proposed Facility, that if applied over the term of the Proposal, is equal to the net present value of the anticipated payments to the Proposer when discounted back to the base year.

In order to fairly evaluate Proposals of different technologies using levelized price, at this stage in the evaluation, the Company will group Proposals into technology buckets, where the inclusion of storage results in a separate bucket (e.g., PV, PV + storage, wind, wind + storage, etc.). Waena Sited Projects will all reflect the same technology (PV coupled with energy storage only) as specified in Section 1.2.12.2 and therefore, will be

<sup>16</sup> Including the evaluation weighting in the Company's Docket No. 2013-0156, Waivers from the Framework for Competitive Bidding.

<sup>17</sup> Appendix J to the PSIP can be found at [https://www.hawaiianelectric.com/Documents/clean\\_energy\\_hawaii/grid\\_modernization/dkt\\_2014\\_0183\\_20161223\\_companies\\_PSIP\\_update\\_report\\_3\\_of\\_4.pdf](https://www.hawaiianelectric.com/Documents/clean_energy_hawaii/grid_modernization/dkt_2014_0183_20161223_companies_PSIP_update_report_3_of_4.pdf)

grouped together separate from other PV + Storage Proposals in its own bucket during the initial evaluation. The Company will then award evaluation points within each technology bucket in accordance with the relative ranking of levelized price per MWh. The Proposal with the lowest levelized price in each technology bucket will receive 600 points. All other Proposals in that technology bucket will be awarded 600 points as reduced by the “Applicable Percentage,” defined below. The Applicable Percentage is the percentage by which the Proposal’s levelized price exceeds the lowest levelized price in that technology bucket. For example, if a Proposal’s levelized price is ten percent (10%) higher than the lowest levelized price in that technology bucket, the Proposal will be awarded 540 points (that is, 600 points less 10%). The result of this assessment will be a ranking and scoring of each Proposal within each technology bucket.

#### 4.4.2 Initial Evaluation of the Non-Price Related Criteria

For the non-price analysis, each Proposal will be evaluated on each of the non-price criteria described in Appendix L. Each non-price criterion will be weighted equally and will be scored on a one (1, poor) to five (5, highly preferable) scale. The minimum standard level for each non-price criterion is defined in Appendix L. The Company will then sum up the scores received for each non-price criterion and award evaluation points in accordance with the relative ranking of scores. The Proposal with the best combined non-price score will receive 400 points, and all other Proposals will receive points equal to the Proposal’s score divided by the top score, multiplied by 400.

During the non-price criteria evaluation, a fatal flaws analysis will also be conducted such that any Proposal that is deemed not to meet the minimum standards level for five (5) or more of the eleven (11) non-price criteria will be disqualified given that the Proposal has failed to meet nearly half of the non-price factors that are indicative as to the general feasibility and operational viability of a proposed project.

#### 4.5 Selection of the Short List

At the conclusion of both the price and non-price analysis, a total score will be calculated for each Proposal using the 60% price-related criteria/40% non-price-related criteria weighting outlined above. The price and non-price analysis, and the summation of both price and non-price scores described above, will result in a ranking of Proposals within each technology bucket.

The Company will select a Short List from the highest-scoring remaining Proposals from across the different technology buckets, including the bucket for Waena Sited Projects. Proposals selected to the Short List from the Waena Sited Projects bucket will be evaluated in the same way and with the same criteria as Proposals from other buckets. The Company’s objective for the Short List selection process is to identify and select Proposals that are low cost and viable Projects, as defined by the price and non-price weights at this stage in the process. The Company reserves the right to determine the number of Projects selected to the Short List. Proposals that are not included on the Short List will be released when the Short List is established. All other Proposals are eligible for selection to the Final Award Group, and if included in the Final Award

Group, are eligible for signing of a PPA for the Project and approval of the PPA by the PUC.

#### **4.6 Best and Final Offer (BAFO)**

4.6.1 The Company will solicit a Best and Final Offer from Proposers selected to the Short List. Proposers will have the opportunity to update (downward only) the pricing elements of their Proposal, including the:

- Lump Sum Payment (\$/year) amount
- Energy Payment price (\$/MWh) amount

4.6.2 If a Proposer does not modify its Proposal, the original Proposal will be deemed its Best and Final Offer.

4.6.3 Proposers will not be allowed to increase the pricing in their Proposals to address interconnection and/or system upgrade costs or for any other reason.

#### **4.7 Detailed Evaluation**

The Best and Final Offers of the Short Listed Proposals will be further analyzed, as described in Appendix L, to determine the final group of Proposals selected in support of the Company system's needs as identified for the Island of Maui in the Company's PSIP Update Report: December 2016. Every Proposal on the Short List will not necessarily be included in the Final Award Group.

During the evaluation and before the Proposals advance to the Final Award Group, the Company will perform load flow analyses to determine if certain Project combinations introduce transmission circuit constraints that will factor into the selection process. This is to address the possibility that even though sufficient line capacity was identified for an individual Project, large Projects on separate transmission circuits that are in close proximity with each other could introduce additional transmission circuit constraints. The Projects selected must not have any additional constraints imposed based on the Load Flow Analysis to advance to the Final Award Group. However, the Company reserves the right, in consultation with the Independent Observer, to allow minor modifications to a Proposal to avoid such additional constraints. If such modification resulted in a reduced size of the facility, the pricing proposed would also need to be revised. Under no circumstances would a Proposer be allowed to increase their price as a result of such minor modification. In addition, the Company will ensure Projects selected as the Final Award Group are not on the same transmission circuit.

In addition, a sensitivity analysis may be performed that considers the Interconnection Costs Savings Rate included in Proposals selected to the Short List in the event that there are Proposals with approximately the same Total Net Cost to the Company in the detailed evaluations. The Company may run additional scenario analyses if requested by the IO and the time and capability exist to run such analyses.

#### **4.8 Selection of the Final Award Group**

Based on the results of the Detailed Evaluation, including the Load Flow Analysis and review of circuits, and review with the Independent Observer, the Company will select a Final Award Group from which to begin contract negotiations. The Company intends to select two (2) Projects in Stage 1, including one (1) Waena Sited Project. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group. However, Proposal evaluation results and rankings will not be disclosed to the Proposers in the Final Award Group. Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of a PPA. Any Project not selected to the Final Award Group may be resubmitted in Stage 2 of this RFP or in a subsequent RFP.

Unless time permits and in consultation with the Independent Observer, after the selection of the Final Award Group, if at any time a Project no longer continues, the Company will not seek a replacement Project in Stage 1 but will seek the supply of variable renewable dispatchable generation from the Stage 2 solicitation process.

### **Chapter 5: Post Evaluation Process**

#### **5.1 Interconnection Requirements Study**

The Company will complete Interconnection Requirements Studies for the Proposals selected to the Final Award Group to assess the costs of system upgrades necessary to integrate the Projects into the Company System. Submission of Facility models and documentation required to perform the IRS is required on the Proposal due date. Proposers must be prepared to provide any additional data necessary for the IRS within fifteen (15) days of request. Failure to provide all requested material within the time specified, or changes to the data provided after the deadline, is grounds for elimination from the Final Award Group. Proposers must pay for the cost of the IRS, which will take into consideration other Proposals selected to the Final Award Group. The IRS provides information including, but not limited to, an estimated cost for required Interconnection Facilities for a particular Project and mitigation measures. Proposers will be responsible for the actual final costs of all Seller-Owned Interconnection Facilities and Company-Owned Interconnection Facilities. No upward adjustments to pricing will be permitted as a result of the actual final costs. However, there may be downward adjustments to the pricing as a result of a lower estimated cost for required Interconnection Facilities previously provided for a particular Project. Proposers will have the opportunity to terminate the PPA in the event that the actual final costs are higher than the estimate provided by the Company. See Section 12.4 of the RDG PPA.

All Proposals selected to the Final Award Group will require a new IRS, including any Proposal at a Site where an IRS might have been previously performed in connection with other RFPs or proposed PPAs.

## **5.2 Contract Negotiation Process**

Within two(2) business days of being notified by the Company of its intent to enter into contract negotiations, Proposers selected for the Final Award Group will be required to indicate, in writing to the Company's primary contact for this RFP, whether they intend to proceed with their Proposals. Proposers who elect to remain in the Final Award Group will be required to keep their Proposal valid through the award period. Contract negotiations will take place in parallel with the IRS process.

The Company's goal is to complete contract negotiations and submit PPAs for approval to the PUC by December 31, 2018. The IRS will not be completed at such time. The Company intends to execute and file the PPA with the PUC for approval and later amend the PPA to include the results of the IRS.

## **5.3 Community Outreach and Engagement**

No later than in parallel with the PPA contract negotiation process, Proposers shall at minimum conduct a public meeting in the community where the proposed Project is located, provide adequate public notice of the meeting of two weeks or more, and inform the Company of the meeting. This public meeting must include an opportunity for stakeholders and other interested parties to learn about the proposed Project, and to engage in dialogue about concerns, mitigation measures and potential community benefits, and must inform the community of the process and/or intent for input and engagements. Following the public meeting, the public will be allowed thirty (30) days to submit comments to the Company. If a PPA is executed by the Proposer and the Company, the Company's application for PUC approval of that PPA will contain an attachment including those comments. Proposers must also comply with any other requirement set forth in the RDG PPA relating to Community Outreach.

Following submission of the PUC approval application, the Company will provide another opportunity for the public to comment on the proposed Project. The Company's statement of position filed in the docket associated with the Project will contain an attachment including those comments.

## **5.4 PUC Approval of PPA**

Any signed PPA resulting from this RFP is subject to PUC approval as described in the RDG PPA, including Article 12 and Section 29.20 thereof.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix A – Definitions*



**Maui  
Electric**



“Best and Final Offer” or “BAFO” means the final offer from a Proposer, as further described in Section 4.6 and elsewhere in this RFP.

“Code of Conduct” means the code of conduct approved by the PUC in Docket No. 03-0372 (Decision and Order No. 23614, August 28, 2007) with respect to a Self-Build Option. An updated code of conduct was submitted to the PUC in Docket No. 2017-0352 on October 23, 2017.

“Commercial Operations” has the meaning set forth in the RDG PPA.

“Commercial Operations Date” means the date on which a Facility first achieves Commercial Operations.

“Company” means Maui Electric Company, Ltd., a Hawai‘i corporation.

“Company Offered Sites” means potential sites identified by the Company where landowners have expressed a willingness to negotiate a lease or purchase of the land to support a renewable energy project, as described in Section 3.10 of this RFP.

“Company-Owned Interconnection Facilities” has the meaning set forth in the RDG PPA.

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

“Consumer Advocate” means the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai‘i.

“Day” means a calendar day, unless the term “business day” is used, which means calendar day excluding weekends and federal and State of Hawai‘i holidays.

“Dispatchable” means the ability to turn on or turn off a generating resource at the request of the utility’s system operators, or the ability to increase or decrease the output of a generating resource from moment to moment in response to signals from a utility’s Automatic Generation Control System, Energy Management System or similar control system, or at the request of the utility’s system operators.

“Electronic Procurement Platform” means the third-party web-based sourcing platform that will be used for the intake of Proposals and associated electronic information, storage and handling of Proposer information, and communication.

“Eligibility Requirements” has the meaning set forth in Section 4.2 of this RFP.

“Energy Payment Price” is the amount that the Company will pay the Seller for electric energy delivered to the Company in accordance with the terms and conditions of the RDG PPA on a

monthly basis as described in Attachment J to the RDG PPA. This payment will be calculated in terms of dollars per MWh.

“Facility” has the meaning set forth in the RDG PPA.

“Final Award Group” means the group of Proposers selected by the Company from the Short List, with which the Company will begin contract negotiations, based on the results of the Company’s detailed evaluation.

“Hawaiian Electric Companies” or “Companies” means Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited.

“Maui Electric System” means the electric system owned and operated by Maui Electric on the island of Maui (including 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.

“HRS” means the Hawai‘i Revised Statutes as of the date of this Request for Proposals.

“Imputed Debt” means adjustments to the debt amounts reported on financial statements prepared under generally accepted accounting principles (“GAAP”). Certain obligations do not meet the GAAP criteria of “debt” but have debt-like characteristics; therefore, credit rating agencies “impute debt and interest” in evaluating the financial ratios of a company.

“Independent Observer” has the meaning set forth in Section 1.4 of this RFP.

“Independent Power Producer” or “IPP” means an entity that owns or operates an electricity generating facility that is not included in the Company’s rate base.

“Interconnection Facilities” means the equipment and devices required to permit a Facility to operate in parallel with, and deliver electric energy to, the Company System (in accordance with applicable provisions of the Commission’s General Order No. 7, Company tariffs, operational practices, interconnection requirements studies, and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers. Interconnection Facilities includes Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities.

“Interconnection Requirements Study” or “IRS” means a study, performed in accordance with the terms of the IRS Letter Agreement), to assess, among other things, (1) the system requirements and equipment requirements to interconnect the Facility with the Company System, (2) the Performance Standards of the Facility, and (3) an estimate of interconnection costs and project schedule for interconnection of the Facility.

“kV” means kilovolt.

“Lump Sum Payment” has the meaning set forth in the RDG PPA. It may also be referred to as a monthly Lump Sum Payment to reflect the portion of the payment made each month.

“Maui Electric” means Maui Electric Company, Ltd., a Hawai‘i corporation.

“Mediation” means the confidential mediation conducted in Honolulu, Hawai‘i, pursuant to and in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention Resolution, Inc. (or its successor) or, in its absence, the American Arbitration Association then in effect.

“RDG PPA” means the PV and/or Wind Renewable Dispatchable Generation Power Purchase Agreement attached as Appendix C1 and Appendix C2 to this RFP.

“MW” means megawatt.

“MWh” means megawatt hour.

“NDA” means the Mutual Confidentiality and Non-Disclosure Agreement attached to this RFP as Appendix F.

“O&M” means operation and maintenance.

“Operating Period Security” has the meaning set forth in Section 14.4 of the RDG PPA.

“Performance Standards” means the various performance standards for the operation of the Facility to the Company as set forth in Section 3 of Appendix B, as such standards may be revised from time to time pursuant to Article 23 of the RDG PPA, and as described in Chapter 2 of this RFP.

“Point of Interconnection” has the meaning set forth in the RDG PPA.

“Power Purchase Agreement” or “PPA” means an agreement between an electric utility company and the developer of a renewable energy generation facility to sell the power generated by the facility to the electric utility company.

“Power Supply Improvement Plan” or “PSIP” means the Company’s Power Supply Improvement Plan.

“PSIP Update Report: December 2016” means the Company’s PSIP update filed on December 23, 2016 in Docket No. 2014-0183.

“Procedures Manual” means the manual approved by the PUC, which was put in place to address and to safeguard against preferential treatment or preferential access to information in a Maui Electric RFP process. The Procedures Manual is attached as Appendix D to this RFP.

“Project” means a Facility proposed to Maui Electric by a Proposer pursuant to this RFP.

“Proposal” means a proposal submitted to Maui Electric by a Proposer pursuant to this RFP.

“Proposal Fee” means the non-refundable fee of \$10,000 for each proposal submitted as set forth in Section 1.8 of this RFP.

“Proposer” means a person or entity that submits a Proposal to Maui Electric pursuant to this RFP.

“Proposer’s Response Package” means the form in which the Proposal should be submitted, which is attached as Appendix B to this RFP.

“PUC” means the State of Hawai‘i Public Utilities Commission.

“Renewable Portfolio Standards” or “RPS” means the Hawai‘i law that mandates that the 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 in HRS §§ 269-91 through 269-95.

“Request for Proposals” or “RFP” means a request for Proposals issued pursuant to a competitive bidding process authorized, reviewed, and approved by the PUC.

“RFP Schedule” means the schedule set forth in Table 1, Section 3.1 of this RFP.

“Self-Build Option” means a Proposal submitted by the Company that is responsive to the resource need identified in the RFP, as required by Section VI of the Framework. Note that a Self-Build Option will not be submitted in Phase 1 of this RFP.

“Self-Build Team” means agents of the Company who develop Self-Build Option proposals.

“Seller” means the entity that the Company is contracting with, as set forth in the RDG PPA.

“Seller-Owned Interconnection Facilities” has the meaning set forth in the RDG PPA.

“Short List” means the group of Proposals selected by Maui Electric as described in Section 4.5 of this RFP.

“Site” means the parcel of real property on which the Facility, or any portion thereof, will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility.

“Site Control” has the meaning set forth in Section 4.3 of this RFP.

“Threshold Requirements” has the meaning set forth in Section 4.3 of this RFP.

“Waena Site” is a Company-owned Site offered for use by Proposers under the terms set forth in Sections 1.2.3.1 and 3.10.2 of this RFP. A draft copy of the proposed form of lease for this Site is attached as Appendix K to this RFP.

Any capitalized term not defined in this RFP has the meaning set forth in the RDG PPA.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix B – Proposer’s Response Package /  
IRS Data Sheet*



**Maui  
Electric**

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## **1.0 General Instructions to Proposers:**

The Company has elected to use the services of PowerAdvocate, a third-party electronic platform as facilitator of the RFP process. All Proposals and all relevant information must be submitted via the Power Advocate platform, as is described in the Final RFP. Proposers are requested to observe response structure, file naming convention, RFP documents and submittals, as identified on the Power Advocate platform. The platform will be configured to mirror the requirements identified in Appendix B, but formatting on the platform may vary from Appendix B. If there are any discrepancies between this Appendix B and what appears on the Power Advocate platform, the Power Advocate platform will control.

Input/submission items in the RFP that are not applicable to a specific Proposer, Proposal or Proposal variation must be clearly marked as “N/A” (Not Applicable) and a brief explanation must accompany each item so marked.

Proposers must clearly identify all confidential information in their Proposals, as described in more detail in Section 3.12 Confidentiality of the RFP.

## **2.0 Commercial Information Requirements**

### **2.1 Required Forms**

Proposer must upload a copy of a completed:

- Mutual Confidentiality and Non-Disclosure Agreement (Appendix F to the RFP)

### **2.2 Proposal Summary / Contact Information**

#### *2.2.1 Project Summary*

Proposer must provide the following summary information about their Proposal:

- Project Name
- Proposed Commercial Operations Date
- Proposer Entity Name
- Proposer’s parent company, owner, sponsor, business affiliation
- Project City or Town
- Proposed interconnection point

#### *2.2.2 Project Contact Information*

Proposer must provide the contact information below for Proposer’s primary point of contact:

- Name
- Title
- Address

- Phone Number
- Mobile Phone Number (if different)
- Email Address

### 2.2.3 *Project Characteristics*

Proposer must provide the following summary information about their Proposal's characteristics:

- Generation Technology
- Gross and Net (MW) AC Capability of the generation facility. The net capacity (amount able to be exported to the grid) must not exceed the available capacity of the circuit to which it will interconnect. Proposers are strongly encouraged to contact the Company as described in Section 2.2.1 of this RFP to ensure the project's net capacity does not exceed the circuit's hosting capacity.
- Net Energy Potential of the Facility (MWh)
- Facility overview, including at a minimum:
  - PV
    - Number of inverters
    - Rated output of inverters (kW AC)
    - Number of PV modules
    - Rated output of PV modules (kW DC)
    - PV array design characteristics (i.e. fixed tilt, single or multi-axis tracking)
  - Wind
    - Number of turbines
    - Rated output of turbines (MW AC)
  - Storage
    - Capacity (MWh)
    - Cycling
    - Round trip efficiency
  - Other technologies
    - Comparable information on the generating unit(s)
  - Manufacturers and model numbers for all major equipment
- Estimated Life of generation facility and interconnection facilities



### 2.3 **Executive Summary of the Proposal**

- The Proposer is required to provide an executive summary of the Proposal. The executive summary must include an approach and description of the important elements of the Proposal and, if it is a variation of another Proposal, describe what the minor variations to the Proposal are. Refer to Section 1.8.2 of this RFP for an explanation of minor variations allowed.

### 2.4 **Financial**

Proposers are required to provide the following information to demonstrate FINANCIAL VIABILITY, FINANCIAL STRENGTH AND PLAN, AND FINANCIAL COMPLIANCE as they pertain to their proposal:

#### 2.4.1 *Identification of Equity Participants*

- Who are the equity participants in the project (or the equity partners' other partners)?
- Proposer company profile information
  - DUNS Number
  - Dun & Bradstreet Rating
  - Tax ID Number
  - If applicable, in which state was the Proposer incorporated/formed?
  - If applicable, in what year was the Proposer incorporated/formed?
  - Does the Proposer have any government ownership?
  - Certificate of Good Standing from the State of Hawai'i Department of Commerce and Consumer Affairs
  - Proposer's Federal and State tax clearance
- If the Proposer has a parent entity, answer the questions below about the parent entity.
  - Parent entity profile information
    - DUNS Number
    - Dun & Bradstreet Rating
    - Tax ID Number
    - If applicable, in which state was parent entity incorporated/formed?
    - If applicable, in what year was parent entity incorporated/formed?
    - Does the parent entity have any government ownership?

#### 2.4.2 *Evidence that the Project will be Financed, including assumptions*

- How will the project be financed?
- Is there a written commitment from the equity participants? If so, please provide a copy with confidential information redacted if necessary.

- Discuss and/or provide supporting information on any project financing guarantees.
- Does the Proposer envision any conditions precedent to project financing other than execution of the Power Purchase Agreement or any other applicable project agreements and State of Hawai'i Public Utilities Commission approval of the Power Purchase Agreement and other agreements?
  - If yes, please describe such conditions precedent to project financing and Proposer's plan to address them.
- Describe the implication of the Federal Production Tax Credits or Investment Tax Credits (or similar incentives) on the viability of the project.

#### *2.4.3 Proposer's Organizational Structure*

- Provide a description of the Proposer's organizational structure and associated responsibilities on the project from a financial and legal perspective, including any general and limited partners, providers of capital, and percentage interest of each party.

#### *2.4.4 Approach and Plan for Project Financing*

- Provide a financing plan for the project, including construction and term financing. The financing plan must address at a minimum:
  - The project's projected financial structure
  - Expected sources of debt and equity financing
  - Estimated development and capital costs
  - Evidence the project is financeable
- Proposer is required to state to the best of its knowledge that its Proposal will not (1) trigger a capital lease accounting treatment under FASB ASC 840 or (2) result in a Developer being a Variable Interest Entity (as defined in FASB ASC 810) that would trigger consolidation of such party's finances onto the Company's financial statements under FASB ASC 810, and provide supporting information to allow the Company to verify such conclusion.

#### *2.4.5 Project Financing Experience of the Proposer*

- Provide documentation illustrating the experience of the Proposer in securing financing for projects of similar size and technology. For each project provide the following information:
  - Project name and location
  - Project type and size
  - Date of construction and permanent financing
  - Commercial Operations Date
  - Proposer's role(s) in financing of project
  - Off-taker, term of interconnection agreement, financing structure, and major pricing terms

#### 2.4.6 *Evidence of the Proposer's Financial Strength*

*The Company reserves the right to request additional financial documents and bank references, as needed.*

- Provide evidence that the Proposer has the financial resources and financial strength to complete and operate the project as planned.
- Submit Proposer's audited annual reports (from legal entity and parent company) containing the balance sheets, income statement, and statement of cash flows for the three (3) most recent fiscal years and quarterly report for the most recent quarter ended.
- List the current credit rating from Standard & Poor's, Moody's, and Fitch for the Proposer, affiliates, partners, and credit support provider.

#### 2.4.7 *Evidence that the Proposer can Provide the Required Securities*

- The Proposer must demonstrate its ability (and/or the ability of its credit support provider) to provide the required securities, including its plan for doing so (including type of security, sources of security and a description of its credit support provider).
- Provide a description of any current credit issues regarding the Proposer or affiliate entities raised by rating agencies, banks, or accounting firms.
- Proposers must agree to provide Development Period Security and an Operating Period Security as set forth in the Model PPA.

#### 2.4.8 *Disclosure of Litigation and Disputes*

- Proposers must disclose any litigation, disputes, and status of any lawsuits or dispute resolution related to projects owned or managed by them or any of their affiliates.

#### 2.4.9 *High-level cost information*

- Provide high-level cost information including costs for equipment, construction, engineering, Seller-Owned Interconnection Facilities, Company-Owned Interconnection Facilities, Land, and Annual O&M.

### 2.5 **Model PPA Contract Exceptions**

Proposers may propose modifications to the Model PPA, including modifications that are intended to address a project's specific technology and operating characteristics. However, in general, Proposers are encouraged to accept the contract terms identified in the Model PPA where possible in order to expedite the overall RFP process and potential PPA negotiations. At a minimum, Proposers who elect to propose modifications to the Model PPA shall provide a red-line version of the Model PPA with their requested modifications as a component of their Proposals and shall also provide a detailed explanation and supporting rationale for each of the proposed modifications to the Model PPA in order to enable the Company and Independent Observer to evaluate the impact that the proposed modifications will have on the overall risk assessment associated with the evaluation of each Proposal.

In the event the Proposer does not upload redlines of the applicable form agreements, the Company will assume the terms in such form agreements are agreeable to the Proposer.

### 2.6 **Site Control**

The Proposal must demonstrate that the Proposer has Site Control for all real property required for the successful implementation of a specific Proposal at a Site not controlled by the Company, including any

Interconnection Facilities for which the Proposer is responsible. The need for a firm commitment is necessary to ensure that Proposals are indeed realistic and can be relied upon as the Company moves through the remainder of the RFP process.

- Demonstrate how the Proposer has met the Threshold Site Control, identified in RFP Section 4.3 Threshold Requirements by complying with one (1) of the following:
  - Provide documentation confirming that the Proposer owns 100% of the fee interest in the Site on which the Project will be situated;
  - Provide documentation confirming that the Proposer holds a leasehold interest in the Site for a term at least equal to the term of the PPA as specified in the Proposer's Proposal (taking into account the timelines set forth in this RFP for selection, negotiation, and execution of a PPA and PUC approval of a PPA); or
  - Provide documentation confirming that the Proposer has an executed option agreement to purchase the Site or to lease the Site for a term at least equal to the term of the PPA as specified in the Proposer's Proposal. This option agreement does not need to be exclusive to the Proposer at the time the Proposal is submitted, but may be contingent upon selection of the Proposal to the Final Award Group.
- Where government or publicly-owned lands are part of the Site or are required for the successful implementation of the Proposal, the Proposer must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary Site Control for the Proposal, including securing necessary and appropriate permits, approvals, rights-of-way, access, and other appurtenances necessary for the project, including but not limited to evidence of sufficient progress toward approval by the government agency or other body vested with authority to grant such approval (as demonstrated by records of the agency). Describe the Proposer's Site Control plan or overall strategy for all real property required for the successful implementation of the proposed project.
- Provide a map of the Generator site that clearly identifies the location of the parcel on which the site is located, the tax map key number, the site boundaries (if the site does not cover the entire parcel), the total acreage of the site, the Point of Interconnection, and the relationship of the site to other local infrastructure. In addition to providing the required map, provide a site layout plan which illustrates the proposed location of all equipment and facilities on the site.
- Provide a detailed description including site sketches of how the facility will be interconnected to the Company's System (above-ground or underground) and a description of the rationale for the interconnection route.
- Identify whether the site and interconnection route are near cultural resources and implications for project completion and mitigation strategies.
- Provide evidence that the site and interconnection route are properly zoned. If they are not currently zoned properly, identify present and required zoning and/or land use designations and provide a permitting plan and timeline to secure the necessary approvals.
- Identify any rights-of-way or easements that are required for access to the site or for interconnection route. Describe the status of rights-of-way and easement acquisition, and describe the plan for securing the necessary rights-of-way, including the proposed timeline.

## 2.7 Environmental Review, Permitting Plan, Environmental Compliance/Impacts

This section addresses environmental, social, and land use issues associated with project(s) siting and operations. The purpose of this section is to identify environmental, social, and land use planning, permitting, and approval requirements, long and short term impacts, and measures that may be required to mitigate these impacts.

- Describe your overall land use and environmental permits and approvals strategy and approach to obtaining successful, positive results from the agencies and authorities having jurisdiction. The plan should explain the conceptual plans for siting, studies/assessments, permits and approvals, including a schedule which identifies the sequencing of activities and critical path.
- Identify all required discretionary and non-discretionary land use, environmental and construction permits and approvals required for development, financing, construction, and operation of the proposed project, including but not limited to, zoning changes, Environmental Assessments and/or Environmental Impacts Statements.
  - Provide a listing of such permits and approvals, indicating Federal, State or Local agencies and authorities having jurisdiction over the issuance, and the anticipated timeline for seeking and receiving the required permit and/or license. Include an explanation of your basis for the assumed timeline, and describe any situation where a permit or license for one aspect of the project may influence the timing or permit of another aspect (e.g. a case where one permit is contingent upon completion of another permit or license), if applicable.
- Describe the current or previous use of the proposed site and identify and explain any State Land Use Reclassifications necessary for Proposal siting and operations, and the associated processing/approval timeframes.
- Provide a decommissioning plan, including:
  - Developing and implementing program for recycling to the fullest extent possible, or otherwise properly disposing of, of installed infrastructure, if any, and
  - Demonstration of how restoration of the Site to its original ecological condition is guaranteed in the event of default by the Proposer in the applicable Site Control documentation.
- Provide a preliminary environmental assessment of the site (including any pre-existing environmental conditions) and potential short and long term impacts associated with, or resulting from the Proposal – including direct, indirect, and cumulative impacts associated with development, construction, operation and maintenance of the proposed project in each of the areas identified below. If alternatives have been or will be considered, those should be discussed. The assessment shall also include Proposer’s short and long term plans to mitigate such impacts an explanation of the mitigation strategies for, but not limited to, each of the major environmental areas as presented below:
  - Natural Environment:
    - Air quality
    - Biology (Natural habitats and ecosystems, flora/fauna/vegetation)
    - Climate
    - Soils
    - Topography and geology
  - Land Regulation

- Land Uses
- Flood and tsunami hazards
- Noise
- Roadways and Traffic
- Utilities
- Socio-Economic Characteristics
- Aesthetic/Visual Resources
- Solid waste
- Hazardous materials
- Water quality
- Public Safety Services (Police, Fire, Emergency Medical Services)
- Recreation
- Potential cumulative and secondary impacts

## 2.8 **Cultural Resource Impacts<sup>1</sup>**

Describe the Proposer's plan to address the below requirements as it pertains to the project site and interconnection route including a status of any consultants that have been identified and/or contracted with and any assessments that have been planned or performed to date. For impacts identified for the areas listed below, provide a mitigation strategy and the expected impact on the project schedule.

- Archaeological Resources
- Cultural Practices and Resources

Provide documentation of work already done, including contracting with a consultant with expertise in this field to begin a cultural impact assessment for the project.

## 2.9 **Community Outreach and Engagement**

- Provide a detailed plan for community outreach and communications to gain support for or acceptance of the proposed project, including the Proposer's plans to reach out and engage with the community during project development and construction to provide project information and address local or community issues. The plan should address, but not be limited to, the following items:
  - Identify communities and other stakeholders that may be affected by the proposed project. How will they be affected? What mitigation strategies will the Proposer implement?
  - When and how will affected communities and the general public be informed about the proposed project? Describe, at a minimum, the frequency of communication, source of information, and outlets utilized.

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<sup>1</sup> Detail the potential impacts of the Proposal on cultural resources in the short and long term and the Proposer's plan to mitigate such impacts. Parties should, at a minimum, identify (1) valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Proposers must provide as much information as possible to allow the Company to understand the considerations.

- Will the affected communities and the general public be given an opportunity to provide the developer with feedback and comments on the proposed project? What will the developer do with the feedback and comments received?
- Provide any documentation of local community support or opposition including any letters from local organizations, newspaper articles, or communications from local officials.
- Provide a description of community outreach efforts already taken or currently underway, including the names of organizations and stakeholders contacted about the proposed project.
- Describe any anticipated or negotiated investment in the community and other community benefits that the Proposer proposes to provide in connection with the project, along with an estimated value of the community benefits in dollars (including the cost to Proposers providing the benefits and supporting details on how those costs and benefits were derived).

#### 2.10 O&M Plan

Operations and maintenance is as an important element of successful project operations. The Company is interested in projects that can demonstrate that their maintenance plan will ensure reliable operations during the term of the contract.

- Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan must include a discussion of the staffing levels proposed for the project and location of such staff, the expected role of the Proposer (Owner) or outside contractor, scheduling of major maintenance activity, maintenance funding levels, and the plan for testing equipment. Also state whether the Proposer would consider 24-hour staffing, explain how this would be done, and identify any cost impacts that are not included in the Proposal.
- Describe the Proposer's contingency plan, including the Proposer's mitigation plans to address failures. Such information should be described in the proposal to demonstrate the project's reliability with regard to potential operational issues.
- Indicate whether or not the project sponsor is willing to coordinate the maintenance schedule for the project with the annual maintenance schedule of the Company.
- Describe the status of the Proposer in securing any operation and maintenance agreements or contracts. Include a discussion of the Proposer's plan for securing a long-term operation and maintenance contract.
- Provide examples of the Proposer's experience with operation and maintenance services for other similar projects.

### 3.0 **Technical Information Requirements**

#### 3.1 Performance Standards

Proposers must provide the following information regarding the project operational parameters for proposed renewable generation. If not applicable to the specific technology, the Proposer must respond with an N/A.

##### 3.1.1 *Design and Operating Information*

- Provide a project design description, including configurations and maps

- RFP NEP Projection (MWh): The estimated annual net energy that could be produced by the facility and delivered to the Point of Interconnection over a ten year period with a probability of exceedance of 95%
- Hourly 8760 (24 hours x 365 days) generation profile for the provided RFP NEP Projection
- Resource data and a description of the resource data used in developing the RFP NEP Projection (i.e. data source(s) including any resource assessment studies prepared by independent consultants, location(s) that were analysed as they relate to the proposed project site, the resolution of the data, the accuracy of any measurement instrumentation, and the duration of the data collection).
- Sample rate of critical telemetry (i.e. frequency and voltage) based on industry experience
- Frequency response characteristic, including time of response, means of implementing
- Reactive power control when resource is at zero
- Maximum controlled ramp rate
- Startup ramp rate
- Ability to cycle on/off and provide any limitations
- Disturbance ride-through:
  - Momentary cessation (Y/N)
  - Provision of fault current- describe, provide graph

Ability to withstand subsequent events

Experience dealing with active power control, dispatch, frequency response, and ride through

### 3.1.2 *Auxiliary Power Information*

- Proposer must list the maximum auxiliary power requirements for:
  - Start-up
  - Normal Operations (from generator)
  - Normal Operating Shutdown
  - Forced Emergency Shutdown
  - Maintenance Outage

### 3.1.3 *Capability of Meeting Performance Standards*

The Companies will review the Proposal information, design documents and operating procedure materials received and will make a determination on whether the facility as designed is able to meet the Performance Standards identified in Section 3 of Appendix B to the Model PPA (Appendix C to the Final RFP).



- To the extent the Performance Standards cannot be achieved, the Proposer must specify and provide an explanation of why they cannot be met. Alternately, provide the Proposer's ability to exceed the Performance Standards and explain with detail and basis.

#### 3.1.4 *Coordination of Operations*

- Provide a description of the control facilities required to coordinate generator operation with and between the Company's System Operator and the Company's System.
  - Provide a description of the equipment and technology used to facilitate dispatch by the Company and communicate with the Company.
- Include a description of the control and protection requirements of the generator and the Company's System.

#### 3.2 **Available Transmission Circuit Capacity**

- Provide the Output Capacity of the Facility (MW). Please note that the output capacity of the proposed project must not exceed the available capacity of the transmission circuit to which it will interconnect.
- Provide the appropriate completed Interconnection Requirement Study Data Request worksheet.

#### 3.3 **Proven Technology**

This criterion is intended as a check to ensure that the technology proposed is viable and can reasonably be relied upon to meet the objectives of this RFP. The Company will only consider Proposals utilizing technologies that have successfully reached commercial operations in multiple commercial applications (i.e., a PPA) at the scale being proposed. Technologies proposed in this RFP should be considered mature energy technologies at the scale proposed.

- Proposals should include any supporting information for the Company to assess the commercial and financial maturity of the technology being proposed. Provide any supporting documentation that shows examples of projects that: 1) use the technology at the scale being proposed; 2) have successfully reached commercial operations (for example, by submitting a PPA).

#### 3.4 **Experience and Qualifications**

Proposers are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. The Company is interested in a project team that has demonstrated success in the development and operation of electricity generation projects through the commercial operations stage where such projects were of a similar size (i.e., no less than half of the size of the project being proposed in response to this RFP), scope, technology and structure to the Project being proposed by the Proposer.

- Provide an organizational chart for the project that lists the project participants and identifies the management structure and responsibilities. For each of the project participants (including the Proposer, partners, and proposed contractors), provide statements that list the specific experience of the firm in: developing, financing, designing, constructing, owning, operating, and maintaining renewable energy generating facilities, or other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.
- Identify those member(s) of the team the Proposer is submitting to meet the experience Threshold Requirements and demonstrate the member(s) firm commitment to provide services to the Proposer.

- Identify those members of the team with experience and qualifications including affiliates, and their principal personnel who will be involved in the project contracting to sell and deliver energy. If the Proposer consists of multiple parties, such as joint ventures or partnerships, provide this information for each party, clearly indicating the proposed role of each party, including an ownership chart indicating direct and indirect ownership, and percentage interests in the partnership or joint venture
- Provide a management chart which lists the key personnel dedicated to this project and provide biographies / resumes of the key personnel, including position, years of relevant experience, and similar project experience. Provide specifics as they relate to financing of renewable energy projects. Identify architects and engineers or provision to provide same that are licensed to practice in the State of Hawai'i.
- Provide a listing of all photovoltaic, wind or other renewable energy projects the Proposer has successfully developed or that are currently under construction. Describe the Proposer's role and responsibilities associated with these projects (lead developer, owner, investor, etc.). Provide the following information as part of the response:
  - Name of the project
  - Location of the project
  - Project type, size and technology
  - Commercial operation date
  - Offtaker (if applicable)
  - Current ownership
  - References with contact information(name, address, phone number, and relationship with the Proposer and with the related project

### 3.5 State of Project Development and Schedule

- Proposers are required to provide a project schedule in GANTT chart format with complete critical path activities identified for the Proposal from the Notice of Selection of the Proposal for contract negotiation to the start of Commercial Operations. The schedule must include Interconnection Requirement Study (IRS), anticipated contract negotiation period, regulatory, permitting (including but not limited to environmental and archaeological compliance), land acquisition, community outreach, interconnection (including engineering, procurement and construction), and all other important elements outside of the direct construction of the project. For each project element, list the start and end date, and include predecessors to clearly illustrate schedule dependencies. Proposers must also list and describe critical path activities and milestone events, particularly as they relate to the integration and coordination of the project components and the Company's Electric System.
  - Proposers must ensure that the schedule provided in this section is consistent with the milestone events contained in the PPA and/or other agreements.
  - Identify the elements on the critical path. The schedule must include, at a minimum, facility contracts, construction, siting, environmental permitting (anticipated submittal and approval), cultural resource implications and mitigation plans, community outreach plan, energy resource assessment, financing, engineering, procurement, local permits and any other requirements that could influence the project schedule, and the Commercial Operations Date. The project schedule must include dates for submittal of engineering and design for review and approval, all

construction management events and construction and applicable reporting milestone events specified in the Model PPA and/or other agreements.

- Proposer must provide the construction execution strategy. This must include identification of contracting/subcontracting plans, modular construction, safety plans<sup>2</sup>, quality control and assurance plan, labor availability, likely manufacturing sites and procurement plans, and similar projects where these construction methods have been used by the Proposer.
- Proposers should provide a description of any project activities that have been performed to date

#### **4.0 Pricing Information**

- Lump Sum Payment - (\$/month) the payment to be made by Company to Seller in exchange for Seller making the Net Energy Potential of the Facility available for dispatch by the Company
- Interconnection Costs Savings Rate – Amount per \$100,000 (lower than the estimate) of actual interconnection costs Variable Price - (\$/MWh) payment for electric energy delivered to the Company

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<sup>2</sup> A document that describes the various safety procedures and practices that will be implemented on the project and how applicable safety regulations, standards, and work practices will be enforced on the project.

**Interconnection Requirement Study - Data Request  
FOR PV GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_  
DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

	Response
1) Please provide a plan map of the Non-Utility Generation (NUG) facility. Please indicate the interconnection point to the HECO system.	
2) Please provide the following generation and load information for the NUG facility:	
a. Gross and net output of the facility	
b. Expected KW and KVAR loads including, but not limited to, generators' auxiliary load curve, process load(s) profile(s), etc.	
c. Expected minimum and maximum MW and MVAR "import from" AND "export to" HECO.	
3) Please provide Single-Line Diagram(s), Three-Line Diagram(s), and Protective Relay List & Trip Schedule for the generation and interconnection facilities:	
a. The Single-line diagram(s) and Three-line diagram (s) should include:	
i. For main and generator step up transformer(s), please show:	
• Transformer voltage and MVA ratings.	
• Transformer impedance(s).	
• Transformer winding connections and grounding. If neutrals are grounded through impedance, please show the impedance value.	
ii. The protective relaying and metering for the generators, transformers, buses, and all other main substation equipment.	
iii. For the potential transformers, please indicate the type, quantity, ratio, and accuracy rating.	
iv. For the current transformers, please indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.	
v. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.	
vi. For the interconnection / tie lines (overhead or underground) and the plant's generation system, please provide the following, as applicable:	
• Installation details such as cross-section(s), plan and profiles, etc.	
• Conductor data such as size, insulation, length etc.	
• Continuous and emergency current ratings.	
• Voltage rating (nominal and maximum KV).	
• BIL rating.	
• Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance)	
• Capacitance or charging current.	
• Short-circuit current capability.	
vii. Include station power for facility and all applicable details.	
viii. All applicable notes pertaining to the design and operation of the facility.	
b. The Protective relay list & trip schedule should list the protected equipment; the relay description, type, style number, quantity, ANSI Device No., and range; and the breaker(s)/switching device(s) tripped, for both the generator protection and the interconnection facilities protection.	
c. Please provide both a paper and an electronic version (e.g. dgn, dxf, or pdf) of the single-line diagram(s) and the protective relay list & trip schedule.	
d. Single-line diagrams should be provided for both the generation plant and the interconnection substation.	

**Interconnection Requirement Study - Data Request  
FOR PV GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

	Response
4) For the PV Inverter Based Generating Facility, please provide the following data:	
a. Inverter manufacturer, Type, Size, Impedances. Attach copy of inverter data sheet.	
b. Power Factor Range Capability	
c. Inverter Reactive Power Capability Curve	
d. Auxillary loads (P, Q, Power Factor)	
e. Ramp rates (up, down) Typical and Measured Proxy Data	
f. Inverter's Internal Isolation Transformer Grounding Method, if used (i.e. effectively grounded, resonant grounded, low inductance grounded, high-resistance grounded, low-resistance grounded, ungrounded). If the transformer is not solidly grounded, provide the impedance value for the grounding neutral and the impedance for the isolation transformer.	
g. Diagram for Inverter's internal isolation transformer	
h. Switching and service restoration practice	
i. Protection data (voltage ride-through and trip settings, frequency ride-through and trip settings etc.). Include setpoint and clearing time ranges for voltage and frequency settings.	
j. Details of filters etc. at Point of Interconnection	
k. Description of harmonic spectrum of inverter injection (order, magnitude)	
l. Description of PV inverter with respect to varying levels of solar irradiance	
5) Energy Storage System, if applicable	
a. Operation characteristics	
b. Voltage level	
c. Capacity (how long and how much can the battery support)	
d. Deployment strategy/schedule	
e. Energy storage system data sheet	
6) For the PV plant's collector system, please provide the following, as applicable:	
a. Conductor data such as size, insulation, etc.	
b. Continuous and emergency current ratings.	
c. Voltage rating (nominal and maximum kV).	
d. BIL rating.	
e. Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance).	
f. Capacitance or charging current.	
g. Short-circuit current capability.	

**Interconnection Requirement Study - Data Request  
FOR PV GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

		Response
7)	Please provide the following software models that accurately represent the Facility:	
	a. Validated PSS/E load flow model up to the point of interconnection. The PSS/E model shall include the main transformer, collection system, generator step-up transformers, inverter systems, and any other components including capacitor banks, energy storage systems, DVAR, etc. An equivalent representation of the collection system, generator step-up transformers, and inverter systems is acceptable. Documentation on the model shall be provided.	
	b. Validated PSS/E dynamic model for the inverter, and other components including energy storage system, DVAR, etc. if applicable. The inverter model shall include the generator/converter, electrical controls, plant-level controller, and protection relays. Generic and Detailed models shall be provided. Documentation on the model(s) shall be provided, including the PSS/E dyre file with model parameters.	
	i. Generic models shall parameterize models available within the PSS/E standard model library.	
	ii. Detailed models shall be supplied by the vendor/manufacturer as user-written models. The uncompiled source code for the user-written model shall be provided to ensure compatibility with future versions of PSS/E. In lieu of the uncompiled source code, a compiled object file and applicable library files shall be provided in PSS/E versions 33 AND 34 format. Updates of the object file compatible with future PSS/E versions must be provided as requested for the life of the project as written in the power purchase agreement. Documentation shall include the characteristics of the model, including block diagrams, values, names for all model parameters, and a list of all state variables.	
	c. Validated PSCAD model of the inverter, and other components including energy storage system, DVAR, auxiliary plant controllers, etc. if applicable. Documentation on the model(s) shall be provided. Refer to PSCAD Technical Memo for model requirements.	
	d. Overlaid plots validating the performance of the three dynamic models for a three-phase fault. Plots shall include voltage, real and reactive power, real and reactive current.	
	e. Validated Aspen Oneliner short circuit model that accurately represents the facility (including energy storage system if applicable), and is valid for all faults conditions anywhere on the Utility system. Documentation on the model(s) shall be provided. (OTHERWISE SEE ADDITIONAL TABS FOR REQUIRED INFORMATION TO MODEL INVERTER)	
8)	For the main transformer and generator step-up transformers, please provide:	
	a. Transformer voltage and MVA ratings, and available taps. Attach copy of transformer test report or data sheet	
	b. The tap settings used.	
	c. The LTC Control Scheme.	
	d. Transformer winding connections and grounding used. If the transformer is not solidly grounded, provide the impedance value for the grounding method.	
	e. Positive, negative, and zero sequence impedance values.	
9)	For the circuit breakers and fault-clearing switching devices, including the generator breakers, please provide:	
	a. The voltage, continuous current and interrupting capability ratings.	
	b. The trip speed (time to open).	

**Interconnection Requirement Study - Data Request  
FOR PV GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

		Response
10)	For the power fuses, please provide:	
	a. The manufacturer, type, size, and interrupting capability.	
	b. The minimum melt and total clearing curves.	
11)	For the protective relaying, please provide:	
	a. Data for the CTs used with the relaying including the manufacturer, type of CT, accuracy class, and thermal rating factor.	
	b. Data for the PTs used with the relaying including the manufacturer, type of PT, voltage ratings, and quantity.	
12)	Please provide protective relay settings for existing and proposed generators, including but not limited to, reverse power, negative sequence, over and underfrequency, over and under voltage, volts per hertz, etc.	

Updated 6/15/11

**Instructions:**

Please fill in the data in the green blanks below

(Note: This does not include the internal isolation transformer, if used)

[1] Maximum rated output power =  kVA

[2] Impedances in **Per Unit** based on kVA from [1]

	R	X
Subtransient =	<input type="text"/>	<input type="text"/>
Transient =	<input type="text"/>	<input type="text"/>
Synchronous =	<input type="text"/>	<input type="text"/>
Negative Sequence =	<input type="text"/>	<input type="text"/>
Zero Sequence =	<input type="text"/>	<input type="text"/>

[3] Neutral impedance (if any) in actual **Ohms**:

R	X
<input type="text"/>	<input type="text"/>

**NOTE:** These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:

**Generating Unit Info**

ID=  Unit rating=  MVA

Impedances (pu based on unit MVA)

Subtransient	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	<input type="button" value="Fill"/>
Transient	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	
Synchronous	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	
- sequence	<input type="text" value="0.15"/>	+j	<input type="text" value="0.15"/>	
o sequence	<input type="text" value="9999.0"/>	+j	<input type="text" value="9999.0"/>	

Neutral Impedance (in actual Ohms)

<input type="text" value="0.0"/>	+j	<input type="text" value="0.0"/>
----------------------------------	----	----------------------------------

Scheduled generation. Enter MVAR for PQ buses only

MW= <input type="text" value="0.0"/>	MVAR= <input type="text" value="0.0"/>
--------------------------------------	--

P and Q limits (MW and MVAR)

Pmax= <input type="text" value="9999.0"/>	Qmax= <input type="text" value="9999.0"/>
Pmin= <input type="text" value="-9999.0"/>	Qmin= <input type="text" value="-9999.0"/>



Updated 6/15/11

Instructions:

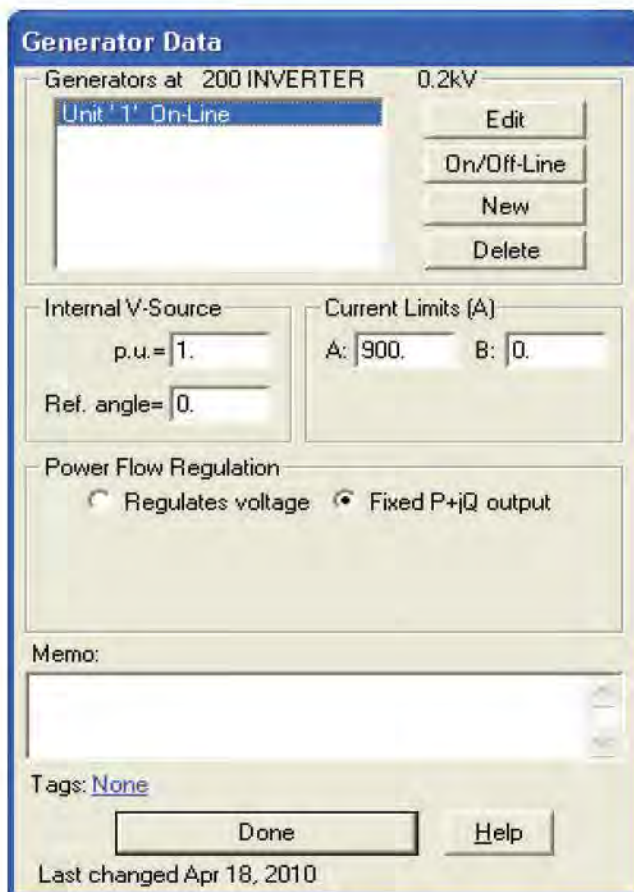
Please fill in the data in the green blanks below

[1] Internal open circuit voltage  
Magnitude =  Per Unit  
Angle =  Degrees

[2] AC Output Current Limit =  Amps

NOTE: These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:



**Interconnection Requirement Study - Data Request  
FOR WIND GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_  
DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

	Response
1) Please provide a plan map of the Non-Utility Generation (NUG) facility. Please indicate the interconnection point to the HECO system.	
2) Please provide the following generation and load information for the NUG facility:	
a. Gross and net output of the facility	
b. Expected KW and KVAR loads including, but not limited to, generators' auxiliary load curve, process load(s) profile(s), etc.	
c. Expected minimum and maximum MW and MVAR "import from" AND "export to" HECO.	
3) Please provide Single-Line Diagram(s), Three-Line Diagram(s), and Protective Relay List & Trip Schedule for the generation and interconnection facilities:	
a. The Single-line diagram(s) and Three-line diagram (s) should include:	
i. For main and generator step up transformer(s), please show:	
• Transformer voltage and MVA ratings.	
• Transformer impedance(s).	
• Transformer winding connections and grounding. If neutrals are grounded through impedance, please show the impedance value.	
ii. The protective relaying and metering for the generators, transformers, buses, and all other main substation equipment.	
iii. For the potential transformers, please indicate the type, quantity, ratio, and accuracy rating.	
iv. For the current transformers, please indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.	
v. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.	
vi. For the interconnection / tie lines (overhead or underground) and the plant's generation system, please provide the following, as applicable:	
• Installation details such as cross-section(s), plan and profiles, etc.	
• Conductor data such as size, insulation, length etc.	
• Continuous and emergency current ratings.	
• Voltage rating (nominal and maximum KV).	
• BIL rating.	
• Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance)	
• Capacitance or charging current.	
• Short-circuit current capability.	
vii. Include station power for facility and all applicable details.	
viii. All applicable notes pertaining to the design and operation of the facility.	
b. The Protective relay list & trip schedule should list the protected equipment; the relay description, type, style number, quantity, ANSI Device No., and range; and the breaker(s)/switching device(s) tripped, for both the generator protection and the interconnection facilities protection.	
c. Please provide both a paper and an electronic version (e.g. dgn, dxf, or pdf) of the single-line diagram(s) and the protective relay list & trip schedule.	
d. Single-line diagrams should be provided for both the generation plant and the interconnection substation.	

**Interconnection Requirement Study - Data Request  
FOR WIND GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

	Response
4) For the Wind Generating Facility, please provide the following data:	
a. Turbine manufacturer, Type, Size, Impedances. Attach copy of turbine data sheet.	
b. Power Factor Range Capability	
c. Turbine Reactive Power Capability Curve	
d. Auxillary loads (P, Q, Power Factor)	
e. Ramp rates (up, down) Typical and Measured Proxy Data	
f. Grounding Method (i.e. effectively grounded, resonant grounded, low inductance grounded, high-resistance grounded, low-resistance grounded, ungrounded). If the transformer is not solidly grounded or ungrounded, provide the impedance value for the grounding neutral, if applicable.	
g. Provide grounding diagram.	
h. Switching and service restoration practice	
i. Protection data (voltage ride-through and trip settings, frequency ride-through and trip settings etc.). Include setpoint and clearing time ranges for voltage and frequency settings.	
j. Details of filters etc. at Point of Interconnection	
k. Description of harmonic spectrum of inverter injection (order, magnitude)	
5) Energy Storage System, if applicable	
a. Operation characteristics	
b. Voltage level	
c. Capacity (how long and how much can the battery support)	
d. Deployment strategy/schedule	
e. Energy storage system data sheet	
6) For the Wind plant's collector system, please provide the following, as applicable:	
a. Conductor data such as size, insulation, etc.	
b. Continuous and emergency current ratings.	
c. Voltage rating (nominal and maximum kV).	
d. BIL rating.	
e. Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance).	
f. Capacitance or charging current.	
g. Short-circuit current capability.	

**Interconnection Requirement Study - Data Request  
FOR WIND GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

		Response
7)	Please provide the following software models that accurately represent the Facility:	
	a. Validated PSS/E load flow model up to the point of interconnection. The PSS/E model shall include the main transformer, collection system, generator step-up transformers, wind turbines, and any other components including capacitor banks, energy storage systems, DVAR, etc. An equivalent representation of the collection system, generator step-up transformers, and turbines is acceptable. Documentation on the model shall be provided.	
	b. Validated PSS/E dynamic model for the wind turbine; and other components including energy storage system, DVAR, etc. if applicable. The wind turbine model shall include the generator/converter, electrical controls, plant-level controller, protection relays, and mechanical systems that impact its electrical performance. Generic and Detailed models shall be provided. Documentation on the model(s) shall be provided, including the PSS/E dyre file with model parameters.	
	i. Generic models shall parameterize models available within the PSS/E standard model library.	
	ii. Detailed models shall be supplied by the vendor/manufacturer as user-written models. The uncompiled source code for the user-written model shall be provided to ensure compatability with future versions of PSS/E. In lieu of the uncompiled source code, a compiled object file and applicable library files shall be provided in PSS/E versions 33 AND 34 format. Updates of the object file compatible with future PSS/E versions must be provided as requested for the life of the project as written in the power purchase agreement. Documentation shall include the characteristics of the model, including block diagrams, values, names for all model parameters, and a list of all state variables.	
	c. Validated PSCAD model of the wind turbine; and other components including energy storage system, DVAR, etc, if applicable. Documentation on the model(s) shall be provided. Refer to PSCAD Technical Memo for model requirements.	
	d. Overlaid plots validating the performance of the three dynamic models for a three-phase fault. Plots shall include voltage, real and reactive power, real and reactive current.	
	e. Validated Aspen Oneliner short circuit model that accurately represents the facility (including energy storage system if applicable), and is valid for all faults conditions anywhere on the Utility system. Documentation on the model(s) shall be provided. (OTHERWISE SEE ADDITIONAL TABS FOR REQUIRED INFORMATION TO MODEL INVERTER)	
8)	For the main transformer and generator step-up transformers, please provide:	
	a. Transformer voltage and MVA ratings, and available taps. Attach copy of transformer test report or data sheet	
	b. The tap settings used.	
	c. The LTC Control Scheme.	
	d. Transformer winding connections and grounding used. If the transformer is not solidly grounded, provide the impedance value for the grounding method.	
	e. Positive, negative, and zero sequence impedance values.	
9)	For the circuit breakers and fault-clearing switching devices, including the generator breakers, please provide:	
	a. The voltage, continuous current and interrupting capability ratings.	
	b. The trip speed (time to open).	

**Interconnection Requirement Study - Data Request  
FOR WIND GENERATION**

Updated 1/17/2018

PROJECT: \_\_\_\_\_

DATE: \_\_\_\_\_

(Nonexclusive Preliminary List)

\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\*

		Response
10)	For the power fuses, please provide:	
	a. The manufacturer, type, size, and interrupting capability.	
	b. The minimum melt and total clearing curves.	
11)	For the protective relaying, please provide:	
	a. Data for the CTs used with the relaying including the manufacturer, type of CT, accuracy class, and thermal rating factor.	
	b. Data for the PTs used with the relaying including the manufacturer, type of PT, voltage ratings, and quantity.	
12)	Please provide protective relay settings for existing and proposed generators, including but not limited to, reverse power, negative sequence, over and underfrequency, over and under voltage, volts per hertz, etc.	

Updated 6/15/11

**Instructions:**

Please fill in the data in the green blanks below

(Note: This does not include the internal isolation transformer, if used)

[1] Maximum rated output power =  kVA

[2] Impedances in **Per Unit** based on kVA from [1]

	R	X
Subtransient =	<input type="text"/>	<input type="text"/>
Transient =	<input type="text"/>	<input type="text"/>
Synchronous =	<input type="text"/>	<input type="text"/>
Negative Sequence =	<input type="text"/>	<input type="text"/>
Zero Sequence =	<input type="text"/>	<input type="text"/>

[3] Neutral impedance (if any) in actual **Ohms**:

R	X
<input type="text"/>	<input type="text"/>

**NOTE:** These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:

**Generating Unit Info**

ID=  Unit rating=  MVA

Impedances (pu based on unit MVA)

Subtransient	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	<input type="button" value="Fill"/>
Transient	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	
Synchronous	<input type="text" value="0.1"/>	+j	<input type="text" value="0.1"/>	
- sequence	<input type="text" value="0.15"/>	+j	<input type="text" value="0.15"/>	
o sequence	<input type="text" value="9999.0"/>	+j	<input type="text" value="9999.0"/>	

Neutral Impedance (in actual Ohms)

<input type="text" value="0.0"/>	+j	<input type="text" value="0.0"/>
----------------------------------	----	----------------------------------

Scheduled generation. Enter MVAR for PQ buses only

MW=  MVAR=

P and Q limits (MW and MVAR)

Pmax=	<input type="text" value="9999.0"/>	Qmax=	<input type="text" value="9999.0"/>
Pmin=	<input type="text" value="-9999.0"/>	Qmin=	<input type="text" value="-9999.0"/>

Updated 6/15/11

Instructions:

Please fill in the data in the green blanks below

- [1] Internal open circuit voltage  
Magnitude =  Per Unit  
Angle =  Degrees
- [2] AC Output Current Limit =  Amps

NOTE: These parameters should reflect the inverter response for all types of faults at any point on the electrical system to which the inverter is connected. This includes faults at the inverter output terminals, and also on the 138 kV transmission system. If the stated parameters do not cover this range, please state the adjustments needed to these parameters to accurately represent the inverter response across this range.

These parameters will be used to model the inverter in the Aspen Oneliner program as shown in the sample dialog box below:

**Generator Data**

Generators at 200 INVERTER 0.2kV

Unit '1' On-Line

Internal V-Source  
p.u. =   
Ref. angle =

Current Limits (A)  
A:  B:

Power Flow Regulation  
 Regulates voltage  Fixed P+iQ output

Memo:

Tags: [None](#)

Last changed Apr 18, 2010

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
<p>1) <b>Please provide Single-Line Diagram(s), Three-Line Diagram(s), and Protective Relay List &amp; Trip Schedule for the generation and interconnection facilities:</b></p> <p><b>General SLD Comments and Questions</b></p>	
<p>a. The Single-line diagram(s) and Three-line diagram (s) should include:</p>	
<p>i. For main and generator step up transformer(s), please show:</p> <ul style="list-style-type: none"> <li>• Transformer voltage and MVA ratings.</li> </ul>	
<ul style="list-style-type: none"> <li>• Transformer impedance(s).</li> </ul>	
<ul style="list-style-type: none"> <li>• Transformer winding connections and grounding. If neutrals are grounded through impedance, please show the impedance value.</li> </ul>	
<p>ii. The protective relaying and metering for the generators, transformers, buses, and all other main substation equipment.</p>	
<p>iii. For the potential transformers, please indicate the type, quantity, ratio, and accuracy rating.</p>	
<p>iv. For the current transformers, please indicate the type, quantity, ratio, and accuracy rating, and thermal rating factor.</p>	
<p>v. Auxiliary power devices (e.g. capacitors, reactors, storage systems, etc.) and their rating(s); additional inquiries may be made to obtain technical data for these devices.</p>	
<p>vi. For the interconnection / tie lines (overhead or underground) and the plant's generation system, please provide the following, as applicable:</p> <ul style="list-style-type: none"> <li>• Installation details such as cross-section(s), plan and profiles, etc.</li> </ul>	
<ul style="list-style-type: none"> <li>• Conductor data such as size, insulation, etc.</li> </ul>	
<ul style="list-style-type: none"> <li>• Continuous and emergency current ratings.</li> </ul>	
<ul style="list-style-type: none"> <li>• Voltage rating (nominal and maximum KV).</li> </ul>	
<ul style="list-style-type: none"> <li>• BIL rating.</li> </ul>	
<ul style="list-style-type: none"> <li>• Positive, negative, and zero-sequence impedances (resistance, reactance, and susceptance)</li> </ul>	
<ul style="list-style-type: none"> <li>• Capacitance or charging current.</li> </ul>	
<ul style="list-style-type: none"> <li>• Short-circuit current capability.</li> </ul>	
<p>vii. Include station power for facility and all applicable details.</p>	
<p>viii. All applicable notes pertaining to the design and operation of the facility.</p>	
<p>b. The Protective relay list &amp; trip schedule should list the protected equipment; the relay description, type, style number, quantity, ANSI Device No., and range; and the breaker(s)/switching device(s) tripped, for both the generator protection and the interconnection facilities protection.</p>	



**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
c. Please provide both a paper and an electronic version (e.g. dgn, dxf, or pdf) of the single-line diagram(s) and the protective relay list & trip schedule.	
d. Single-line diagrams should be provided for both the generation plant and the interconnection substation.	

2) <b>Please provide a plan map of the Non Utility Generation (NUG) facilities; please indicate the interconnection point to the HECO system.</b>	
---	--

3) <b>For the power transformers including the generator step-up transformers, please provide:</b>	
a. Transformer voltage and MVA ratings, and available taps. Attach copy of transformer test report or data sheet	
b. The tap settings used.	
c. The LTC Control Scheme.	
d. Transformer winding connections and grounding used. If the transformer is not solidly grounded, provide the impedance value for the grounding method.	
e. Positive, negative, and zero sequence impedance values.	

4) <b>For the circuit breakers and fault-clearing switching devices, including the generator breakers, please provide:</b>	
a. The voltage, continuous current and interrupting capability ratings.	
b. The trip speed (time to open).	

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

		Response
5)	<b>For the power fuses, please provide:</b>	
	a. The manufacturer, type, size, and interrupting capability.	
	b. The minimum melt and total clearing curves.	
6)	<b>For the protective relaying, please provide:</b>	
	a. Data for the CTs used with the relaying including the manufacturer, type of CT, accuracy class, and thermal rating factor.	
	b. Data for the PTs used with the relaying including the manufacturer, type of PT, voltage ratings, and quantity.	
7)	<b>Please provide protective relay settings for existing and proposed generators, including but not limited to, reverse power, negative sequence, over and underfrequency, over and under voltage, volts per hertz, etc.</b>	
8)	<b>For the new generator(s), please provide:</b>	
	a. Manufacturer and model of the generator.	
	b. Generator type (e.g. synchronous, induction, etc.). If synchronous, indicate round rotor or salient pole.	
	c. Generator voltage, MVA, and power-factor ratings.	
	d. Validated PSSE and Synergi load flow and dynamic model. Documentation on the models should also be provided.	
	e. Please provide the following: <ul style="list-style-type: none"> <li>i. The time constants T'do, T'qo, T"do, T"qo.</li> </ul>	

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

	Response
ii. The reactance values for the $X_d$ , $X_q$ , $X_2$ , $X_0$ , $X'_d$ , $X'_q$ , $X''_d$ , $X''_q$ , and $X_L$ . Please provide both saturated (for short-circuit calculations) and unsaturated (for dynamics modeling) values where appropriate.	
iii. The inertia, $H$ , for the generator/turbine/exciter combination.	
iv. The generator saturation characteristics.	
v. Starting power factor	
vi. Starting current	
vii. Starting torque	
viii. Full load speed/slip	
ix. Full load speed/slip	
x. Full load efficiency	
xi. Pull out torque	
f. Generator V/Hz curve.	
g. Negative Sequence Current Limit curve ( $I_2^{ft}$ ).	
h. Generator auxiliary load curve.	
i. Generator (MW/MVAR) capability curve(s).	
j. The type of grounding used with the generator. If the generator is not solidly grounded, provide the grounding method details and equipment ratings.	
k. Validated Aspen Oneliner short circuit model that accurately represents the facility, and is valid for all faults conditions anywhere on the Utility system.	

9) <b>For the generators' excitation system, please provide:</b>	
a. For synchronous generators, please provide the following.	
i. Exciter type, manufacturer, model, and voltage/current ratings.	
ii. Excitation system response ratio and ceiling factor.	
iii. Validated PSSE excitation system model with parameter values representative of the excitation system. Documentation of the model should also be provided.	
iv. Please indicate whether the excitation system has a maximum excitation (OEL) limiter, a minimum excitation (UEL) limiter, and/or a power system stabilizer (PSS); please provide the device settings if device(s) present.	
v. Description of the control mode of the excitation system, e.g. on voltage regulation, power factor regulation, etc.	
b. For asynchronous generators, please describe the method of excitation and its control. Note additional inquiries may be made to obtain technical data for such method.	

10) <b>For generator's prime mover, please provide:</b>	
a. Validated PSSE and Synergi governor system model with parameter values representative of the prime mover system. Documentation of the model should	
b. Description of the control mode of the prime mover, e.g. on droop control, load control, etc.	

**FOR SYNCHRONOUS, ASYNCHRONOUS, INDUCTION GENERATORS**

**PROJECT:**

**DATE:**

**Preliminary**

**Interconnection Requirement Study - Data Request**

**(Nonexclusive Preliminary List)**

**\*\*\*ALL ITEMS ARE REQUIRED AND ALL RESPONSES MUST BE FILLED UNLESS NOT APPLICABLE.\*\*\***

		Response
11)	<p><b>Please provide the following generation and load information for the NUG facilities:</b></p> <p>a. Expected KW and KVAR loads including, but not limited to, generators' auxiliary load curve, process load(s) profile(s), etc.</p> <p>b. Expected minimum and maximum MW and MVAR "import from" AND "export to" HECO.</p> <p>c. Gross and net output of the facility</p>	
12)	<p><b>In addition to the items mentioned above, please provide the following for PSS/E models:</b></p> <p>a. Object files and IPLANS for user written models, and applicable library files. The uncompiled source code for object files shall be provided to ensure compatability with future versions of PSS/E. In lieu of the uncompiled object file source code, compiled object file updates compatible with future PSS/E versions shall be provided as requested for the life of the project.</p>	
13)	<p><b>In addition to PSS/E, other power system analysis tools are required to study events that cannot accurately be modeled in PSS/E due to limitations of the program (e.g. sub-cycle behavior). Data compatible with the following tools shall be provided:</b></p> <p>a. Time domain tools - PSCAD® or electro-magnetic transient program (EMTP). Documentation on the model shall also be provided.</p> <p>b. ASPEN One-Liner (VALIDATED MODEL TO BE PROVIDED)</p>	

NOTE: \*\*Equivalent models other than PSSE may be required if the PSSE model cannot be converted properly.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix C1 – Model PV RDG PPA*

[Note: The body of the Companies' RDG PPAs for both PV and wind are the same for all three Companies and are therefore not reproduced as part of this exhibit. Some of the attachments to the RDG PPA for both PV and wind are island specific and such island specific attachments for Maui are provided in Exhibit 7 of this Transmittal Letter]



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix C2 – Model Wind RDG PPA*

[Note: The body of the Companies' RDG PPAs for both PV and wind are the same for all three Companies and are therefore not reproduced as part of this exhibit. Some of the attachments to the RDG PPA for both PV and wind are island specific and such island specific attachments for Maui are provided in Exhibit 7 of this Transmittal Letter]



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix D – Code of Conduct  
Procedures Manual*



**Maui  
Electric**

**HAWAIIAN ELECTRIC COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED  
HAWAII ELECTRIC LIGHT COMPANY, INC.**

**Code of Conduct Procedures Manual  
for the  
Competitive Bidding  
Program**



## **I. INTRODUCTION**

The Framework for Competitive Bidding ("Framework") adopted on December 8, 2006, by the Public Utilities Commission of the State of Hawaii (the "Commission") pursuant to Decision and Order No. 23121 (Docket No. 03-0372, Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawaii), requires that the utility develop and follow a Code of Conduct whenever a utility or its affiliate seeks to advance an energy generation resource proposal in response to a request for proposals (RFP) issued by any of the Hawaiian Electric Companies (Hawaiian Electric Company, Maui Electric Company and Hawaii Electric Light Company) (individually, a "Company" and collectively, the "Companies"). Section III.A.4 of the Framework required the utility to submit to the Commission for review and approval (subject to modification if necessary) a Code of Conduct prior to the commencement of any competitive bid process under the Framework. On June 7, 2007, by letter to the Commission, the Company submitted its form of Code of Conduct for Commission review and approval. By Decision and Order No. 23614 (Docket No. 03-0372), issued August 28, 2007, the Commission approved the Code of Conduct.

This Code of Conduct Procedures Manual has been developed to outline the procedures to be followed and the policies that have been developed surrounding the implementation of the Companies' competitive bidding process for new generating capacity. This Code of Conduct Procedures Manual has been developed in accordance with the requirements of Section IV.H.9.a(iii) of the Framework and outlines requirements (1), (3) and (4) of such section, namely: (1) the protocols for communicating with proposers, the self-build team, and others; (3) the documentation forms, including logs for any communications with proposers; and (4) other information consistent with the requirements of the solicitation process. Requirement (2) of the section, the evaluation process in detail and the methodologies for undertaking the evaluation process for the RFP are described in detail in Chapter 4 (Evaluation Process and Evaluation Criteria) of the RFP. The bid evaluation process and methodology will consider both

price/system impacts and non-price criteria in accordance with Section IV.E of the Framework and Tariff Rule 19 (See Appendix J (Tariff Rule 19) of the RFP).

The procedures and policies set forth herein have been designed to ensure that the procurement process is undertaken in a fair and equitable manner and that each Proposer is afforded an equal opportunity to participate and compete within the RFP framework.

This Code of Conduct Procedures Manual is intended to serve as a set of rules and guidelines for implementing the Companies' solicitation process and to manage communications between Company personnel and consultants participating in the RFP process. Necessary additions, deletions, and/or changes depending on the circumstances surrounding the RFP and directions from the IO may be required but only as ordered directly by the Commission, or indirectly through the IO after consultation with the Commission.

## **II. DEFINITIONS**

- Affiliate- An "affiliated interest" of the Company as defined in HRS Section 269-19.5(a), specifically: (1) any person/entity holding 10% or more of the shares of the Company, (2) any person/entity holding 10% or more of the ownership interests of an entity holding 10% or more of the shares of the Company; (3) any corporation, 10% of which is owned by a person/entity holding 10% or more the shares of the Company; (4) any person who is an officer or director of the Company; (5) any corporation operating the Company, or providing engineering, accounting, legal, or similar service to the Company, which has 3 or more officers or 3 or more directors in common with the Company; and (6) any corporation which has directors in common with the Company where the number of common directors is more than one-third of the total number of the Company's directors. For the purposes of any RFP where an Affiliate of the Company is presenting a proposal in response to the RFP, such Affiliate and its proposal will be considered and evaluated in the same manner as any other independent Proposer.

- Affiliate Team – Affiliate personnel and outside consultants for the Affiliate responsible for the development of the Affiliate’s response to the RFP.
- Code of Conduct - A written code developed by Hawaiian Electric Company, Inc., Maui Electric Company, Limited and Hawaii Electric Light Company, Inc. (each, a “Company” and collectively, the “Companies”) to ensure the fairness and integrity of the competitive bidding process, in particular where the host utility or its affiliate seeks to advance its own resource proposal in response to an RFP. The Code of Conduct follows the requirements described in Section IV.H.9.c of the Framework and was previously approved by the Commission in Decision & Order No. 23614. Ministerial revisions and clarifications to the Code of Conduct have been proposed by the Companies in the instant Docket.
- Company Executive in Charge – A Company’s executive responsible for ensuring compliance with this Code of Conduct and serving as the point of contact for the Independent Observer for reporting any violations by the Company of the Code of Conduct. For any RFP of the Companies, the Company Executive in Charge shall be the Senior Vice President of Business Development & Strategic Planning. The Company’s Corporate Compliance Officer shall remain responsible for the Companies’ independent code of conduct and may support compliance matters and questions arising with employees, agents and other representatives of the Company, e.g., conflicts of interest, with respect to this Code of Conduct.
- Company RFP Team – The Company personnel and outside consultants responsible for the development of the Company’s RFP and the evaluation of bids submitted in response to the RFP. Within the Company RFP Team, there may be designated certain “core” team members who will be permanent team members of any Company RFP Team. Such “core” members will not have any involvement with the Company Self-Build Team for the subject RFP.
- Company Self-Build Team - The Company personnel and outside consultants responsible for the development of the Company’s self-build response to the RFP. Within the Company Self-Build Team, there may be designated certain

“core” team members who will be permanent team members of any Company Self-Build Team. Such “core” team members will not have any involvement with the Company RFP Team for the subject RFP.

- Confidential Information – Any non-public information developed and provided by the Company (i.e. proprietary system information, etc.) or Proposers during the RFP process (such non-public information may include, for example, the identity of competing Proposers, and their technical, trade or financial information). This term includes any material non-public information regarding the RFP process developed for and used during the competitive bidding solicitation process, such as the evaluation process or criteria. Confidential Information does not include public information, such as information on resources in the Company’s Power Supply Improvement Plan (PSIP) included in its filings with the Commission.
- Director of Energy Procurement - The director of the Division within the Renewable Acquisition Department responsible for directing the resources responsible for the implementation of the competitive bidding process pursuant to the Framework. The Director of Energy Procurement shall be a member of the Company RFP Team. The Director of Energy Procurement will report to the Manager of Renewable Acquisition on the status of the competitive bidding process.
- Eligible Proposer – A Proposer who has met the minimum requirements and threshold requirements in the RFP necessary to remain eligible to compete in the process.
- Energy Contract Manager – The staff position(s) within the Company’s Renewable Acquisition Department responsible for managing the RFP.
- Framework – The Framework for Competitive Bidding contained in Decision & Order No. 23121 issued by Commission on December 8, 2006, to establish rules for competitive bidding in response to a request for proposals when a utility seeks to acquire new generation resources.
- Independent Observer (IO) – The neutral person or entity appointed by the Commission to monitor the utility’s competitive bidding process, and to

advise the utility and Commission on matters arising out of the competitive bidding process, as described in Part III.C of the Framework.

- Manager of Renewable Acquisition – The manager of the Department that will oversee the Company’s competitive bidding process. The Manager of Renewable Acquisition shall be a member of the Company RFP Team.
- Proposer – Entity who submits or plans to submit a proposal in response to a Company-issued RFP. An Affiliate of the Company participating in the RFP and submitting a proposal shall be considered a Proposer.
  
- RFP – A written request for proposals issued by one of the Companies to publicly solicit bids to supply future generating capacity to the Company pursuant to the competitive bidding process established in the Framework.
- Shared Resource – An employee of a Company or consultant to a Company who, because of the scarcity of his/her expertise within the Company, is authorized to communicate and provide information or input to both the Company RFP Team and the Company Self-Build Team and is not a resource dedicated to either team. Shared Resources will not be available as a resource to any Affiliate Team.
  
- Unassigned Company Resource -- Company employees unassigned to an essential team that may be called upon by the Company RFP Team and/or the Company Self Build Team to assist in meeting limited, *ad hoc* tasks for the RFP or the Self-Build proposal. For example, the RFP team may be unable to evaluate an unforeseen technical specialty included in a bid. In that event, the RFP team would need to request assistance from an employee in the company or a consultant that isn’t already assigned to an essential team and possesses the specific expertise. Such personnel are intended to assist the requesting team only in an ad hoc manner, limited in scope and purpose to the particular task required. Unassigned Company Resources, once identified, may become Shared Resources, or if necessary because of the abundance of work performed for a team, may be placed on such team.

### **III. STATEMENT OF OBJECTIVES**

From time to time, the Companies will be proposing to seek power supply proposals for electric generation resources that best meet the needs of the respective Company's system. The timing for issuance of RFPs for each of the systems will be dependent upon the Company's needs identified in the applicable PSIP, the necessary competitive bidding procedures identified in the Framework and upon the timing of the need for capacity for each island. Each of the Companies will undertake a detailed multi-stage review and evaluation process whereby eligible proposals will be selected based upon their ability to most cost-effectively and reliably satisfy the requesting Company's resource requirements. While cost minimization is a major criterion, the Companies will select those resources which, in its opinion, represent the best value to the Companies and its customers regarding economic and technical attributes, limited risk and flexibility for meeting its projected requirements. Consistent with this objective is the Companies' goal of ensuring the competitive benefits of the procurement process while continuing to provide equitable and fair consideration for all proposals. The Companies also intend that the evaluation process will be well-documented so that the results of the evaluation can be fully reviewed by an IO to confirm that all proposals were treated in a fair and consistent manner.

The Code of Conduct and this Manual addresses: (1) communication requirements and procedures associated with the relationship between utility employees (Company RFP Team, Company Self-Build Team, Shared Resources and Unassigned Company Resources); (2) communication requirements and procedures associated with the relationship between the Company RFP Team, the Company Self-Build Team, and Affiliate Team and Proposers; and (3) communication requirements associated with the relationship between Company management and the Company RFP Team. Communications between the Company and any Affiliate Team shall be treated as a communication with an independent third party Proposer. An Affiliate Team shall have no access to any

Shared Resources or Unassigned Company Resources other than such access provided to any other independent third party Proposer.

The Code of Conduct and this Manual also include procedures for the sharing of resources, where necessary and appropriate, by the Company RFP Team and the Company Self-Build Team for the purposes of completing their efforts to effectively administer the RFP or to submit a bid in response to the RFP. The small size of the Companies and limitation of resources will require specialized services, information exchange and sharing of resources in certain limited circumstances. Company personnel and consultants identified as "Shared Resources" or "Unassigned Company Resources" shall be designated by the Companies for this specific purpose. Specific rules shall apply to "Shared Resources" and "Unassigned Company Resources" as described herein and all such communications shall be governed by these rules. It is important to note here that Shared Resources may serve as a resource for either the Company RFP Team or the Company Self-build Team but shall not be a resource to facilitate the communication or the exchange of information between the Company RFP Team and the Company Self-build Team.

#### **IV. ORGANIZATION AND COMMUNICATION RESPONSIBILITIES**

This section outlines the RFP organizational structure for the development of the RFP and the Company self-build option and the organization's responsibilities to ensure that communications between Company personnel and consultants working on their respective RFP or self-build projects are conducted in a fair, consistent, and equitable basis so that the Company Self-Build Team does not enjoy any unfair advantage over other Proposers responding to the RFP.

##### **A. Organization**

The Company shall identify two separate teams to facilitate the independence and objectivity of the Company resources working on the RFP and ensure an arms-length relationship with the resources working on the Company's self-build

project to avoid any real or perceived inequity in the RFP process. The two essential teams shall be the "Company RFP Team" and the "Company Self-Build Team."

Other limited Company resources, such as select staff from various functional areas of the Company that are in short supply and thus cannot be dedicated solely to either team, may be designated as "Shared Resources" to perform services for the Company RFP Team and Self-Build Team. Shared Resource employees are allowed to carry on with both their RFP (for either the RFP Team and/or the Self-Build Team) and regular functions throughout the resource planning process (including the development of any Company parallel or contingency plan as defined in the Framework), which may require communications with or services performed for the Self-Build Team. Shared Resource employees, however, will not participate in the evaluation and selection process of proposals submitted in response to the RFP. Rules for communications between Shared Resources and the essential teams shall be outlined below.

Company employees unassigned to the RFP may be called upon by the RFP Team, Self-Build Team, or both for help to meet unforeseen tasks. After completing the Code of Conduct training, these "Unassigned Company Resources" are eligible to assist on an ad hoc basis with the requirement that all communications as an Unassigned Company Resource must be memorialized logged in the same manner as communications with Shared Resources. If an Unassigned Company Resource is called upon repeatedly and asked for a substantial amount of assistance by a particular team, the employee should be assigned to such team or evaluated for designation as a Shared Resource.

### **1. Essential Teams**

Company RFP Team. The Company RFP Team, tasked with preparing the RFP and evaluating the responses and bids in response to the RFP, will consist



primarily of Director/Manager-level and other experienced employees together with possible outside consultants, with backgrounds in a number of disciplines necessary to conduct a thorough evaluation of each proposal. The members of the team will be prepared to evaluate proposals on the basis of their price and non-price aspects pertaining to their level of expertise. Members of the Company RFP Team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

Price and Non-price sub-teams will conduct their sections of the bid evaluation process separately and will not share the results of their evaluation with members of the other sub-team. Each team will submit their evaluation results to an oversight team, which will be responsible for compiling the results of the evaluations and selecting the short-list.

The Energy Contract Manager will be responsible for directing the efforts of the Company RFP Team and for distributing the appropriate sections of the proposal to the appropriate Company RFP Team members when the proposals are received. The Energy Contract Manager will be responsible for maintaining the documentation underlying the evaluation of each proposal as well as all communications with proposers.

The Self-Build Team. The Self-Build Team, tasked with preparing any Company proposal to be submitted by the Company in response to a Company RFP, will consist primarily of Company employees, along with possible outside consultants with backgrounds in a number of disciplines necessary to complete a competitive proposal in response to the Company RFP. The members of the team will include professionals with experience in the following areas of expertise: engineering, siting/land use, environmental, transmission planning, fuel

procurement, legal, financial planning, system operations, integrated resource planning, generation planning, production cost analysis, and others as needed.

Affiliate Team. Any Affiliate Team will be comprised solely of employees and consultants of the Affiliate and no Company employee or consultant shall serve as a member of an Affiliate Team, provided, however, that a consultant may perform services for an Affiliate and the Company so long as appropriate "walls" are established satisfactory to the Company, that ensures that employees of the consultant working for the Affiliate Team do not also perform work for the Company nor communicate with employees of the consultant performing work for the Company, and vice versa. Any consultant of an Affiliate Team assisting with the Affiliate Team's RFP proposal shall agree to abide by the Code of Conduct and complete the Competitive Bidding Code of Conduct Acknowledgement of Receipt.

## **2. Other Resources.**

Shared Resources. Other limited Company resources, such as select staff from various functional areas of the Company that are in short supply and thus cannot be dedicated solely to either team, may be designated as "Shared Resources" to perform services for the Company RFP Team and Self-Build Team. Shared Resource employees are allowed to carry on with both their RFP (for either the Company RFP Team and/or the Company Self-Build Team but not as a member of such teams) assignments and their regular functions throughout the resource planning process (including the development of any Company parallel or contingency plan as defined in the Framework), which may require communications with or services performed for the Self-Build Team. Shared Resource employees, however, will not participate in the evaluation and selection process of proposals submitted in response to the RFP. Rules for communications between Shared Resources and the essential teams shall be outlined below.

Unassigned Company Resources. Company employees unassigned to either of the essential teams may be called upon by the Company RFP Team, or the Company Self-Build Team for assistance to meet unforeseen tasks. After completing the Code of Conduct training and executing the Competitive Bidding Code of Conduct Acknowledgement of Receipt, these “Unassigned Company Resources” are eligible to assist on an ad hoc basis with the requirement that all communications as an Unassigned Company Resource must be memorialized and logged in the same manner as communications by Shared Resources. If an Unassigned Company Resource is called upon repeatedly and asked for a substantial amount of assistance by a particular team, the employee should be assigned to such team or evaluated for designation as a Shared Resource.

**B. Communications Protocols**

The Companies have developed policies and procedures governing communication between the Company RFP Team, the Company Self-Build Team, Shared Resources, Unassigned Company Resources, Proposers, the IO and with the Commission regarding RFP design and bid evaluation. Bid information and evaluation data and information shall not be communicated between members of the Company RFP Team, outside parties and other employees within the Companies except to those with a business need to know.

To ensure that the competitive bidding process is fair and unbiased, that all Proposers have access to the same information so that no Proposer has an unfair advantage, and that any Company Self-build and/or Affiliate proposals do not have any unfair competitive advantage or undue preference over third-party bids, the Companies shall follow the Code of Conduct whenever the utility or its Affiliate is seeking to advance a resource proposal as provided in Section IV.H.9.b of the Framework.

Each employee or consultant on the Company RFP Team, Company Self-Build Team and Shared Resources shall read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt. Unassigned Company

Resources who may be called upon by the Company RFP Team or Self-Build Team for help to meet unforeseen tasks shall also read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt if called upon. Finally, each employee or consultant of an Affiliate intending to submit a proposal in response to a Company-issued RFP shall read, acknowledge and sign a Competitive Bidding Code of Conduct Acknowledgement of Receipt.

The Company issuing the RFP will establish a shared drive on its corporate computer network designed to maintain the bid evaluation documentation and other information associated with the bidding process. Only Company RFP Team members will have access to all the files on the shared drive for the particular RFP.

In cases where staffing and resources are limited or constrained, the Company may identify Shared Resources or those employees eligible to provide information or serve as a resource to both the Company RFP Team and the Company Self-Build Team. Specific rules to log communications with the Company RFP Team or the Company Self-Build Team are described below.

Shared Resources will not have access to the Company's shared drive established for the RFP process which will include the documentation of the bid evaluation results.

**1. Communications Between the Company RFP Team and Proposers, including the Company Self-Build Team.**

During the RFP process, the Energy Contract Manager shall serve as the primary contact person for all RFP communications with Proposers. This is important from the standpoint of maintaining consistency and confidentiality of information between Proposers and the Company. For documentation and oversight purposes, all communications from Proposers must be submitted to an established website link provided by

the Company (the "Company RFP website"). The IO will monitor all communications through the Company RFP website. To ensure fair and equal access to information, any Company Self-Build Team and/or Affiliate Team shall be considered a Proposer for communication purposes and any request for information from the Company Self-Build Team or Affiliate Team to the Company RFP Team shall be through the Company RFP website.

A single exception to the communication process outlined above shall be instituted for the purpose of facilitating the preliminary exchange of confidential interconnection requirements for any Proposer's bid. For this limited scope, Proposers may communicate with the Company's Interconnection Services Division to discuss preliminary interconnection requirements associated with a Proposer's potential bid. The Director of Interconnection Services for the Company will serve as the primary contact person for all such interconnection communications with a Proposer, provided that all necessary confidentiality and non-disclosure agreements are in place. Employees of the Interconnection Services Division including the Director of Interconnection Services shall be considered "Shared Resources" for purposes of the Code of Conduct and this Procedures Manual and shall be required to adhere to all of its rules and requirements. Under no circumstances shall communicated information from any Proposer be directly or indirectly communicated to the Company RFP Team, the Company Self-Build Team or any Affiliate Team. Interconnection communications will be limited to a Proposer's bid and no more information other than as necessary to facilitate such communications will be permitted. Locations of projects shall be limited to that necessary only to determine the interconnection requirements of such Proposer's project. The IO shall have the right to monitor all such communications in his/her discretion. Company, with input from the IO, reserves the right to share any information that may be generally applicable to all Proposers via the Company RFP website.

Subject to confidentiality obligations, it is the objective of the Code of Conduct that all Proposers, including the Company Self-Build Team and any Affiliate Team, receive access to information released by the Company RFP Team, whether in response to a question from a Proposer or not, at the same time.

The communications process for addressing questions and requests for information from Proposers, and for the Company RFP Team to provide information to Proposers, is provided below:

- a. Other than during Company sponsored conferences, Proposers must submit all questions to the Company RFP website or the designated RFP email address (if the Company RFP website has not been opened yet for the RFP).
- b. Questions will be reviewed and responses will be coordinated with the appropriate functional area within the Company for a response. Every reasonable effort will be made to provide responses in a timely manner.
- c. All responses, including the classification of such response, i.e., whether non-confidential or confidential as described below, will be made available to the IO for monitoring purposes. The IO may choose to comment on any response at its discretion.
- d. Depending on the questions received, responses may involve Confidential Information of the Company and/or Proposers. Release of any Company Confidential Information must be approved in advance by the Company Executive authorized to release the Confidential Information. Any release of Company Confidential Information shall be accompanied by appropriate

confidentiality and non-disclosure agreements, protective orders or other means required to maintain the confidentiality of the Company Confidential Information while still permitting its disclosure under circumstances deemed appropriate by the responsible Company Executive. Other non-Company Confidential Information will not be shared without the prior written consent of the owner of such Confidential Information and the execution of appropriate confidentiality and non-disclosure agreements by all recipients of such Confidential Information. Responses will be categorized as follows:

Non-Confidential Responses: Questions and responses will either be posted directly on the Company RFP website (process-related questions or simple non-substantive information) or a description of the information that can be made available will be posted and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive a copy.

Confidential Responses: Questions and a description or notice of a Confidential Information response will be posted on the Company RFP website and Proposers will be instructed to submit a request to the Company via the Company RFP website to receive instructions on how to access the Confidential Information. The Confidential Information will only be provided to the requestor after receipt of an executed Confidentiality and Non-Disclosure Agreement. Only those who have qualified to submit a bid (i.e. Eligible Proposers) and have executed a Confidentiality and Non-Disclosure Agreement will be considered for receipt of Confidential Information.

Process for Distribution of Confidential Information

Confidential Information provided in response to questions from proposers may be made available only to parties as indicated above via the following:

Confidential Information that is approved for exchanging on a secured access site: (1) Confidential Information may be made available on a secured website with an individual password provided to each approved Proposer. (2) Confidential Information in documents may be transmitted to approved recipients through the Company's secure email system.

Confidential Information that can be made available for inspection only, but cannot be copied: There may be some types of Confidential Information that the Company may consider making available for inspection only with no copies allowed. This type of Confidential Information will be made available on Company premises for inspection only. Proposers will be advised via the Company RFP website to make arrangements with Company staff to view the Confidential Information.

Confidential Information that may not be released. In the event that Proposers submit questions that require responses that the Company feels are not appropriate to provide for reasons which may include, but not be limited to, safety, security, protection of trade secrets or intellectual property rights, Proposers will be advised as such via the Company RFP website.

- e. Prior to and during the RFP, and outside of the Company RFP website protocol, developers may inquire with the Company Interconnection Services Division directly as to the interconnection viability of a proposed project. Contact information will be as follows:



Hawaiian Electric Company, Inc.  
Interconnection Services Division  
Attention: Director  
Email: interconnection.services@hawaiianelectric.com  
Telephone: \_\_\_\_\_

If determined necessary, face-to-face meetings may be scheduled. The IO may, in its discretion, attend and/or monitor such communications and/or meetings.

- f. Once bids are received, the Company may submit information requests to Proposers to clarify their proposals or request additional information. All contacts with Proposers will be through the Company RFP website. If determined necessary, face-to-face meetings may be scheduled. All contacts and information exchanged will be under the oversight of the IO.

## **2. Communications Between the Companies and the Commission.**

The Company's Regulatory Affairs staff will be responsible for initiating communication with the Commission regarding the RFP or the Companies' evaluation process. Regular updates may be provided to the Commission regarding the RFP process if requested.

## **3. Communications Between the Company RFP Team and the IO.**

Communications between the Company RFP Team and the IO will be required for many aspects of the evaluation process. The IO is also required to maintain confidentiality of any Company or Proposer Confidential Information. The IO will coordinate all activities through the Energy Contract Manager and/or the Director of Energy Procurement and/or the Manager of Renewable Acquisition. The IO will be invited to

participate in any meetings or discussions between the Company RFP Team and the Proposers and other communications as noted above. Sufficient notice will be provided whenever possible and teleconference and/or web conference alternatives may be utilized.

In order to provide full access to the IO during the evaluation process, substantive evaluation communications between Company RFP Team members shall be copied to the IO in a contemporaneous manner. Non-substantive and/or administrative communications are not required to be copied to the IO, provided, however, that such communications shall be maintained and reviewable by the IO in his/her discretion.

**4. Communications between the Company RFP Team and the Company Self-Build Team**

Any communication between the Company RFP Team and the Company Self-Build Team or between the Company RFP Team and any Affiliate Team with respect to the RFP shall be handled no differently than with Proposers and other outside parties. Accordingly, the Self-Build Team and any Affiliate Team will be required to submit any questions or information requests to the Company RFP Team via the Company RFP website and all responses will be provided in the same manner as to other Proposers. Members of the Company RFP Team are prohibited from providing any input into the development of the Self-build or Affiliate resource option by the Company or such Affiliate. Company RFP Team members are prohibited from sharing, either directly or indirectly through others, any Confidential Information (i.e. detailed evaluation criteria, other proposals, etc.) with any Self-Build or Affiliate Teams except in accordance with the procedures in the Code of Conduct, this Manual or the RFP.

Company RFP Team members and Company Self-Build Team members may continue to work with each other on projects not related to the RFP.

Further, members of each respective team do not have to be physically separated from each other but members of each team must take all reasonable measures to keep all Confidential Information (including electronic data) secure and inaccessible to the other team.

**5. Communications among the Company RFP Team, the Company Self-Build Team and Shared Resources**

Shared Resources may provide services to the Company RFP Team and the Company Self-Build Team. Shared Resources shall be limited as much as possible to instances where Company resources cannot provide a dedicated member to the Company RFP Team and the Company Self-Build Team at the same time and still provide the necessary functions of its area to the Company as a whole. Shared Resources are expressly prohibited from providing any Confidential Information developed on behalf of the Company RFP Team to the Company Self-Build Team, either directly or indirectly through others, or any Confidential Information developed on behalf of the Company Self-Build Team with the Company RFP Team, either directly or indirectly through others, except through the formal communication process outlined above, i.e., through the Company RFP website.

Additionally, Shared Resources are required to maintain a written record of the time, date and substance of all conversations, data and written material directly or indirectly exchanged with the Company RFP Team, the Company Self-Build Team and any affiliates that pertain to the RFP. A SharePoint-based interface will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations.

Shared Resources will not have direct access to the Company's shared drive developed for the RFP process which will include documentation of the bid evaluation results. As noted above, Shared Resources shall have

no input into and shall not participate in the evaluation process for any particular RFP.

**6. Communications between the Company RFP Team, the Company Self-Build Team and any Unassigned Company Resource or consultant that is not a Shared Resource.**

There may be times, in which a Company RFP or Company Self-Build team member may need ancillary or other ministerial or administrative assistance that requires communication and/or assistance from Company personnel who are not on any team nor considered a Shared Resource. In such events, such personnel may assist the requesting team member on an *ad hoc* basis upon the following conditions:

- a. The essential team member making the request must inform the Company personnel that sharing of the requested information or assistance with the other team, be it the Company RFP or Company Self-Build Team, is expressly prohibited under the Code of Conduct.
- b. The assisting Company personnel shall complete the Code of Conduct training and sign the Competitive Bidding Code of Conduct Acknowledgement of Receipt form.
- c. The assisting Company personnel shall be directed to the Company RFP and Company Self-Build Team rosters provided by such requesting team member to determine and/or confirm the restrictions on communication with the other team members. The essential team member making the request will ensure the roster of Unassigned Company Resources is updated by the Energy Contract Manager to include the assisting Company personnel.
- d. Unassigned Company Resources will be required to maintain a written record of the time, date and substance of all conversations, data

and written material directly or indirectly exchanged with the Company RFP Team, the Company Self-Build Team and any affiliates that pertain to the RFP. A SharePoint-based interface will be set up and managed by the Energy Contract Manager to provide an easy to use and understand mechanism to log and memorialize these conversations. Unassigned Company Resources are expressly prohibited from providing any Confidential Information developed on behalf of the Company RFP Team to the Company Self-Build Team, either directly or indirectly through others, or any Confidential Information developed on behalf of the Company Self-Build Team with the Company RFP Team, either directly or indirectly through others, except through the formal communication process outlined above, i.e., through the Company RFP website.

e. If assistance from Unassigned Company Resource becomes more than occasional or more substantive than ancillary, ministerial or administrative services, the Unassigned Company Resource should be considered for inclusion on the team that he/she has been assisting on such basis. Additionally, the Unassigned Company Resource may also be considered for inclusion as a Shared Resource. Members of the Company RFP Team shall consult with the Energy Contract Manager for the RFP for resolution. Members of the Company Self-Build Team shall consult with the Director of Energy Procurement through the Company RFP website for resolution.

**7. Communications between Company RFP Team, Company Self-Build Team and Company Management.**

The Company RFP Team and the Company Self-Build Team will necessarily require management approval of the RFP and the Self-Build Proposal. Because of the size of the Company, it may be possible that a single employee (at whatever level) (the "Approver") may have approval responsibility for matters affecting the RFP and the Self-Build proposal. Approvers in this situation must use their best judgment in

making decisions reviewing and approving matters for the respective teams. The Code of Conduct must be adhered to in these situations and the Approver must not communicate, either directly or indirectly through others, Confidential Information learned from the Company RFP Team with the Company Self-Build Team.

If an Approver feels that he/she cannot manage this potential conflict, the Approver is recommended to consult with his/her immediate supervisor to determine whether such higher authority could be appointed with the task of reviewing and approving matters for a designated team, either the Company RFP Team or the Company Self-Build Team. In matters where a team of employees (including one or more Approvers) is responsible for reviewing and approving matters for the respective teams, approving employees (from whatever level, including executives) with information from reporting personnel beneath them from both the Company RFP Team and the Company Self-Build Team may consider recusing himself/herself from the decision making if such employee cannot objectively make a decision on the matter.

Finally, an Approver may be a member of either the Company RFP Team and have a subordinate reporting to him/her that is a member of the Company Self-Build Team (and vice versa). In such situations, because the Code of Conduct prohibits communication between the teams, the manager must recuse himself/herself from the decision making and request his/her manager to review and approve the matter in his/her place.

In all instances, it is possible that any particular situation above may be addressed and/or resolved by the terms and conditions of the Company's internal code of conduct implemented for all employees and consultants of the Company. As appropriate, an Approver or any other team member, Energy Contract Manager, Director of Energy Procurement,

Manager of Renewable Acquisitions or Company Executive in Charge may involve the Company's Corporate Compliance Officer for input and possible resolution under the Company's internal code of conduct.

**V. WHEN THE CODE OF CONDUCT BECOMES EFFECTIVE**

A. No later than 30 days after the Commission opens the docket to issue an RFP the Code of Conduct for that RFP will be activated. However, if the Company Self-Build Team determines at any time that it will not pursue a Self-Build Option for a particular RFP, the Code of Conduct may be de-activated in consultation with and approval from the IO.

B. Upon the signal to activate Step 1 above, the Code of Conduct shall be activated and members of the Company RFP Team and the Company Self-Build Team must then conduct activities on the RFP or Self-build process in compliance with the Code of Conduct. Once identified and having commenced work, no information may be shared outside the respective team members with respect to the RFP or the Self-Build Option except through the formal communication processes outlined above.

C. Immediately upon assignment to a Company team (RFP or Self-Build), designated as a Shared Resource, or requested to assist as an Unassigned Company Resource, each such employee or consultant must review this Manual, and sign the Competitive Bidding Code of Conduct Acknowledgement of Receipt form.

D. Within the RFP process, after a member has been assigned to a particular team, he or she will not be able to transfer to a different team at a later date for any reason. It is the responsibility of each team to fill vacant team positions with employees that have not been previously assigned as a team member for a team.

E. Each employee and consultant working on the RFP shall review the Code of Conduct and sign an acknowledgement attesting to his/her compliance with the Code of Conduct for each subsequent year until the Code of Conduct is terminated.

F. The Energy Contract Manager will be responsible for maintaining the Code of Conduct organizational chart and the signed "Competitive Bidding Code of Conduct Acknowledgement of Receipt" forms. The Company Executive in Charge shall be responsible for ensuring compliance with the Code of Conduct and shall have the written authority and obligation to enforce the Code of Conduct.

#### **VI. IMMEDIATE ACTIONS UPON ACTIVATION OF THE CODE OF CONDUCT**

The following items are required to be completed as soon as possible after activation of the Code of Conduct but no later than the designated events specified for each item below.

A. No later than 30 days after the opening of the docket commencing an RFP, an organizational chart listing each employee (with their title) and consultants in their designated role; Company RFP Team, Company Self-Build Team, Affiliate Team, Shared Resource or Unassigned Company Resource. When the IO is appointed, this organizational chart shall be provided to him/her. The organizational chart shall be placed in an accessible database (such as the Company's SharePoint database) so that any Company personnel can access the database to determine the identity of the respective teams and Shared Resources and any Unassigned Company Resources.

B. Upon the finalization of the organizational chart for the RFP and upon each addition to any team, the Energy Contract Manager shall obtain signed copies of the Competitive Bidding Code of Conduct Acknowledgement of Receipt form by Affiliate Team members, and all employees (whether full-time, part-time, temporary, or contract) and consultants involved in the competitive bidding



process, such as members of the Company RFP Team, the Company Self-Build Team, Shared Resources or Unassigned Company Resources.

C. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company email address to accept requests for information from Proposers, including the Company Self-Build Team or any Affiliate Team.

D. No later than 30 days after the opening of the docket commencing an RFP, establishment of the Company secured site that houses the accessible database (such as SharePoint).

## **VII. WHEN THE CODE OF CONDUCT TERMINATES**

The Code of Conduct for a specific RFP will terminate after the following two conditions are met:

A. When the final contract(s) with the successful proposer(s) is executed or when written notice of the RFP's termination is provided by the Director of Energy Procurement or his/her designee to the IO and the Commission.

B. A certification of Code of Conduct compliance by all employees participating in the specific RFP process is submitted by affidavit by the Company Executive in Charge.

## **VIII. DOCUMENTATION FORMS**

The following documentation forms may be utilized by those Company personnel involved in the RFP. These forms may be amended from time to time as necessary. Additional forms may also be developed as determined necessary.

- Competitive Bidding Code of Conduct Acknowledgement of Receipt form
- Code of Conduct Attestation Form (annual/final)
- Communications Log for Shared Resources

- Organizational Chart for essential teams, Shared Resources and Unassigned Company Resources

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix E – PowerAdvocate User Information*



**Maui  
Electric**

### **Electronic Procurement Platform**

1. “Sourcing Intelligence™,” developed by PowerAdvocate, is the Electronic Procurement Platform that the Company has licensed and will utilize for this RFP.
2. There are no license fees, costs, or usage fees to Proposers for use of the PowerAdvocate Platform.
3. To access the RFP, the Proposer must register as a “Supplier” on the PowerAdvocate platform. A Proposer must submit a separate registration on the PowerAdvocate platform for each separate Proposal and each separate Proposal variation submitted.

The number of Proposal variations a Proposer is allowed under one Proposal Fee is defined in Section 1.8.2 of this RFP. The number of registrations on the PowerAdvocate platform does not correspond with the number of Proposal Fees that must be submitted.

4. If a Proposer is already registered on the PowerAdvocate platform, the Proposer may use their current login information as one registration.
5. Each registration will require a unique username, unique email address, and unique company name. Proposers that require multiple registrations to submit multiple Proposals or Proposal variations should use the Company Name field to represent the Company Name, Proposal Number, and Variation Number (ex: CompanyNamePIV1). Proposers may use shorthand or clear abbreviations. Proposers are asked to refer to their chosen unique company name throughout when referring to it in text responses.
6. Proposers can register for an account on the PowerAdvocate Electronic Procurement Platform by clicking on the “Registration” button (located in the top right corner of the webpage) on the PowerAdvocate website at the following address:

[www.poweradvocate.com](http://www.poweradvocate.com)

7. Proposers may contact PowerAdvocate technical support for technical questions on the use of the Electronic Procurement Platform, including help with registration or modification of registration if desired. Support is available from 8 AM to 8 PM Eastern Daylight Time (2 AM to 2 PM Hawaii Standard Time when daylight savings is in effect) Monday to Friday, with the exception of Holidays posted on the PowerAdvocate website, both by phone (857-453-5800) and by email (info@poweradvocate.com).

Contact information for PowerAdvocate Support can also be found on the bottom border of the PowerAdvocate website:

[www.poweradvocate.com](http://www.poweradvocate.com)

8. In order to complete the registration, the Proposer will need to review and accept PowerAdvocate’s Terms of Use. The Terms of Use are available online and a copy is also attached for convenience in this Appendix E.

9. Once a Proposer has successfully registered as a Supplier with PowerAdvocate, the Proposer shall request access to the subject RFP event from the Company Contact via email through the RFP email address set forth in Section 1.6 of the RFP. The email request must list the Company Name field (ex: CompanyNameP1V1), as applicable, under which the Proposer has registered with PowerAdvocate.
10. Once the RFP event is opened, Proposers will have online access to general notices, RFP-related documents, and other communications via Sourcing Intelligence™, and may begin to submit their Proposal. Proposals will be accepted only through the PowerAdvocate Platform.

#### **Instructions to Proposers – Electronic Procurement Platform**

11. Prior to the opening of the RFP in Sourcing Intelligence™, Proposers are encouraged to familiarize themselves with Sourcing Intelligence™.
12. Proposers should note that they will not be able to access any Bid documents until the event officially opens in Sourcing Intelligence™.
13. An e-mail notification will be sent to all prospective Proposers via the messaging feature in Sourcing Intelligence™ when the event has been opened to receive Proposals.
14. Proposals must be submitted through Sourcing Intelligence™ before 2:00 p.m. Hawai'i Standard Time (HST) on the date shown in the RFP Schedule in Section 3.1 of this RFP. Sourcing Intelligence™ will not accept the submittal of late information for this RFP event. It is the Proposer's sole responsibility to ensure that its complete information has been submitted on time. Any proposal information that is merely SAVED, but not SUBMITTED will not be considered. The Proposal submission deadline via the PowerAdvocate platform is an Eligibility Requirement for this RFP. See Section 4.2 of this RFP.
15. All Proposals must be prepared in accordance with the procedures and format specified in this RFP document and in the event hosted on PowerAdvocate's Sourcing Intelligence™ Electronic Procurement Platform. Proposers are also required to respond to all questions and provide all information requested in the RFP and the bid event, as applicable. This process is intended to provide an orderly, consistent and fair evaluation of the Proposals.
16. Uploaded files must follow consistent naming conventions described herein. Names of electronic files uploaded to the Electronic Bidding Platform must include, in order, consistent company names, proposal number, variation number, technology, variation descriptor, and question number, for example:  
"SupplierNameP1V1\_Solar\_wstorage\_Q1.PDF".  
Proposers may use shorthand if it is clear and easy to follow.
17. Input/submission items in the RFP that are not applicable to a specific Proposer, Proposal or Proposal variation must be clearly marked as "N/A" (Not Applicable) and provide a brief explanation for each item as marked.

18. It is the Proposer's sole responsibility to advise the Energy Contract Manager of conflicting requirements, ambiguities, omission of information, or the need for clarification prior to submitting a Proposal. The Company cautions proposers to allow sufficient time to receive a response and submit Proposals before the Proposal due date.
19. It is the Proposer's sole responsibility to ensure the timely submission of the completed Proposal. The Company will not be responsible for technical problems that interfere with the upload or download of Proposal information. PowerAdvocate provides live customer support Monday through Friday, from 8 AM to 8 PM, Eastern Standard Time (3 AM to 3 PM Hawai'i Standard Time when daylight savings is not in effect), and is closed on Holidays specified on the PowerAdvocate website..
20. Proposers are encouraged to start early, SAVE data frequently and avoid waiting until the last minute to SUBMIT the required information. Proposers are allowed to revise information that has been previously submitted, as well as add, modify and/or delete documents any time before the event closes. There is no limit to the size of a file that can be uploaded, but larger files will take longer. Multiple files can also be compressed into a .zip archive for upload.

#### **PowerAdvocate Platform Submittal Procedures**

21. After logging onto the PowerAdvocate Platform, the RFP will be visible on the Proposer's dashboard with several Tabulations (Tabs) each used for the following:
  - "Download Documents:" Documents stored under this tab are provided for the Suppliers use and information. All documents can be downloaded and/or printed, as required. If available, the Company's responses to Proposer questions will be posted in this tab.
  - "Upload Documents:" In addition to specific data that is requested through the datasheets stored under the Commercial, Technical and Pricing Data Tabs, files such as (spreadsheets, pdfs, word documents, signature statements, etc.) may be requested. Such files being submitted by the Supplier may be uploaded here.
  - "Commercial Data:" Proposers are required to fill in the Commercial datasheets.
  - "Technical Data:" Proposers are required to fill in the Technical datasheets.
  - "Pricing Data:" Proposers are required to fill in the Pricing datasheets.
22. All responses to this RFP shall be submitted in the English language.
23. All questions or concerns regarding the RFP shall be submitted to the Energy Contract Manger via the PowerAdvocate Messaging tab.
24. Questions regarding the PowerAdvocate platform ONLY should be directed to:

PowerAdvocate Support

E-mail: [support@poweradvocate.com](mailto:support@poweradvocate.com)

Tel: 857-453-5800

PowerAdvocate Support will only answer questions related to the operation and functionality of the PowerAdvocate platform. Questions related to the RFP cannot be answered by PowerAdvocate Support. All RFP related questions should be directed to the Company Contact email address identified in Section 1.6 of this RFP.



## PowerAdvocate Terms of Use (Version: January 19, 2010)

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READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SITE. BY USING OR ACCESSING THE SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPT, AND AGREE TO BE BOUND BY THESE TERMS OF USE.

### 1. Background

Your use of [www.poweradvocate.com](http://www.poweradvocate.com) (the "Site") is governed by these PowerAdvocate Terms of Use ("Terms of Use" or "Agreement"). The password-protected areas of the Site allows individuals or entities with registered Users (as defined below) to access and use the PowerAdvocate Energy Intelligence Platform. Your use of the Energy Intelligence Platform (or any of the individual products that comprise the Energy Intelligence Platform – Spend Intelligence, Cost Intelligence, Market Intelligence and Sourcing Intelligence as of the date hereof) is governed by these Terms of Use and by any license, subscription or other applicable written contract entered into by you or by the Participating Company (as defined below) for which you are a User. A "Participating Company" is an individual or a legal entity that has Users that have registered to participate on the Energy Intelligence Platform. The employees or authorized agents of a Participating Company are referred to as "Users." A Participating Company submitting information on, or bids or other offers to sell, goods or services (including any entity acting as a representative or agent for another) on Sourcing Intelligence is referred to as a "Supplier Company." A Participating Company posting a request on the Sourcing Intelligence, or otherwise requesting or collecting information on, or receiving bids or offers for the purchase of, goods or services from Supplier Companies is referred to as a "Buyer Company." Except as expressly stated otherwise, all terms apply equally to Supplier Companies and to Buyer Companies.

### 2. Registration

Each User must register on the Site before Users are authorized to participate on the Energy Intelligence Platform.

### 3. User Names and Passwords

Each User will be issued a unique user name and password upon registration. Each Participating Company agrees to take all reasonable precautions to maintain as confidential the user names and passwords of its Users. Each Participating Company agrees not to provide access to the Energy Intelligence Platform to any persons other than authorized Users through use of their user names or passwords and to notify PowerAdvocate upon becoming aware of any loss or theft of a user name or password or an unauthorized use of the Energy Intelligence Platform or a user name or password. A Participating Company will be responsible for all use of its user names and passwords by any person or entity. At its sole discretion and at any time, PowerAdvocate may disable one or more user names or passwords or otherwise deny a User access to the Energy Intelligence Platform.

### 4. PowerAdvocate's Role

PowerAdvocate may be involved on the Site in many ways, including by assisting a Buyer Company with the preparation and posting of a request for proposals on Sourcing Intelligence, by promoting Supplier Company participation, and by facilitating Participating Company use of the Energy Intelligence Platform through helpdesk services. PowerAdvocate will not take title to, or otherwise have any liability for, any products or services sold or offered for sale on the Site, and each Participating Company hereby releases PowerAdvocate from any such liability. PowerAdvocate is not responsible for any material posted on the Site by a Participating Company. PowerAdvocate has no obligation to monitor the content on the Site. PowerAdvocate has the right, but not the obligation, to remove any material posted on the Site, including any material that is alleged to violate an intellectual property right (whether or not the allegation proves accurate) or that may violate these Terms of Use or applicable laws.

### 5. Participating Company's Role

Each Participating Company is responsible for all activities carried out on the Energy Intelligence Platform by its Users, and ensuring that each of its Users abides by the Terms of Use, as they are amended from



9/22/2017

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time to time and appear on the Site. All Users must be employees or authorized agents of a Participating Company and authorized by that Participating Company to conduct business on the Energy Intelligence Platform. A Participating Company shall inform PowerAdvocate immediately of any change in a User's status that affects that User's right to use the Energy Intelligence Platform. Should a Participating Company fail to do so, that Participating Company will continue to be responsible for all the User's activities on the Energy Intelligence Platform. The applicable Buyer Companies and Supplier Companies are responsible for determining the final terms and conditions between them with respect to a purchase and sale of goods or services arising out of their use of Sourcing Intelligence, including pricing, warranties, logistics, transportation, and inspection as required. If a Buyer Company elects to purchase any goods or services, that Buyer Company and the successful Supplier Company(s) will enter into any contracts they deem necessary and PowerAdvocate will not be a party thereto. You and each Participating Company warrant and covenant that its Contact Information (as defined in paragraph 9), its posting of any materials on the Site, and its other uses of and activities on the Site do not and shall not: (a) infringe any third party's copyright, patent, trademark, trade secret or other intellectual property rights, or other proprietary rights or rights of publicity or privacy; (b) violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, deceptive trade practices, and false advertising); or (c) constitute activities that are scandalous, deceptive, inaccurate, misleading, defamatory, libelous, obscene, harassing or threatening. You and each Participating Company will comply with all applicable laws, statutes, ordinances and regulations regarding its use of the Site, and regarding its ordering of, bidding on or purchase of goods and services, and its posting and retrieval of information, on or through the Site. Access to the Site by means of screen scrapers, web crawlers or similar methods is prohibited. Any Supplier Company acting as a representative or agent for another Supplier Company (e.g., a manufacturer's representative) acknowledges and agrees that these Terms of Use are intended to bind itself and the Supplier Company that it represents. Each Participating Company represents and warrants that it has all necessary right, title and interest to enter into this Agreement and to perform its obligations under this Agreement and, in the case of a Supplier Company acting as a representative for another Supplier Company, that it has the power to bind that other Supplier Company to these Terms of Use.

## 6. Third Party Links

The Site may contain links to third-party web sites not under the control or operation of PowerAdvocate. PowerAdvocate does not endorse these third-party web sites, and is not responsible for the contents of any linked site or any link contained in a linked site. You may provide a hypertext link to the Site on another web site, so long as such link is done in good taste and does not create the false appearance that PowerAdvocate is associated with or sponsoring the linking web site. The use of techniques to frame the Site within a third-party web site is not permitted under this Agreement. PowerAdvocate reserves the right to revoke its consent to any link at any time in PowerAdvocate's sole discretion.

## 7. Warranties and Limitations of Liability

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## 8. Confidential Information

PowerAdvocate recognizes the importance of protecting confidential and proprietary information collected or posted on the Energy Intelligence Platform and of not disclosing such information to unauthorized third parties. As such, PowerAdvocate enters into confidentiality agreements with PowerAdvocate customers that contain PowerAdvocate's sole obligations concerning the treatment of confidential or proprietary information collected or posted by that customer on the Site.

## 9. Intellectual Property

"PowerAdvocate" (alone and together with the three rings) is a registered trademark of Power Advocate, Inc. In addition, "Energy Intelligence Platform," "Spend Intelligence", "Cost Intelligence", "Market Intelligence", and "Sourcing Intelligence" are trademarks or service marks of Power Advocate, Inc. Unless otherwise noted on the Site, all other trademarks, service marks, and logos used in this Site are the trademarks, service marks or logos of their respective owners. All ownership rights -- including all right, title, and interest in all patents, copyrights, trademarks, trade secrets and other intellectual property rights -- in the Site, including any software associated with the operation or functioning of the Site, are and will remain in PowerAdvocate or its licensors. You and each Participating Company will not undertake to copyright, trademark or patent the Site, or any portion thereof. You and each Participating Company acknowledge that all or portions of the Site (including the software and methodologies associated with the operation or functioning of the Energy Intelligence Platform) may be copyrighted, trademarked or patented by PowerAdvocate or another party. You and each Participating Company acknowledge that no such act will cause or be construed as causing any portion of the Energy Intelligence Platform to be in the public domain. You and each Participating Company will not, and will not attempt to, modify, reverse engineer, disassemble or decompile the Site, or permit or cause any third party to do so on your behalf. Any changes, advice, modifications or evaluations of or concerning the Site generated or proposed by any party will be the exclusive property of PowerAdvocate and will not give any one other than PowerAdvocate any right, title or interest in or to the Site. All ideas, concepts, know-how or techniques relating to the use, operation or functioning of the Site will be the exclusive property of PowerAdvocate or PowerAdvocate's licensors. You and each Participating Company are granted only a limited, revocable, non-transferable license to print and download portions of any materials created by PowerAdvocate ("PowerAdvocate Materials") and posted on the Site solely for internal, non-commercial use, provided that any copyright notice and any other notices that appear on any such copies are maintained and unmodified. Any other use, copying, redistribution, publication, or retransmission of any portion of any PowerAdvocate Materials on the Site is strictly prohibited without the express written permission of PowerAdvocate. All PowerAdvocate Materials on the Site are, and shall continue to be, owned by PowerAdvocate. Each Participating Company shall also maintain any copyright notice and any other notices that appear on any materials created by any third party and posted on the Site. PowerAdvocate retains all rights to any data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices ("Technical Elements") owned or developed by PowerAdvocate prior to, or independently from, the provision of the Site (and any modifications or enhancements to PowerAdvocate's Technical Elements developed in the course of providing the Site) (collectively, "PowerAdvocate Technical Elements") and PowerAdvocate retains exclusive ownership rights to all PowerAdvocate Technical Elements. PowerAdvocate retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of providing the Site, and, subject to the confidentiality obligations in the separate contracts referenced in Section 8, you and each Participating Company hereby grant to PowerAdvocate a perpetual, worldwide, paid-up license to use, copy, modify and/or sublicense, in the course of

9/22/2017

PowerAdvocate :: Terms of Use

PowerAdvocate's business, any Technical Elements acquired or developed as a result of providing the Site.

#### **10. Contact Information**

"Contact Information" shall mean any and all contact information (name, address, phone numbers, email address) that you provide to PowerAdvocate during registration for the Energy Intelligence Platform or during any other use of the Site. During registration, you shall provide -- and Participating Company shall ensure that its Users provide -- true, accurate, current and complete Contact Information. During registration or any other use of the Site that collects Contact Information, you will ensure that all Contact Information is office or home office contact information and is not private home contact information. PowerAdvocate uses the Contact Information in furtherance of, and consistent with, the Site and otherwise in its normal course of business. By providing your Contact Information, you provide your consent to PowerAdvocate's contacting you by email or telephone in its normal course of business, including to determine your interest in any PowerAdvocate offerings.

#### **11. Governing Law and Jurisdiction**

This Agreement shall be deemed to have been made and performed entirely in the Commonwealth of Massachusetts, and shall be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts without regard to its provisions regarding the conflicts of laws. You and each Participating Company and PowerAdvocate hereby agree the state and federal courts of Massachusetts shall be the exclusive forum and venue to resolve disputes involving PowerAdvocate and arising out of or relating to these Terms of Use or any use of the Site. By using the Site and thereby agreeing to these Terms of Use, you and each Participating Company consent to personal jurisdiction and venue in the state and federal courts in Massachusetts with respect to all such disputes.

#### **12. Amendment**

PowerAdvocate may modify this Agreement from time to time by posting the modified Agreement on the Site. Any use of the Site after the posting of the modified Agreement constitutes that user's and that Participating Company's agreement to be bound by such modified version of this Agreement. PowerAdvocate reserves the right to change the Site at its discretion at any time. PowerAdvocate may add or remove features, services or otherwise modify the Site, all without any liability whatsoever.

#### **13. Order of Precedence**

THESE TERMS OF USE SHALL NOT ALTER OR OVERRIDE ANY CONFLICTING TERMS AND CONDITIONS OF ANY OTHER WRITTEN CONTRACT THAT YOU OR A PARTICIPATING COMPANY MAY HAVE WITH POWERADVOCATE OR WITH ANOTHER PARTICIPATING COMPANY. In the event of any conflicting terms under a written contract signed by you or a Participating Company with PowerAdvocate and these Terms of Use, the terms of the written contract will prevail over the conflicting terms in these Terms of Use.

#### **14. Miscellaneous**

Any notice, report, approval, or consent required or permitted under this Agreement shall be in writing and in the English language. Notices to PowerAdvocate may be sent to Power Advocate, Inc., 179 Lincoln Street, Boston, MA 02111, Facsimile: 857-453-5656, Attention: Daniel P. Sullivan. No failure or delay in exercising any right under this Agreement will operate as a waiver thereof, nor will any partial exercise of any right or power under this Agreement preclude further exercise. If any provision of this Agreement is unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. For all purposes under this Agreement, each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract with third-parties. No agency, partnership, joint venture, employee-employer, or franchisor-franchisee relationship is intended nor created by this Agreement.



## Sourcing Intelligence® Quick Start for Suppliers

PowerAdvocate Sourcing Intelligence enables suppliers to access buyer documents and submit documents over a web-based sourcing platform.

### Logging In

1. Launch a web browser and go to [www.poweradvocate.com](http://www.poweradvocate.com).
2. Click the orange **Login** button.
3. Enter your account **User Name** and **Password** (both are case-sensitive) and click **Login**.
4. Click the **Events** tab if it is not already displayed.

### Dashboard

Your Dashboard lists the events you have been invited to. A line divides currently accessible events from others.

Click to view Supplier Intelligence Dashboard

Click to view Contract Intelligence Dashboard

Buyer filter

Navigation bar

Dashboard Profile Company Help Logout

Events Portals Contracts

**Dashboard**

Company Filter: All Companies

Fill-In Data Sheets

Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190-cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	3	4	5

Open & Pending Pre-Bid events

Pending (no Pre-bid) and Closed events

Buying entity

Click to view the event's Status tab

Number of unread/total messages  
Click to view the event's Messaging tab

Click numbers to view event tabs

Datasheet available

No datasheet available

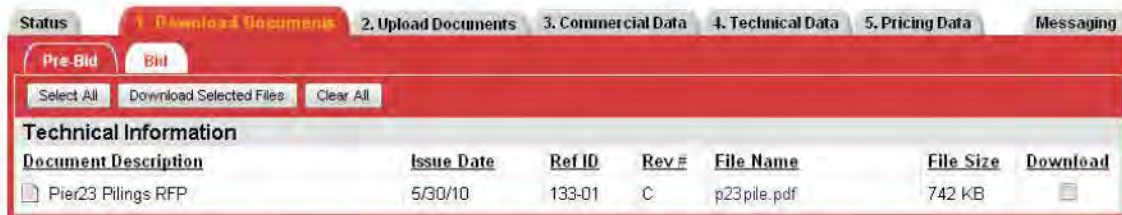
- Click an event name to view its Status tab, which displays a summary of your activity and key event dates. To view specific details of an event, click the buttons **1 2 3 4 5** to view the corresponding tab.
- To return to the Dashboard, click **Dashboard** in the navigation bar at the top of the window.
- An event will not appear on your Dashboard until the Bid Event Coordinator has added you as a participant.

In addition to the Events tab, you may also see:

- An **Opportunities** tab, if a buyer opens an event to all PowerAdvocate suppliers; you can review a high-level event description, and may request full access to the event.
- A **Portals** tab, if a buyer subscribes to PowerAdvocate Supplier Intelligence
- A **Contracts** tab, if a buyer subscribes to PowerAdvocate Contract Intelligence.

## Downloading Bid Packages

All of the buyer's bid package documents, including specifications and engineering drawings, are centrally stored on the PowerAdvocate platform. To view bid documents, click **1** on your Dashboard or on the **1. Download Documents** tab from within the event.



- You can access the **Bid** sub-tab after the bid opens. You can access Buyer documents before the event from a **Pre-Bid** sub-tab if the buyer requires a Pre-Bid submittal; the buyer must approve your submittal before you can access the **Bid** sub-tab. Likewise, you will see a **Post Bid** sub-tab if the buyer invites you to participate in post-bid negotiations.
- To view or download a document, click the file name; you may be prompted to open or save the file.
- To download multiple documents:
  1. Select the checkbox in the **Download** column for each document you wish to download, or click **Select All**.
  2. Click **Download Selected Files**.
  3. Click **Start** to download a .zip file containing the selected documents.

## Uploading Documents

To upload your documents, click **2** on your Dashboard, or on the **2. Upload Documents** tab from within the event.



- As with the **1. Download Documents** tab, you may be able to access and upload documents to **Pre-Bid**, **Bid**, and **Post Bid** sub-tabs as appropriate.
- To upload a document:
  1. Specify a **Document Type**, and edit the Issue Date and Reference ID if necessary.
  2. Click **Browse**, navigate to and select the document, and then click **Open**; multiple files can also be compressed into one .zip file for upload.
  3. Click **Submit Document**.
- Late documents are accepted at the Buyer's option, but are flagged in red text.

## Completing Datasheets

To view the event datasheets, click **3** **4** **5** on your Dashboard or on the **3. Commercial**, **4. Technical**, or **5. Pricing** tabs from within the event. Buttons/tabs are grayed out (e.g., **3**) if the buyer did not create a particular type of datasheet.



- Complete the datasheets over the course of the Bid Open period; datasheets may have multiple sub-tabs.
- Click **Save Data** often to avoid data loss. Once the bid closes, saved data is automatically submitted to the buyer.
- Once the bid closes, you are normally unable to modify datasheets. However, at the buyer's option, you may upload additional documents on the **2. Upload Documents** tab (which are flagged as being late).
- To view a printer-friendly version of a datasheet, click **Printable**.

## Communicating with the Bid Event Coordinator

Buyer companies use one of two communication options in Sourcing Intelligence: Email or PowerAdvocate Messaging.

### Email

Click the icon next to the Buyer Contact's name to contact them through your default email application (e.g., Outlook).



### PowerAdvocate Messaging

To send a message to the Bid Event Coordinator (BEC), go to the **Messaging** tab and click **Create New Message**. To read or reply to a message from the BEC, click the message subject.



- You can send messages to the BEC and Buyer Team; replies are sent your Supplier Team and the Buyer Team.
- BECs can message the Buyer Team and all Supplier Teams at once; Supplier Teams can respond but not see other Supplier Teams' responses.
- Supplier Teams cannot message each other, or see other Supplier Teams' correspondence with the Buyer Team.
- You can receive external email notification of new PowerAdvocate messages.

## Getting More Information

- Click **Help** on the navigation bar to display the online help.



- Supplier documentation can be downloaded from the online help system.
- Call PowerAdvocate support at 857-453-5800 (Mon-Fri, 8 a.m. to 8 p.m. Eastern Time) or email [support@poweradvocate.com](mailto:support@poweradvocate.com).

May 2016

# PowerAdvocate Sourcing Intelligence®



Suppliers' Frequently Asked Questions  
May 2016



# How do I log in to Sourcing Intelligence?

1. Launch a web browser and go to [www.poweradvocate.com](http://www.poweradvocate.com), and then click the orange **Login** button.
2. Enter your account **User Name** and **Password** (both are case-sensitive).
3. Click **Login**.

PowerAdvocate - Login

User Name:  [Forgot User Name](#)

Password:  [Forgot Password](#)

[Frequently Asked Questions](#)

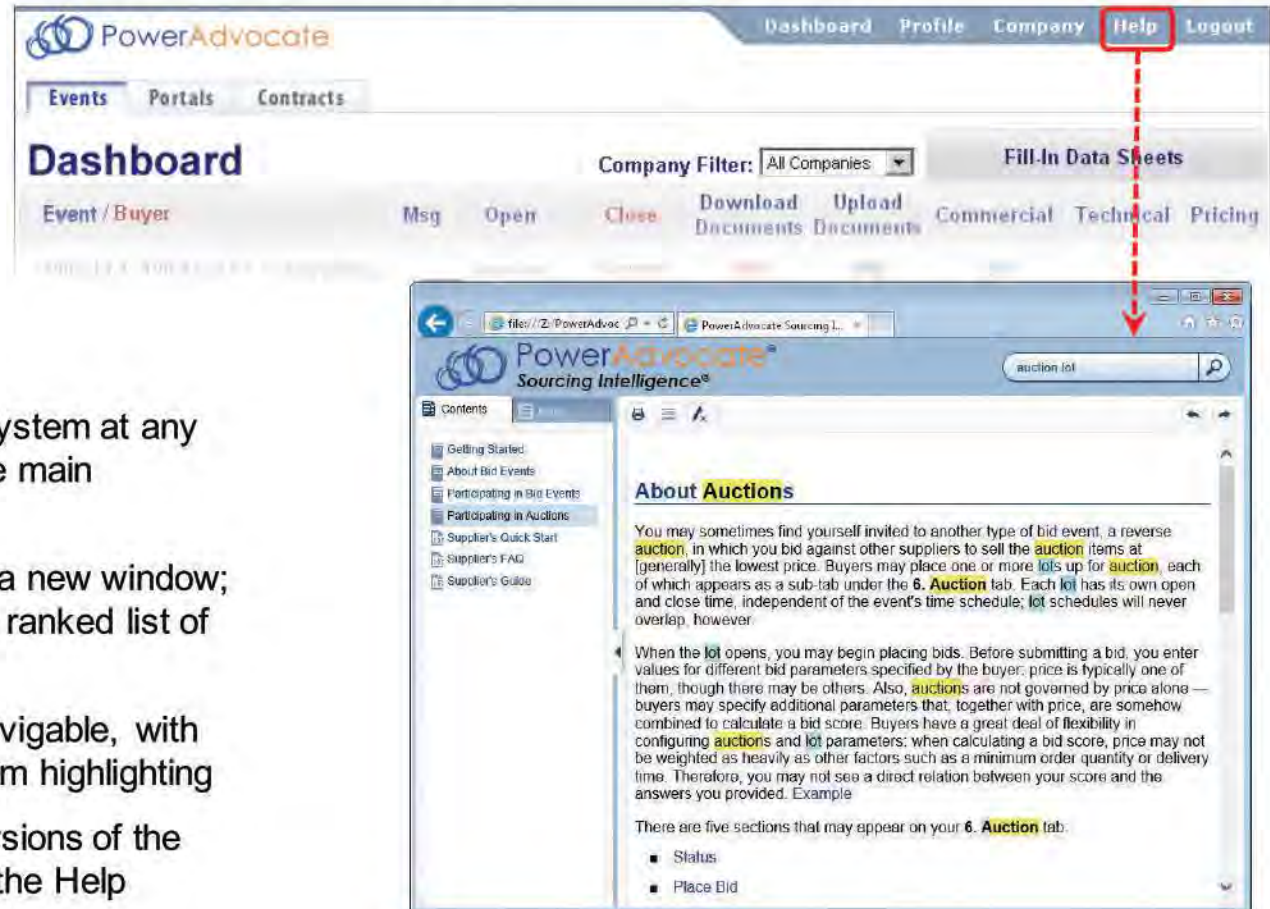


## Tips

- Participating in a Reverse Auction requires logging into PowerAdvocate using IE9 or higher.
- If you received an email from a Bid Event Coordinator inviting you to register, follow the instructions in the email to complete the registration process.
- **Portals** and **Contracts** tabs may appear if buyers also subscribe to Supplier Intelligence or Contract Intelligence, respectively. An **Opportunities** tab may also appear, which is described on page 5.

## How do I get more information if I need it?

You can contact PowerAdvocate Support at support@poweradvocate.com or by calling **857-453-5800**, Monday through Friday (excluding U.S. Federal Holidays) from 8:00 AM to 8:00 PM Eastern Time



### Online Help

- You can access the Help System at any time by clicking **Help** on the main navigation bar
- The Help System opens in a new window; use full-text search to get a ranked list of relevant help topics
- The Help System is fully navigable, with features such as search term highlighting
- You can download PDF versions of the documentation from within the Help System

# What information is displayed on my Dashboard?

Your Dashboard displays all bid events to which you have been invited.

Event / Buyer	Msg	Open	Close	Download Documents	Upload Documents	Commercial	Technical	Pricing
190 -cbl-1: 190 First St. Cable/Wiring Electric Power Utility		05/16/10 8:00 AM EDT	06/08/10 4:00 PM EDT	1	2	3	4	5
T42g: Colorado River Sluice Gates Great Western Utilities	1/1	04/04/10 10:00 AM EDT	06/30/10 4:00 PM EDT	1	2	3	4	5
1998-01: Grid Expansion Electric Power Utility		09/01/10 8:00 AM EDT	12/29/10 4:00 PM EST	1	2	3	4	5

Open and Pending Pre-Bid events

Pending (not Pre-Bid) and Closed events

Buying entity

Event name/number

Number of unread/total messages; click to access the **Messaging** tab.

The numbers on the Dashboard represent a general workflow, though you can work in any order:

- 1** Download the bid package.
- 2** Upload bid documents, proposals, etc.
- 3 4 5** Fill in online datasheets if present.

### Tips

- If an event is missing a type of datasheet, that number & its corresponding tab are grayed out (e.g., **3**).
- Events with links in the **Msg** column use PowerAdvocate Messaging; others use standard email.
- Supplier contacts are invited individually by the buyer

## How do I find other supplier opportunities?

Buyer companies have the option to make their bid events visible to all PowerAdvocate-registered suppliers.

When these opportunities exist, your **Opportunities** tab displays some high-level event information for you to evaluate.



The screenshot shows a web interface with two tabs: "Events" and "Opportunities". The "Opportunities" tab is selected. Below the tabs is a section titled "Opportunities Dashboard" containing a table with the following data:

Event Title	Company	Products / Services	Open Date	Close Date	Accessible
Actuators	Acme Electric	Controls	08/18/2015 8:00 AM EDT	08/31/2015 4:30 PM EDT	
Next-Gen Boiler Upgrade	Universal Energy	Boiler Components	08/15/2015 8:00 AM EST	12/31/2015 4:00 PM EST	
<b>Description:</b> Looking for a cutting-edge implementation for a green building in the planning stages.					
Project Simulator	Solar Arrays LLC	Construction Services	08/01/2015 8:00 AM EDT	09/07/2015 4:00 PM EDT	Pending
Site 101 Rough-out	Sheridan Builders	Piping	07/01/2015 9:00 AM EDT	12/31/2015 6:00 PM EST	

To request access to a posted event:

1. Click

A pop-up appears asking you to verify your qualifications. You may also enter Optional Comments to the buyer, if you have something to add.

2. Click **Submit Request**.

The Accessible column will display Pending until the buyer approves your request. Once approved, the event will appear on your Events tab. If the buyer does not approve your request, the event will be removed from your Opportunities tab.

## How do I access the buyer's bid package?

Once a buyer invites you to participate in a bid event, that event appears on your Dashboard. You can begin downloading the buyer's bid documents after the event opens. From the Dashboard, click **1** to access the **1. Download Documents > Bid** tab, where you can download the buyer's entire bid package, download selected documents, or view individual documents online.

If the buyer invites you to Pre-Bid, you can access documents from the **1. Download Documents > Pre-Bid** tab before the event opens; the buyer must approve your Pre-Bid submittal before you can access the **Bid** sub-tab. Likewise, a **1. Download Documents > Post Bid** sub-tab indicates an invitation to post-bid negotiations.

Click **Select All** to select all files in the bid package.

Click **Download Selected Files** to download the selected documents.

Click a document **File Name** to open and view it online

Technical Information						
Document Description	Issue Date	Ref ID	Rev #	File Name	File Size	Download
Pier23 Pilings RFP	5/30/10	133-01	C	p23pile.pdf	742 KB	<input type="checkbox"/>

If there are multiple documents, you can selectively download them

### Tip

➤ Selected documents are saved in a .zip file named **BidPackage-nnnn-n.zip** (nnnn-n is a unique ID).

# How do I submit documents to the buyer?

1. Go to the **2. Upload Documents** tab and select the appropriate sub-tab.

2. Select a **Document Type** and enter a brief **Document Description**.

The screenshot shows the '2. Upload Documents' tab with sub-tabs 'Pre-Bid' and 'Bid'. The 'Upload Bid Proposal' section includes fields for 'Document Type \*' (a dropdown menu), 'Issue Date' (01/06/2011), and 'Reference ID' (marked as a required field). Below these are 'Select File(s) Location' with a 'Browse...' button and 'Selected File(s)' showing 'p23 abp\_rev2.pdf' and 'p23eir.pdf'. A 'Submit Document' button is also present. Below the form is a 'Bid Submissions' table with columns for Document Description, Issue Date, Ref ID, File Name, File Size, Upload Date, and Actions.

Document Description	Issue Date	Ref ID	File Name	File Size	Upload Date	Actions
Pier 23 Architectural	6/01/10	133-22	p23 abp.pdf	420 KB	6/01/10	[edit] [delete]

3. Click **Browse**, navigate to your document, and click **Open**.

4. Click **Submit Document**.

## Tips

- **Issue Date** and **Reference ID** are optional, though they are helpful for tracking documents.
- You can add, modify (✎), or delete (✖) documents at any time before the event closes.
- There is no limit on the number or size of documents that you can upload; multiple files can also be compressed into a .zip archive for upload.
- Late documents, if the buyer opts to accept them, are flagged in red text.

## How do datasheets work?

In addition to your proposal, buyers often request that you complete datasheets as part of your bid package. Datasheets are online forms that allow buyers to collect specific data to tabulate and compare across suppliers.

1. Click one of the datasheet tabs.

2. Fill out the required information in the online form.

1. Click one of the datasheet tabs.

2. Fill out the required information in the online form.


3. Click **Save Data**.

### Tips

- Multiple users from the same company cannot simultaneously fill out a datasheet — when one user saves, others' work will be lost.
- Be sure to click **Save Data** before navigating elsewhere, or data may be lost. Save your work often.
- There is no **Submit** button. Data is automatically submitted when the bid closes.
- The buyer may block access to datasheets once the bid closes.

## How do I communicate with the buyer? (1 of 2)

The buyer uses one of the following messaging options in Sourcing Intelligence:

- **Standard email** – Click an  icon to create a message to the buyer contact in your default email application.



The screenshot displays a software interface for a sourcing event. At the top left, the event ID is "17579 : Widgets and Gizmos" and the buyer is "Electric Power Utility". Below this, the event dates are "Open: 08/19/09 08:00:00 AM EDT" and "Close: 09/15/09 04:00:00 PM EDT", with a "Time Remaining: 21 days 2 hours 56 mins 5 secs". The buyer contact is listed as "Cathy Walsh" with an envelope icon circled in red. A navigation bar contains tabs for "Status", "1. Download Documents", "2. Upload Documents", "3. Commercial Data" (highlighted), "4. Technical Data", and "5. Pricing Data". Below this is a secondary bar with "1. Supplier Info ...", "2. M&WBE Rep ...", "3. Company - 27 ...", "4. Commercial", and a "Printable" icon. At the bottom, a "Save Data" button is next to a warning: "Your information can be changed after it is saved. If you leave this page without saving it first, you will lose all unsaved data."

- **PowerAdvocate Messaging** – See the following slide.



## How do I communicate with the buyer? (2 of 2)

### To create a message in PA Messaging:

1. Click the event's **Messaging** tab or the link in the **Msg** column on your Dashboard.
2. Click **Create New Message**.

The screenshot displays the PA Messaging interface. At the top, there are tabs for 'Status', '1. Download RFP', '2. Upload Proposal', '3. Commercial Data', '4. Technical Data', '5. Pricing Data', and 'Messaging'. The 'Messaging' tab is selected. Below the tabs, there is a 'Create New Message' button circled in red. To the right of this button is a search box labeled 'Search Inbox:' and a 'Send email notifications?' toggle set to 'Yes'. Below the search bar is an 'Inbox (3)' table with columns for Status, Date, From, Company, and Subject. The table contains three entries: 1) 9/29/07 2:58 PM EDT from Peter Holm, Elsbeth International, subject 'engineering specialist'; 2) 9/29/07 2:53 PM EDT from Cindy Walsh, Electric Power Utility, subject 'site visit rescheduled'; 3) 9/29/07 2:52 PM EDT (3) from Cindy Walsh, Electric Power Utility, subject 'structural specialist'. The 'structural specialist' subject is circled in red. To the left of the inbox is a 'Create Message' dialog box with fields for To, Cc, From, Date, Subject, and Message. The 'Message' field contains the text 'Could we reschedule the Substation #3 visit to 3:30pm?'. Below the dialog is a table of attachments with columns for Description, Type, Date, and actions (Submittals, View, Remove). The 'View Message' dialog is open on the right, showing details for the 'site visit rescheduled' message, including the subject, date, and message body: 'Are there any questions we need to address at the site visit? - Cindy'. It also shows an attachment table with one entry: 'site prep questions' (Message Attachment, 10/3/07).

### To view a message:

- Click the message subject or status icon (✉ / ✉)

### Tips

- New messages are sent to the Bid Event Coordinator and copied to the Buyer and Supplier Teams.
- Messages/file attachments are embedded within an event, and cannot be viewed outside of that event.
- Messages are sent to entire teams; one-to-one messaging is not allowed.
- You can choose to receive [external] email notifications of new event-related messages.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix F – Mutual Confidentiality and  
Non-Disclosure Agreement*



**Maui  
Electric**

**APPENDIX F**  
**MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**  
Independent Power Producers – (“IPPs”)

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) between [INSERT NAME OF IPP], a [State of incorporation/organization] [type of entity] (“IPP”) and Hawaiian Electric Company, Inc., a Hawai‘i corporation (“Hawaiian Electric”) and Maui Electric Company, Limited, a Hawai‘i corporation (“Maui Electric”) (Hawaiian Electric and Maui Electric collectively, the Companies). In consideration of the mutual promises contained in this Agreement, including the provision of Confidential Information (as defined below) by either party to the other hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Background

The Companies have or intend to issue a Request for Proposals (“RFP”) for renewable energy generation. The IPP has or intends to propose a nominal [ ] MW, [TYPE OF PLANT] plant located at [LOCATION] on the island of [NAME OF ISLAND], State of Hawai‘i (“Proposal”).

In connection with the IPP’s Project, the Companies may conduct an interconnection requirements study (“IRS”) to establish the requirements for interconnection of the IPP’s proposed renewable energy generation facility to the Companies’ electric grid. The RFP process may also result in the award of a potential power purchase agreement, the terms of which must be negotiated and agreed upon by the parties (“PPA Negotiations”). For purposes of this Agreement the term “Project” refers to the RFP, Proposal and potential IRS and PPA Negotiations.

In order to evaluate the Project, either party may from time to time provide to the other party certain Confidential Information, as defined herein. The parties are willing to provide such Confidential Information to each other upon the terms and conditions of this Agreement.

2. Confidential Information

Except as set forth in Section 3 below, “Confidential Information” means all non-public, confidential or proprietary information disclosed by either party (the “Provider”) to the other party (a “Recipient”) its affiliates and its and their directors, officers, employees, agents, advisors, consultants (including, without limitation, financial advisors, counsel and accountants) and controlling entities or individuals (collectively, “Representatives”) whether disclosed orally or disclosed or accessed in written, electronic or other form of media, and whether or not marked or otherwise identified as “confidential,” including, without limitation:

(a) all information concerning the Provider and its affiliates’, and their customers’, suppliers’ and other third parties’ past, present and future business affairs including, without

limitation, finances, customer information, supplier information, products, services, designs, processes, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, business, marketing, development, sales and other commercial information and strategies;

(b) information concerning the Companies' generation, transmission, and distribution systems (e.g., engineering and operating characteristics of the Companies' transmission lines and substations) ("Critical Infrastructure Confidential Information");

(c) the Provider's unpatented inventions (whether or not they are patentable), ideas, methods and discoveries, techniques, formulations, development plans, trade secrets, know-how, unpublished patent applications and other confidential intellectual property;

(d) all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing;

(e) any third-party confidential information included with, or incorporated in, any information provided by the Provider to the Recipient or its Representatives; and

(f) all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials ("Notes") prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

### 3. Exclusions from Confidential Information

Except as required by applicable federal, state, or local law or regulation, the term "Confidential Information" as used in this Agreement shall not include information that:

(a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives; provided, however, that Confidential Information shall not be disqualified as Confidential Information (i) merely because it is embraced by more general or generic information which is in the public domain or available from a third party, or (ii) if it can only be reconstructed from information taken from multiple sources, none of which individually shows the whole combination (with matching degrees of specificity);

(b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a contractual or other obligation to the Provider;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the Provider pursuant to this Agreement;

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider's Confidential Information; or

(e) was or is learned of established entirely from public sources, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Provider's Confidential Information.

The parties acknowledge and understand that the confidentiality obligations of this Agreement apply only to the Confidential Information shared in connection with the Project. The parties may share other information with each other under other agreements, provisions or understandings which are not related to the Project. Such information sharing shall be subject to the provisions of the agreements and confidentiality provisions associated thereto and this Agreement shall not be construed to infringe upon or apply to such agreements or provisions.

#### 4. Non-Disclosure of Confidential Information

Unless otherwise agreed to in writing by the Provider, the Recipient agrees as follows:

(a) except as required by law, not to disclose or reveal any Confidential Information to any person or entity other than its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know the Confidential Information for the purpose of evaluating the Project.

(b) not to use Confidential Information for any purpose other than in connection with its evaluation of the Project or the consummation of the Project.

(c) except as required by law, not to disclose to any person or entity (other than those of its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know for the purpose of evaluating the Project) any information about the Project, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Proprietary Information has been made available to the Recipient or its Representatives.

(d) to use diligent efforts to safeguard and protect the confidentiality of the Confidential Information, including, at minimum, implementing the same commercial measures that the Recipient uses to protect its own confidential information. Before disclosing the Confidential Information to any Representative, the Recipient will inform such Representative of the confidential nature of such information, their duty to treat the Confidential Information in accordance with this Agreement and shall ensure that such Representative is legally bound by the

terms and conditions of this Agreement or subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement.

(e) Any provision herein to the contrary notwithstanding, the Companies may disclose Confidential Information to the State of Hawai'i Public Utilities Commission ("Commission") and/or the State of Hawai'i Division of Consumer Advocacy (including their respective staffs) provided that such disclosure is made under a protective order entered in the docket or proceeding with respect to which the disclosure will be made or any general protective order entered by the Commission.

5. Required Disclosure and Notice

If the parties or any of their Representatives become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, court order, or similar process) to disclose any of the Confidential Information, the compelled party shall undertake reasonable efforts to provide the other party with notice within three (3) business days of such requirement or advice prior to disclosure so that the other party may (a) seek a protective order or other appropriate remedy, (b) consult with the other party with respect to the compelled party taking steps to resist or narrow the scope of such requirement or advice, and/or (c) waive compliance, in whole or in part, with the terms of this Agreement. If such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the compelled party agrees to furnish only that portion of the Confidential Information which it is legally required to so furnish and, at the request of the other party, to use reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, it being understood that such reasonable efforts shall be at the cost and expense of the party whose Confidential Information has been sought. In any event, neither the IPP nor any of its Representatives will oppose action by the Companies to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

6. Return or Destruction of Confidential Information

At any time during or after the term of this Agreement, at the Provider's written request, and in any event, upon the termination of the Agreement, the Recipient shall certify within ten (10) business days that it has destroyed all Confidential Information by using industry standard data elimination methods used to prevent unauthorized disclosure of information, and for Personally Identifiable Information (defined as personally identifiable information of individuals, and any information that may be used to track, locate or identify such individuals (or which is otherwise protected by privacy laws), including any automatically generated information (such as IP addresses and other customer identifiers) that identifies or is unique or traceable to a particular individual or computer or other electronic device capable of accessing the internet, including without limitation, name, address, telephone number, social security number, credit card account numbers, email addresses, user identification numbers or names and passwords, which is disclosed to the Recipient or its subcontractors in connection with this Agreement by the Provider, which products and services are used or intended to be used for personal, family or household purposes), such methods shall be consistent with Hawaii Revised Statute 487-R;

provided, however, that with respect to Confidential information in tangible form, the Recipient may return such Confidential Information to the Provider within ten (10) business days in lieu of destruction. The Recipient's sole obligation with respect to the disposition of any Notes shall be to redact or otherwise expunge all such Confidential Information from such Notes and certify to the Provider that it has so redacted or expunged the Confidential Information. Notwithstanding the foregoing, with respect to any Confidential Information stored in Recipient's disaster recovery backups or other electronic archives, Recipient is not required to destroy such Confidential Information if it would impose a material cost or burden; provided, however, such Confidential Information shall be destroyed when such archives are destroyed in accordance with Recipients records retention policies.

7. Authority

Each party represents and warrants that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement, understands it and agrees to be bound by it.

8. No Representations or Warranties

Neither the Provider nor any of its Representatives make any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information disclosed to the Recipient hereunder, and the Recipient agrees that it is not entitled to rely on the accuracy or completeness of any Confidential Information. Neither the Provider nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or arising from the use of any Confidential Information or for any errors therein or omissions therefrom. Notwithstanding the foregoing, the Recipient shall be entitled to rely solely on such representations and warranties regarding Confidential Information as may be made to it in any final agreement relating to the Project, subject to the terms and conditions of such agreement.

9. No Other Obligations

Neither this Agreement nor the disclosure of the Confidential Information shall result in any obligation on the part of either party to enter into any further agreement with the other with respect to the subject matter hereof or otherwise, to purchase any products or services from the other, or to require either party to disclose any further information to the other. 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. Either party may offer products or services which are competitive with products or services now offered or which may be offered by the other. Subject to the express terms and conditions of this Agreement, neither this Agreement nor discussions and/or communications between the parties will impair the right of either party to develop, make, use, procure, and/or market any products or services, alone or with others, now or in the future, including those which may be competitive with those offered by the other. Whether or not the Project is consummated, neither party shall issue a press release or release any information to the general public concerning such transaction or the absence thereof without the express prior written consent of the other, and the parties agree that neither

party will use the other's name whether by including reference to the other in any press release, list of customers advertising that its services are used by Companies or otherwise, without written authorization by the respective party's authorized representative.

10. Property Rights in Confidential Information

All Confidential Information shall remain the sole and exclusive property of the Provider and nothing in this Agreement, or any course of conduct between the parties shall be deemed to grant to the Recipient any license or rights in or to the Confidential Information of the Provider, or any part thereof. Unless otherwise expressly agreed in a separate license agreement, the disclosure of Confidential Information to the Recipient will not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information or to any patents or patent applications of the Provider.

11. Publicly Traded Companies

The IPP acknowledges that the Companies' holding company is a publicly traded company, and that Confidential Information of the Companies may constitute material, non-public information with respect to the Companies. The IPP understands, and will advise its Representatives to whom Confidential Information of the Companies is disclosed, of the restrictions imposed by the United States securities laws on (a) the purchase or sale of securities by any person in possession of material, non-public information with respect to such securities, and (b) the communication of material, non-public information with respect to securities to a person who may purchase or sell such securities in reliance upon such information.

12. Remedies

(a) Each party acknowledges and agrees that any breach or threatened breach of this Agreement may give rise to an irreparable injury to the Provider or its Representatives, for which compensation in damages is likely to be an inadequate remedy. Accordingly, in the event of any breach or threatened breach of this Agreement by the Recipient or its Representatives, the Provider shall be entitled to seek equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

(b) In the event that the Recipient learns of dissemination, disclosure, or use of the Confidential Information which is not permitted by this Agreement, the Recipient shall notify the Provider immediately in writing and shall use reasonable efforts to assist the Provider in minimizing damages from such disclosure. Such remedy shall be in addition to and not in lieu of any other rights or remedies available to the Provider at law or in equity.

13. Cumulative Remedies

No rights or remedy herein conferred upon or reserved to either party hereunder is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or hereafter existing.



14. Notice

(a) By delivering written notice, either party may notify the other that it no longer wishes to receive or provide Confidential Information. Any further information received or provided by the party who received such notice following receipt of such notice, shall not be subject to the protection of this Agreement.

(b) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a party may designate by notice to the other party):

**(1) Companies:**

By Mail:

Maui Electric Company, Ltd.  
P.O. Box 398  
Kahului, HI 96733-6898  
Attn: Jarett Contino, Customer Solutions & Planning  
Department

Delivered By Hand or Overnight Delivery:

Maui Electric Company, Ltd.  
210 West Kamehameha Ave.  
Kahului, HI 96732-2253  
Attn: Jarett Contino, Customer Solutions & Planning  
Department

By E-mail:

Maui Electric Company, Ltd.  
Attn: Jarett Contino, Energy Contract Manager  
Email: [jarett.contino@mauielectric.com](mailto:jarett.contino@mauielectric.com)

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By Mail:

Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawaii 96840  
Attn: Director of Procurement, Renewable Acquisition  
Department

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.  
Central Pacific Plaza  
220 South King St, 21<sup>st</sup> Floor  
Honolulu, HI 96813  
Attn: Director of Procurement, Renewable Acquisition  
Department

By E-mail:

Hawaiian Electric Company, Inc.  
Attn: Director of Procurement, Renewable Acquisition  
Department  
Email: [renewableacquisition@hawaiianelectric.com](mailto:renewableacquisition@hawaiianelectric.com)

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With a copy to:

By Mail:

Hawaiian Electric Company, Inc.  
Legal Department  
P.O. Box 2750  
Honolulu, Hawaii 96840

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.  
American Savings Bank Tower  
1001 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813  
Attn: Legal Department

By E-mail:

Hawaiian Electric Company, Inc.  
Legal Department  
Email: [legalnotices@hawaiianelectric.com](mailto:legalnotices@hawaiianelectric.com)

**(2) [Purchaser][Vendor][Supplier]**

By Mail:

**[INSERT ADDRESS/CONTACT]**

Delivered By Hand or Overnight Delivery:

[INSERT ADDRESS/CONTACT]

By E-mail:

[INSERT ADDRESS/CONTACT]

With a copy to:

By Mail:

[INSERT ADDRESS/CONTACT]

Delivered By Hand or Overnight Delivery:

[INSERT ADDRESS/CONTACT]

By E-mail:

[INSERT ADDRESS/CONTACT]

15. No Waiver

Except as otherwise provided in this Agreement, no delay or forbearance of a party 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.

16. Governing Law

This Agreement is made under, governed by, construed and enforced in accordance with, the laws of the state of Hawaii. Any action brought with respect to the matters contained in this Agreement shall be brought in the federal or state courts located in the State of Hawaii. Each party agrees and irrevocably consents to the exercise of personal jurisdiction over each of the parties by such courts and waives any right to plead, claim or allege that the State of Hawaii is an inconvenient forum or improper venue. Notwithstanding the foregoing, Companies, at its option, may elect to submit any such dispute to binding arbitration pursuant to the commercial arbitration rules of Dispute Prevention & Resolution, Inc. or the American Arbitration Association then in effect in which case the parties agree that any alternative dispute resolution shall take place in the State of Hawaii.

17. Attorneys' Fees and Costs

If there is a dispute between the parties and either party institutes a lawsuit, arbitration, mediation or other proceeding to enforce, declare, or interpret the terms of this Agreement, then the prevailing party in such proceeding shall be awarded its reasonable attorneys' fees and costs.

18. Assignment Prohibited

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns. Neither party shall have the right to assign any of its rights, duties or obligations under this Agreement, by operation or law or otherwise, without the prior written consent of the other party. Any purported assignment in violation of this section shall be null and void.

19. 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.

20. Entire Agreement

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior and contemporaneous agreements, understandings or undertakings, oral or written with respect to the subject matter. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via by the Party against whom waiver is asserted.

21. Term and Survival

This Agreement shall remain in full force and effect for a period of two (2) years from the Effective Date. All confidentiality obligations within this agreement shall survive following expiration or termination of this Agreement.

22. Severability

If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both parties notwithstanding any such aforesaid invalidity or unenforceability.

23. 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.

24. Counterparts and Electronic Signatures

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. The parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by E-mail or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf by a duly authorized representative, all as of the Effective Date.

HAWAIIAN ELECTRIC COMPANY, INC.  
("HAWAIIAN ELECTRIC")

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

MAUI ELECTRIC COMPANY, LIMITED  
("MAUI ELECTRIC")

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

[Insert Name of IPP]

\_\_\_\_\_  
("IPP")

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

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix G – Description of Available Sites*



**Maui  
Electric**

**MAUI ELECTRIC  
VARIABLE RENEWABLE DISPATCHABLE GENERATION RFP  
DESCRIPTION OF AVAILABLE SITES**

**Company Owned Site**

A Company-owned Site, referred to as the Waena site is being offered to Proposers for their consideration. The Waena site consists of 65.7 acres located along Pulehu and Waiko roads in central Maui (TMK 3-8-03:23 and 3-8-03:24). See Exhibits A & B to this Appendix G. The site is zoned Heavy Industrial.

The Company Site is currently vacant land owned by the Company. Up to 33.2 acres have been allocated for the variable dispatchable Facility and the location at Waena is shown in Exhibit C to this Appendix G. Proposer shall only be permitted to lease as much acreage as is necessary for its project. Additional acreage shall not be available and Proposers may only use the available land for its project and for no other uses. The current plan anticipates that the Company Site will be subdivided and any Proposer proposing to use a subdivided lot shall be required to execute a ground lease for the site coterminous with the term of the PPA. An access easement for access to the subdivided lot from Pulehu Road shall be provided. Proposer shall be required to pay for all expenses to subdivide the lot and ongoing prorata maintenance and other charges for such access road and any other services provided as part of the ground lease. Proposer shall be responsible, at its sole cost and expense, for all other site improvements, utilities, permits and other required infrastructure and regulatory requirements necessary for use of the site for Proposer's project (see Appendix K).

A conceptual layout of the Company's Waena Switchyard is shown in Exhibit D to this Appendix G. The Company is willing to share certain geotechnical and drainage reports concerning the Waena Site with interested Proposers. Requests for copies of these reports must be sent to the RFP email address, and the reports will be made available to Proposers only after execution of a Non-Disclosure Agreement. Any drawings, geotechnical reports, drainage reports or any other information or data relating to the Site ("Site Information") are being furnished for the Proposer's convenience only and the Company assumes no responsibility whatsoever in respect to the sufficiency or accuracy of such Site Information or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Site. In addition, no assurance is given that conditions found at the time of any surface or subsurface explorations will be the conditions that prevail at the time of construction at the Site. The Proposer shall be solely responsible for all assumptions, deductions, or conclusions the Proposer may make or derive from the information furnished. Making such information available to the Proposer is not to be construed in any way as a waiver of the Proposer's responsibility to examine the Request for Proposals and the Site. Proposer must satisfy itself through its own investigation as to conditions to be encountered at the Site.

All underground water, gas, oil, telephone, electric, storm drain, sewer, and other pipes or conduits that may be shown on the Site Information are only approximate in their locations. The Proposer shall make a personal investigation and inspection of the records and drawings possessed by owners of the utilities. The Proposer shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities, if any.



### **Land Request for Information**

On December 12, 2016, the Hawaiian Electric Companies issued a Land Request for Information (“Land RFI”) seeking information on available land for potentially siting future utility scale renewable energy projects on the islands of O’ahu, Maui, Moloka’i, Lana’i, and Hawai’i. Information from responding landowners is available upon request by following the instructions at <http://mauielectric.com/landrfi>

This information is being provided for proposers’ consideration only. Project proposals submitted in response to this RFP are not required to be sited at a location identified through the Land RFI. Maui Electric also makes no representations as to the suitability of the listed sites for renewable energy production with regard to resource quality, interconnection constraints, zoning and permitting issues, community support, or other issues. Proposers should perform their own evaluation of these factors in determining whether a site is suitable for renewable energy project development. After further evaluation, proposers that are interested in any of the identified Land RFI parcels are invited to engage in further discussions directly with landowners to negotiate any required rights to use the property.

Additionally, the following links to a few publicly available resources relating to renewable energy project siting and development from the Hawaii State Energy Office are being provided for use at proposers’ sole discretion:

### **Project Permitting Assistance and Resources**

<http://energy.hawaii.gov/developer-investor/project-permitting-assistance-and-resources>

Provides numerous resources to support more informed and appropriate project siting and permitting, including the Permit Guide, Renewable Energy Permitting Consultants, DOH, ePermitting Portal, Renewable EnerGIS, Permitting Wizard, and the Renewable Energy Projects Directory.

### **Hawaii Clean Energy Programmatic Environmental Impact Statement**

<http://energy.hawaii.gov/testbeds-initiatives/hawaii-clean-energy-peis/peis-overview>

The Hawaii Clean Energy Programmatic Environmental Impact Statement (PEIS) analyzes, at a programmatic level, the potential environmental impacts of clean energy activities and technologies in the following clean energy categories: (1) Energy Efficiency, (2) Distributed Renewables, (3) Utility-Scale Renewables, (4) Alternative Transportation Fuels and Modes, and (5) Electrical Transmission and Distribution

### **Hawaii Statewide GIS Program**

<http://planning.hawaii.gov/gis/>

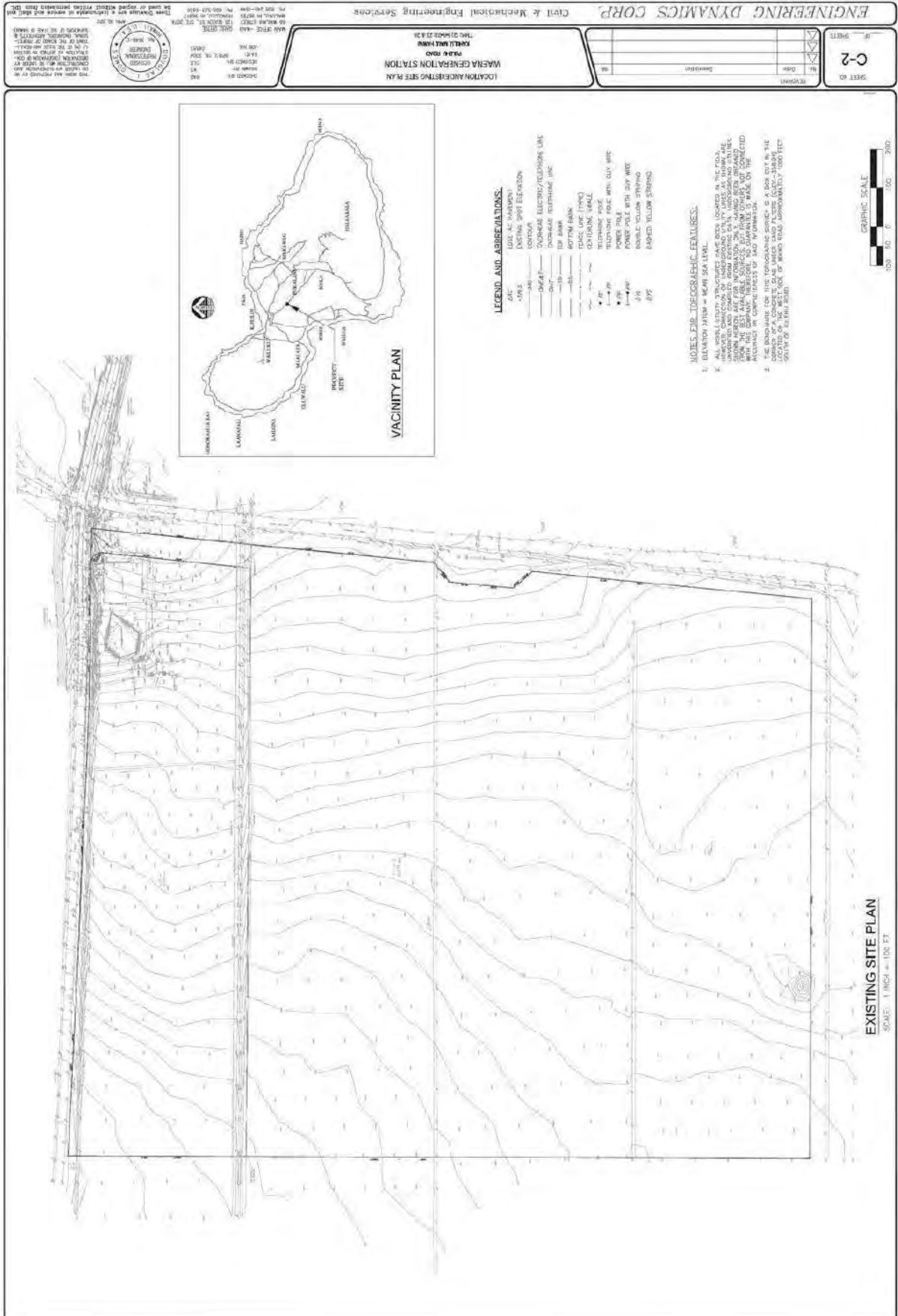
Provides Hawaii GIS data and other resources to support site identification and analysis

**Aloha Aina: A Framework for Biocultural Resource Management in Hawai'i's Anthropogenic Ecosystems**

[https://nmshawaiihumpbackwhale.blob.core.windows.net/hawaiihumpbackwhale-prod/media/archive/council/pdfs/aloha\\_aina.pdf](https://nmshawaiihumpbackwhale.blob.core.windows.net/hawaiihumpbackwhale-prod/media/archive/council/pdfs/aloha_aina.pdf)

A framework developed by the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council to integrate Native Hawaiian and Western scientific management approaches toward ecosystem management. While intended for the Sanctuary, this document provides useful insight into successful collaboration in Hawaii.

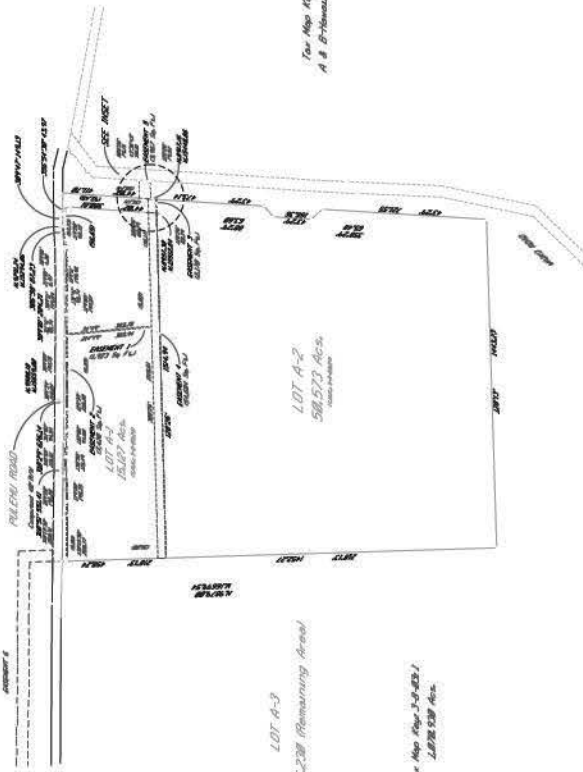
EXHIBIT A



# EXHIBIT B



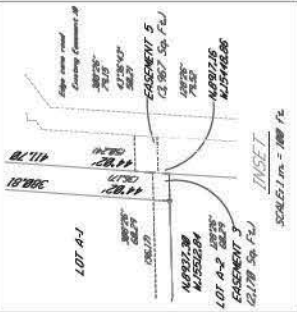
For Map Key 3-9-83-1  
A & B Hawaii, Inc. - Owner



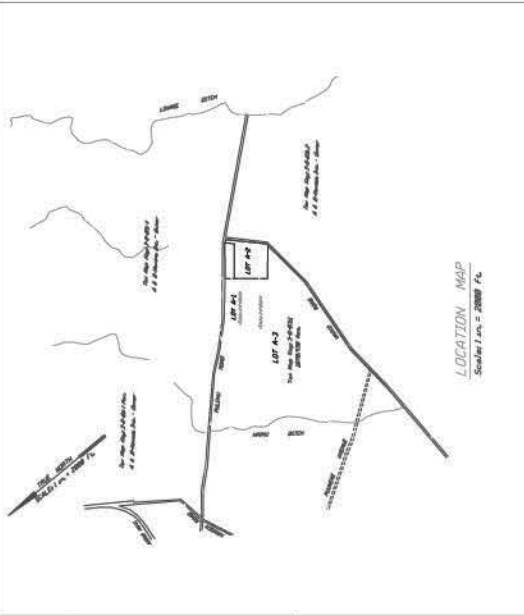
LOT A-3  
1,895.238 (Remaining Area)

For Map Key 3-9-83-1  
LOT 288 Ac.

For Map Key 3-9-83-2  
A & B Hawaii, Inc. - Owner



SCALE 1 in. = 200 Ft.



LOCATION MAP  
SCALE 1 in. = 2000 Ft.

## NEW CENTRAL MAUI GENERATION SITE SUBDIVISION

SUBDIVISION OF PARCEL 1 OF TAX MAP KEY 02-3-9-83  
INTO LOTS A-1, A-2, AND A-3 AND DESIGNATION OF  
EASEMENTS 1 TO 5, INCLUSIVE

Being a portion of Grant 3343 to Claus Spreckels

MAZUREL MAUI HAWAII  
OWNER A & B HAWAII, INC.

SCALE 1 in. = 200 Ft.

Prepared for Maui Electric Company Limited

Prepared by A. B. Probert, Inc.  
Scholar, Hawaii

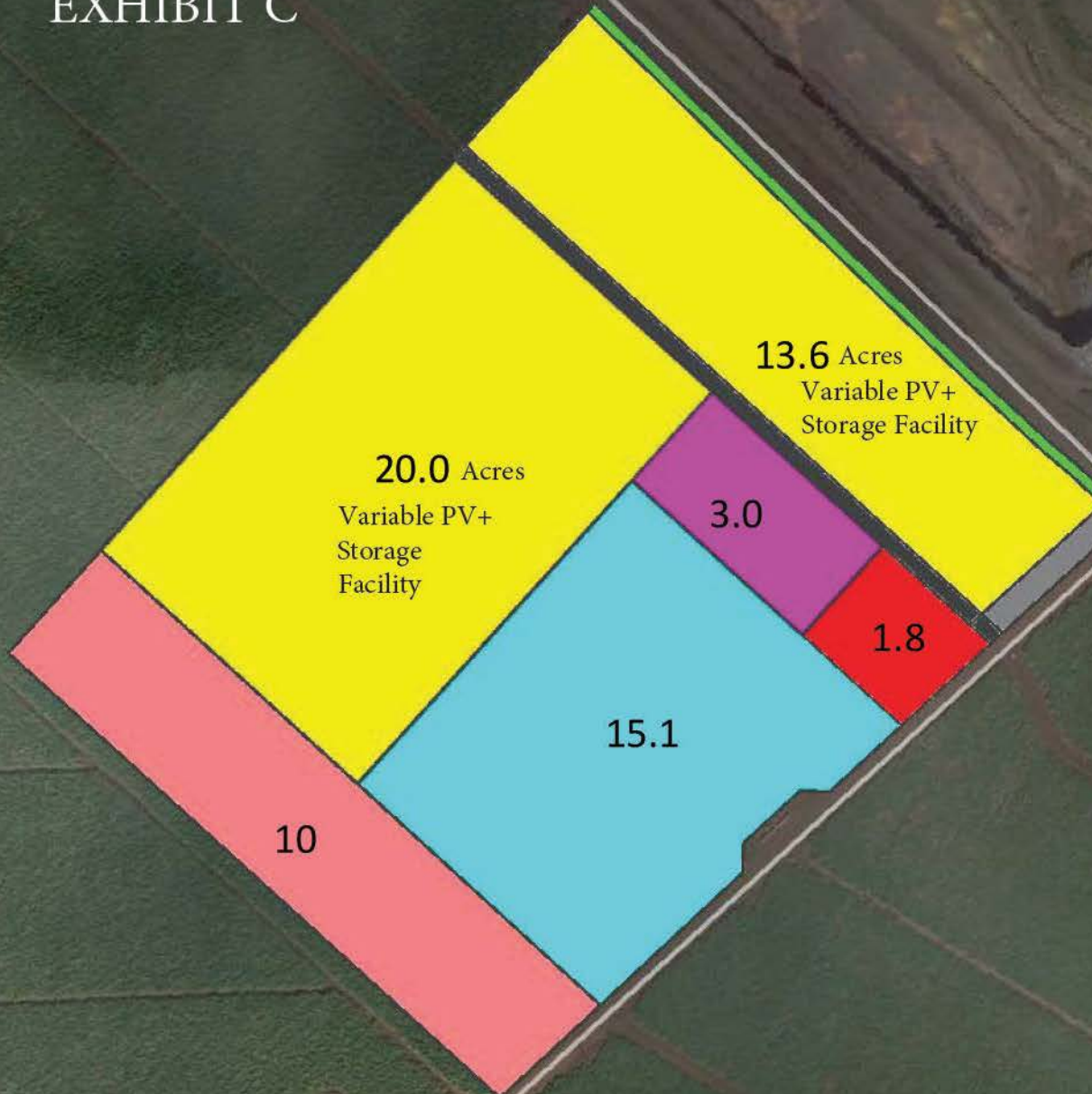
- NOTES
1. Acreage and computations referred to Government Survey Triangulation Station 920 0000.
  2. Origin of actual field survey from Government Survey Triangulation Station 920 0000.
  3. Boundary corners marked with iron pipe unless noted otherwise.
  4. Easements 1 and 2 are for water-line purposes in favor of Hawaiian Commercial and Sugar Company.
  5. Easements 3 and 4 are for access and water-line purposes in favor of Hawaiian Commercial and Sugar Company.
  6. Right-of-way for utility lines shown adjacent to the boundary of Parcel 1 of Tax Map Key 02-3-9-83 and Easement 5 is for electrical transmission line purposes in favor of Maui Electric Company, Limited.

This work was prepared by me or under my supervision.

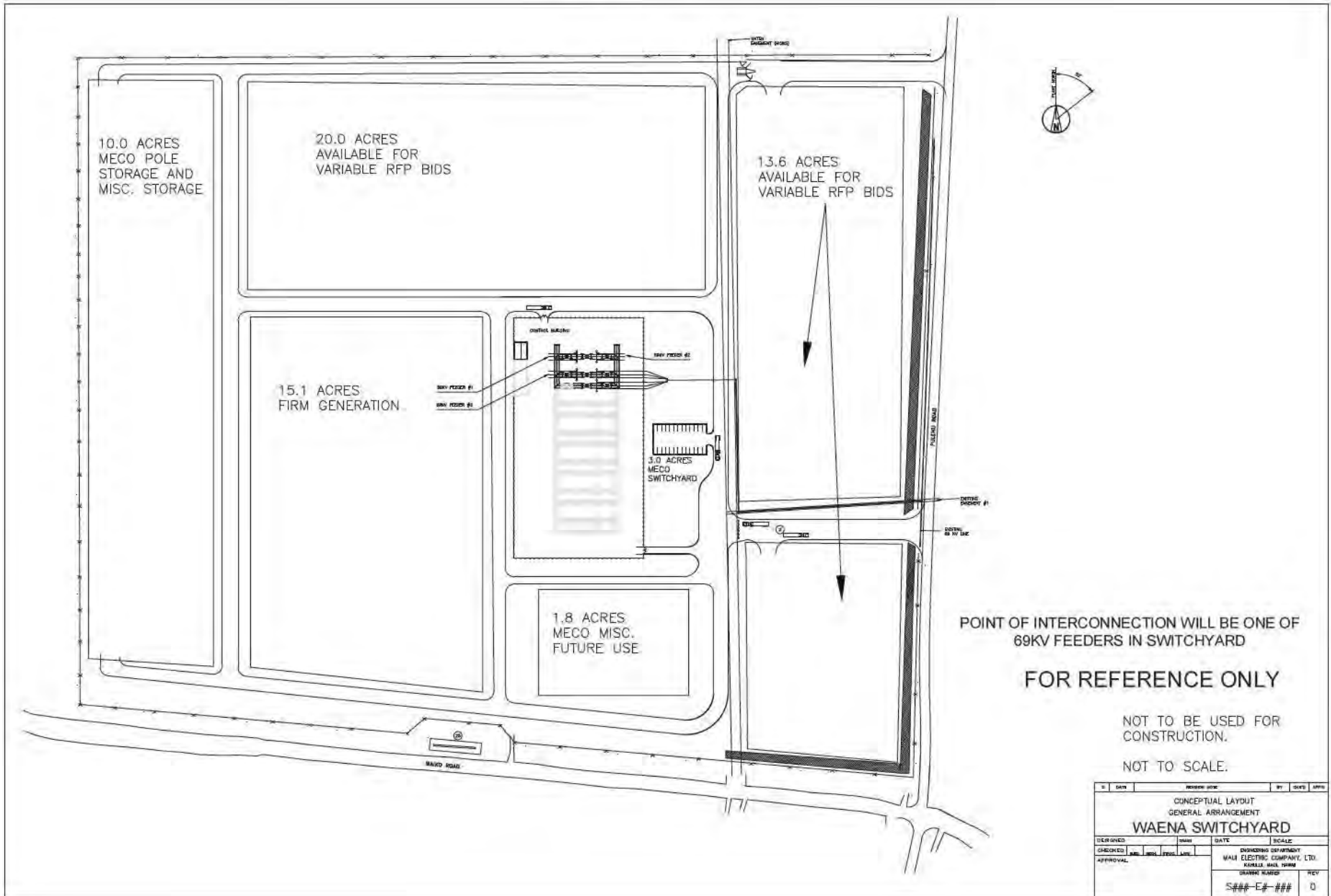
Registered Professional Land Surveyor No. 15-3027

For Map Key 02-3-9-83-1, 23 & 24

# EXHIBIT C



# EXHIBIT D



**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix H – (Reserved)*



**Maui  
Electric**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix I – Interconnection Facilities and  
Cost Information*



**Maui  
Electric**



APPENDIX I

INTERCONNECTION FACILITIES AND COST INFORMATION

Developers are responsible for the cost of interconnecting their project with the Hawaiian Electric system. To assist developers in assessing the impacts of location on potential projects, the per unit cost figures provided in the sections and tables below are to be used to provide an approximate estimated cost for interconnecting, including substation, communications, and transmission or distribution line cost to the existing Hawaiian Electric System. The per-unit cost figures below should not be used to create a detailed project estimate. A detailed project estimate typically requires a certain level of engineering to assess project site conditions and to factor in other parameters specific to the project.

The project proposal must identify the components assumed for their project and the quantity assumed for each. Each table below provides notes on the assumptions for each of the unit cost estimates. If a proposed project’s requirements are different than what is assumed in the notes, the developer must identify each difference and provide an estimated additional cost or savings resulting from those different requirements.

**2.1 Transmission Line Interconnection Costs**

<b>Component</b>	<b>Description</b>	<b>Cost per Mile</b>
1	New 69kV Overhead line (accessible 500' spans)	\$1,700,000
2	69kV overbuild on existing 23kV line (accessible 500' spans)	\$2,100,000
3	New 69kV Underground line Dielectric Cable	\$16,300,000

**Notes:**

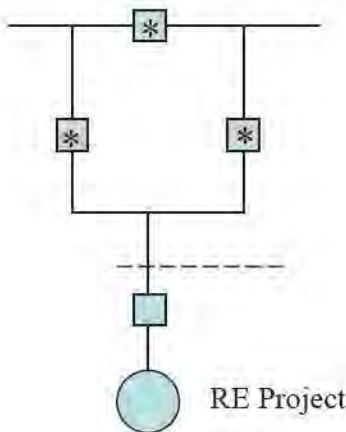
1. New 69kV Overhead line (accessible) consists of 75’ height concrete embedded steel poles (66’ above / 9’ below grade).
2. 69kV Overbuilt line (accessible) consists of 75’ height steel poles steel poles on concrete pier foundations and assumes the removal of the existing 23kV poles.
3. Component 3 - based on 1500 KCM AL 69kV (800A) cable includes duct bank and MH installation.
4. Note: Exclusions to these rough costs are as follows but not limited to:
  - a. Development of the PUC application/proceedings timeline
  - b. State or County right-of-way permitting and SMA

- c. Environmental studies cost
  - d. Survey proposed line extension route
  - e. Easement/Land Issues if discovered in the course of final design
  - f. Archaeological survey and monitoring cost/duration (if needed)
  - g. Clearing/grading along power line corridor and access road
  - h. Final design adjustments required to negotiate terrain, physical landmarks, existing utilities and access
  - i. Construction of permanent roadways/truck access
  - j. Helicopter services
  - k. Traffic Control
  - l. Removals (MECO & HTC&O as applicable)
  - m. Salvage and depreciation credits
  - n. Street lights
  - o. Delays due to weather and material acquisitions
5. All estimates are provided in 2017 dollars.

**2.2 Substation Interconnection Costs** (Please Note: Requirements for Variable and Firm projects may differ)

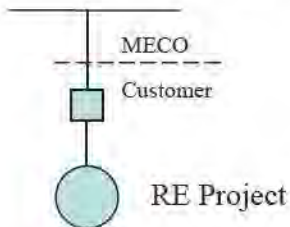
**2.2.1 Substation Interconnection Costs VARIABLE Projects**

**2.2.1.1 69kV On a Network Circuit**



Component	Description	Cost
1	*3 – 69kV circuit breaker ring bus (MECO)	\$6,100,000

**2.2.1.2 69kV On a Radial Circuit (TO BE EVALUATED ON A CASE BY CASE BASIS)**



Component	Description	Cost
N/A	MECO 69kV circuit breaker not required	N/A

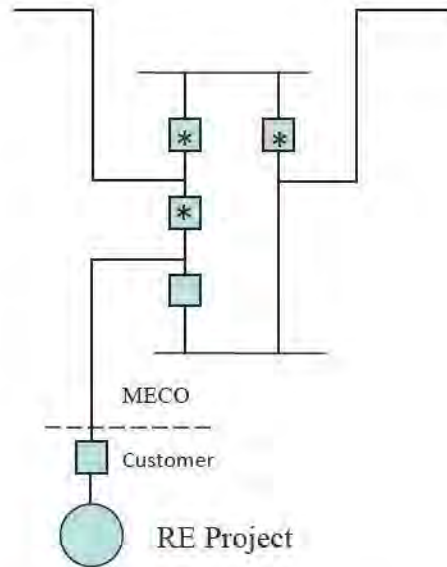
**Notes:**

1. Substation land that is received has been graded per Maui Electric's civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.

4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical line protection relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

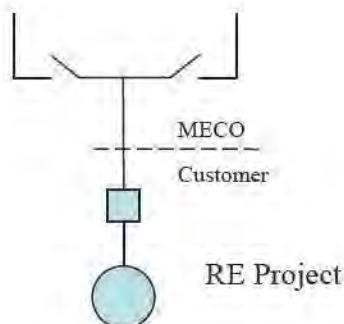
**2.2.2 Substation Interconnection Costs FIRM Projects**

**2.2.2.1 69kV On a Network Circuit**



Component	Description	Cost
1	*4 – 69kV circuit breakers in breaker-and-half configuration (MECO)	\$7,100,000

**2.2.2.2 69kV On a Radial Circuit (TO BE EVALUATED ON A CASE BY CASE BASIS)**



Component	Description	Cost
1	MECO 69kV redundant circuit required	\$300,000

**Notes:**

1. Substation land that is received has been graded per Maui Electric's civil and structural requirements. No costs for excavation and fill are included in the estimates.
2. Permits are not included in indicated costs.
3. Costs are in 2017 dollars.
4. Estimate does not contain any of the following costs:
  - a. Telecommunication infrastructure
  - b. Relay Coordination Study
  - c. Land Cost
  - d. Environmental Assessment/Environmental Impact Statement
  - e. Project Management
  - f. Any required upgrades to existing substations to integrate the new generating facility into the system.
5. Substation relay protection requirements have not been identified, so costs are based upon typical line protection relaying requirements.
6. Control house and local SCADA equipment are included in cost estimates.
7. The estimate is for a switching station, which does not contain any transformers.
8. Projects shall be designed to limit the maximum loss-of-generation contingency to 30MW due to system reliability requirements. This may include limiting the project size on radial circuits or splitting the project capacity and installing additional breaker(s) in the ring bus on network circuits.

### **2.3 Telecommunications**

1. Point-to-point microwave: \$1,095,000 with the following assumptions:
  - a. There is line-of-sight between the communications endpoints.
  - b. FCC licensed Microwave Frequencies are available.
  - c. There are existing structures/buildings and available space on either end to house the radio equipment.
  - d. Telecommunications grounding standards are up-to-date at both sites.
  - e. -48V DC power with 12 hour battery backup is available.
  - f. This estimate does not include any special site-specific permit/approval that may be required.
  - g. Space is available to locate antenna towers/structures at both ends. Meets category 5 hurricane wind loading.
  - h. Interconnection to Maui Electric's existing communications is not included.
  
2. Fiber with overbuild and new construction: \$254,000 per mile with the following assumptions:
  - a. The poles are in good condition and do not need replacing.
  - b. The poles are not overloaded.
  - c. The poles and the attachments are in accordance with NESC 2002 and no work is required to upgrade the poles to current standards.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix J – Rule 19 Tariff*



**Maui  
Electric**



Sheet No. 42  
Effective November 5, 2007

RULE NO. 19

Interconnection and Transmission Upgrades

A. GENERAL

1. Definitions

- a. "Betterment" means and includes any upgrading to a facility made solely for the benefit of and at the election of the Company, not attributable to the interconnection requirements. The Betterment includes any provisions for future expansion which cannot be charged to replacement. It also includes any related system work beyond that required for interconnection. If an existing facility is replaced with one of greater functional capacity or capability, the difference between the upgraded facility and a replacement facility of equivalent functional capacity is considered Betterment. It does not mean the substitution of a replacement facility for an existing facility, that is, an underground facility for an overhead facility, unless otherwise provided for in the RFP.

Example 1: A substation with a three breaker scheme is required to connect the Generating Facility to the grid. If the Company installs a substation with a six breaker ring bus scheme, the difference between installing a substation with a three breaker scheme and one with a six breaker scheme would be the Betterment.

Example 2: A transmission line needs to be upgraded to accommodate a new Generating Facility. The existing line is designed to withstand a 56 mph wind speed. The project includes upgrading the facilities to withstand a 100 mph wind speed. The increase in the design to the 100 mph wind speed criteria would be the Betterment.

Example 3: A transmission line needs to be upgraded to accommodate a new Generating Facility. In response to the Company's application to upgrade the line, the Commission orders that the line be placed underground. The cost difference between the overhead upgrade and the installation of the underground facilities would not be considered Betterment.

- b. "Company's Dispatch" means the Company's sole and absolute right to control, from moment to moment, through Supervisory Control, or otherwise, and in accordance with good engineering and operating practices in the electric utility industry, the rate of delivery of energy offered by the bidder to the Company.
- c. "Company's System" means the electric system owned and operated by the 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.

MAUI ELECTRIC COMPANY, LIMITED

Docket No. 03-0372, D&O No. 23799, Dated November 5, 2007  
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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- d. "Distribution System" means all electrical wires, equipment, and other facilities at the distribution voltage levels (such as 25kV, 12kV, or 4kV) owned or provided by the Company, through which the Company provides electrical service to its customers.
- e. "Framework" means the Framework for Competitive Bidding dated December 8, 2006, adopted by the Commission in Docket No. 03-0372, Decision and Order No. 23121, which provides the mechanism for acquiring a future energy generation resource or a block of generation resources by the Company.
- f. "Generating Facility" means a bidder or utility-owned electrical energy generation resource that is interconnected to the Company electrical grid.
- g. "Grid Connection Point" means the point at which Interconnection Facilities connect to the Company's System, normally the Company's transmission grid. Facilities from the Generating Facility to the Grid Connection Point shall be considered Interconnection Facilities (see examples given in Attachment A). The Grid Connection Point will be identified in the IRS.
- h. "Interconnection Agreement" means a contract with the bidder that specifies the terms and conditions under which Interconnection Facilities (and, in some cases, certain System Upgrades) will be designed, installed, paid for, owned, operated and/or maintained. In some instances, such terms and conditions may be included in the PPA with a bidder, instead of in a separate Interconnection Agreement.
- i. "Interconnection Facilities" means the equipment and devices required to permit a Generating Facility to operate in parallel with and deliver electric energy to Company's System and provide reliable and safe operation of, and power quality on, the Company's System (in accordance with applicable provisions of the Commission's General Order No. 7, Company tariffs, operational practices and planning criteria), such as, but not limited to, transmission and distribution lines, transformers, switches, and circuit breakers.

Example 1: A wind farm facility constructed on a neighbor island (e.g. Molokai) that exports to the Company the energy it produces would be required to install undersea transmission lines to interconnect the Generating Facility to the Company's System. The undersea transmission lines and related facilities would be considered Interconnection Facilities.

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Example 2: A proposed Generating Facility is remotely located in a region of the island where there are no existing Transmission System facilities. In this case, if the size of the Generating Facility requires that it be tied to the existing Transmission System, the new Transmission System facilities (i.e. all electrical wires, equipment, and other facilities at the transmission voltage level) constructed from the Generating Facility to the Company's existing Transmission System facilities would be considered Interconnection Facilities.

- j. "Interconnection Requirements Study (IRS)" means a study, performed in accordance with the terms of the IRS Letter Agreement and with the applicable terms of the RFP and any resulting PPA, to identify the Interconnection Facilities, System Upgrades and other system requirements and all associated costs to integrate the proposed Generating Facility with the Company's System, and includes a detailed steady-state and a dynamic analysis. The IRS is conducted by the Company or its consultant and the bidder is responsible for the cost of conducting the IRS.
- k. "Interconnection Requirements Study Letter Agreement (IRS Letter Agreement)" means the letter agreement and any written, signed amendments thereto, between the Company and the bidder that describes the scope, schedule, and payment arrangements for the IRS.
- l. "IRP" means an electric utility's Integrated Resource Plan that has been submitted to the Commission for review and approval in the utility's IRP proceeding, in accordance with the Commission's IRP Framework.
- m. "IRP Framework" means the Commission's Framework for Integrated Resource Planning, dated May 22, 1992, as amended by In re Public Util. Comm'n, Docket No. 05-0075, Decision and Order No. 22490, filed on May 26, 2006.
- n. "Point of Interconnection" means the point of delivery of Energy and/or Capacity supplied by the bidder to the Company, where the facilities owned by the bidder interconnect with the facilities owned or to be owned by the Company. The bidder shall own and maintain the facilities from the Generating Facility to the Point of Interconnection. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's System (see examples given in Attachment A). The Point of Interconnection will be identified in the IRS.
- o. "PPA" means a power purchase agreement or contract by the Company to purchase firm capacity, energy, or both.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- p. "Renewable Energy Facility" means a Generating Facility that generates electricity using renewable energy as the source.
- q. "RFP" means a written request for proposal issued by the Company to solicit bids from interested third-parties, and where applicable from the Company or its affiliate, to supply a future generation resource or a block of generation resources to the Company pursuant to a competitive bidding process.
- r. "Subtransmission System" means all electrical wires, equipment, and other facilities at the subtransmission voltage levels (such as 46kV, 35kV, or 23kV) owned or provided by the Company, through which the utility provides electrical service to its customers.
- s. "Supervisory Control" means remote monitoring and/or control of a Generating Facility's power output and interrupting device status by means of a communication channel that is acceptable to the Company. For Generating Facilities intending to export power with an aggregate export capacity greater than 250kW, computerized supervisory control may be required to ensure the safety of working personnel and prompt response to system abnormalities in case of islanding of the Generating Facility. The Company shall determine the need for supervisory control based upon the results of the initial technical screening and/or IRS. Supervisory control shall include at a minimum monitoring of: (a) gross generation by the Generating Facility; (b) feedback of Watts, Vars, WattHours, current and voltage; (c) Vars furnished by the utility; and (d) status of the interrupting device. In addition, the supervisory control will allow the Company to trip the interrupting device during emergency conditions. Monitoring will be performed by system dispatchers or operators at the Company's control center.
- t. "System Benefit" means a material increase in power flow capability or in the reliability of the Company's electrical system from a system-wide perspective.
- u. "System Upgrades" means improvements made to the Company's System, other than the Interconnection Facilities, required to provide reliable and safe operation of, and power quality on, the Company's System (in accordance with applicable provisions of the Commission's General Order No. 7, Company tariffs, operational practices and planning criteria) when the Generation Facility is interconnected with the Company's System (see Attachment A). Such improvements may include, but are not limited to, new transmission or distribution lines, reconstruction or reconditioning of existing lines, circuit breakers, switches, transformers, buses, protective devices, communications, and substation equipment and facilities.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

v. "Transmission System" means all electrical wires, equipment, and other facilities at the transmission voltage levels (such as 138kV or 69kV) owned or provided by the utility, through which the utility provides electrical service to its customers.

2. Application of Tariff

This Tariff shall apply to an RFP issued pursuant to the Framework and Interconnection Requirement Studies arising from the RFP process. In the event that there is a conflict between any provision of this Tariff and that of an RFP issued pursuant to the Framework and reviewed by the Commission in accordance with Sections III.B.2 and IV.B.6.e. of the Framework, the provisions of the RFP shall prevail. The terms and conditions established in a PPA arising from the RFP and approved by the Commission shall ultimately control over the requirements and terms of both this Tariff and the RFP.

3. Independent Observer

As established in the Framework, the duties and responsibilities of an Independent Observer (IO) include, among other duties and responsibilities, reviewing and monitoring the Company's communications, methods, and implementation of this Tariff, the RFP and related IRS processes.

B. INTERCONNECTION STUDY PROCESS FOR COMPETITIVE BIDDING

1. RFP Package Data -- available to all prospective bidders.

RFP packages issued by the Company shall contain general and regional system information to provide prospective bidders with high level guidance relating to the Company's existing transmission infrastructure. For example, RFP packages may include information in the form of an island map with areas of the Transmission System identified that are at or near their loading limits to provide high level guidance to bidders on areas of the island with transmission constraints. These constraints may include "load pockets", which are load-driven transmission constraints as well as areas of generation-driven transmission constraints. Because transmission impacts are to a large extent specific to the characteristics of supply-side proposals, definitive transmission information cannot be provided in these maps. Detailed geographic maps of the transmission system may not be part of this information due to security concerns. Rather, a map of the island with areas of the map shaded to identify areas (rather than circuits) of transmission constraints, may be provided.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

In addition, the RFP shall include applicable transmission planning criteria that will be used in the determination of interconnection requirements and potential Transmission System impacts. The information in the bid package will provide bidders with information (a) that should help in the selection of the proposed project's characteristics, including project site, project size, and project mode of operation, and (b) to estimate the interconnection requirements associated with their Generating Facilities and the opportunity to reflect the costs of the interconnection requirements in their bids.

2. Information Requests During Bidding Process - available to all prospective bidders.

During the bidding process, if a prospective bidder requires clarification or additional technical or operational information pertaining to the Company's System, a written request with specific questions may be submitted to the Company in accordance with the requirements set forth in the RFP. The written request, specific questions, and written Company response will be provided to all bidders.

3. RFP Requirements and Threshold Criteria Screening - evaluation performed on all bids received

Each bid received will be reviewed to ensure that it satisfies all of the RFP and threshold criteria requirements. The Company will determine whether each bid conforms to the specified RFP requirements and meets the minimum threshold criteria. Applicable performance standards may be part of the threshold criteria. These performance standards may vary depending upon factors such as the size of the generating resource(s) being acquired in the RFP, the Company's ability to dispatch the Generating Facility, the operational status (e.g., as-available vs. firm) of the Generating Facility, and the fuel type of the Generating Facility (e.g., run-of-the-river hydro may have different performance standards from wind power).

4. High Level Evaluation -- performed on all bids that pass threshold screening in RFP process
  - a. All bids which pass the threshold screening in the RFP process will undergo a high level evaluation consistent with the requirements identified in the RFP, which will focus primarily on basic steady-state analyses (e.g., identifying thermal line impacts, voltage impacts, and any obvious "fatal flaws").

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- b. For each bid, a high level estimate of the costs of Interconnection Facilities and required System Upgrades will be developed based solely on the high level evaluation identified in Section B.4.a. of this Tariff and on unitized cost estimates (e.g., \$/mile for 138kV line, \$/transformer).
  - c. Results of the high level evaluation and high level estimate of the costs of Interconnection Facilities and required System Upgrades will be factored into the determination of which bids make the short list based on the requirements specified in the RFP.
  - d. Basic curtailment analysis of the proposed Generating Facility and related impacts to operations of existing Generating Facilities may also be factored into the determination of which bids make the short list based on the requirements specified in the RFP.
5. Full Interconnection Requirements Study - performed only on short list bids.
- a. An IRS shall be performed only for bid(s) that have met the RFP requirements, passed the threshold criteria, and made the short list, or as otherwise specified in the RFP.
  - b. An IRS would be performed either serially starting with the bid evaluated as the most competitive at the point of the evaluation process, then proceeding to the next most competitive bid on the short list or in parallel on all or some of the short list bidders simultaneously. The determination of whether or not IRS work is to be performed serially, in parallel, or a combination of the two will be based upon factors such as resource availability, number of short list bids, RFP schedule, and relative competitiveness of one bid to others, and the availability of all information and data from bidders necessary to perform the IRS work
  - c. The Company may if practicable "bundle" IRS work for multiple short list bids into a single IRS if the bids are, among other factors, technically, operationally and geographically (e.g., size, location, technology, timing, operating characteristics, etc.) identical or sufficiently similar to each other.
  - d. The results of the IRS, including identified Interconnection Facilities, System Upgrades, Point of Interconnection, and Grid Connection Point, will be provided to the bidder.
  - e. Bidders shall be responsible for incorporating the costs of their Interconnection Facilities into their bids. The RFP may provide bidders with an opportunity to revise their pricing proposals under certain circumstances. Any pricing change, if permitted under the terms of the RFP, will prompt a re-evaluation of short list bidders in the selection of the winning bid as provided for in the RFP.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

- f. The Company may perform the analyses included in the IRS, or the IRS or parts of the IRS may be contracted to an outside consultant specializing in such analyses for complex situations or in situations where the Company does not have available resources to conduct the analyses in a time frame agreeable to the Company.
- g. The scope and cost of the IRS will depend on the complexity of the Company's System and Generating Facility that must be modeled, and the degree to which the Generating Facility will affect the Company's System.
- h. The bidder will be responsible for the cost of the IRS (or such lesser amount as the Company may specify to facilitate the processing of interconnection requests for similarly situated facilities) to be performed in order to evaluate the impacts of the Generating Facility's interconnection to the Company's System.

C. INTERCONNECTION COST AND SYSTEM UPGRADE COST ALLOCATION FOR COMPETITIVE BIDDING

- 1. The bidder shall be responsible for the cost of Interconnection Facilities and shall be responsible for the installation and maintenance of Interconnection Facilities from the Generating Facility to the Point of Interconnection, unless otherwise specified in the RFP.
- 2. Interconnection Facilities from the Generating Facility to the Point of Interconnection shall be built by the bidder, unless the Company agrees otherwise.
- 3. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point shall be built by the Company and paid for by the bidder, unless the Company agrees or determines otherwise. The Company may elect to include Betterments to Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, and such Betterments shall be paid for by the Company. The cost of Betterments to such Interconnection Facilities will not be considered in the bid evaluations. The bidder shall acquire the necessary land and easements for Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, unless the Company agrees otherwise. Interconnection Facilities from the Point of Interconnection to the Grid Connection Point, if built by the bidder, shall be transferred to the Company upon completion, along with the necessary land rights and easements.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

4. The Company shall install and maintain the identified System Upgrades arising from the interconnection of the Generating Facility and shall be responsible for the cost of such System Upgrades.
  - a. The Company's cost for System Upgrades will be considered as a factor in the bid evaluations.
  - b. The degree to which the System Upgrades provide System Benefits and/or Betterments will be considered in the bid evaluations.
5. Standards and Interconnection Agreements
  - a. Interconnection Facilities and System Upgrades owned or to be owned by the Company shall be constructed in accordance with the Company's applicable standards and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.
  - b. Generating Facilities and Interconnection Facilities owned by the bidder shall be constructed in accordance with applicable State and County code requirements and in accordance with the PPA or the Interconnection Agreement, if there is a separate Interconnection Agreement.
  - c. The bidder's Generating Facility may be interconnected and operated in parallel with the Company's System in accordance with the terms and conditions of the PPA between the Company and the bidder, and/or the terms and conditions of an Interconnection Agreement between the Company and the bidder, if there is a separate Interconnection Agreement.
  - d. The bidder will be required to furnish, install, operate, and maintain suitable and sufficient equipment, to maintain adequate records, and to follow such operating procedures, as may be specified by the Company to protect the Company's System from damage resulting from the parallel operation of the Seller's Facility, including the equipment, records and operating procedures more fully described in the PPA and/or Interconnection Agreement, if there is a separate Interconnection Agreement.
  - e. Interconnection Facilities shall be designed, installed operated and maintained in accordance with good interconnection practice. The objectives of good interconnection practice include, but are not limited to,
    1. Safety - To protect the safety of utility personnel, utility customers, and the public.

MAUI ELECTRIC COMPANY, LIMITED

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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

2. Reliability - To maintain the reliability of the utility system for all utility customers.
  3. Power Quality - To provide for acceptable power quality and voltage regulation on the utility system and for all utility customers.
  4. Restoration - To facilitate restoration of power on the utility system.
  5. Protect Utility and Customer Equipment - To protect utility and customer equipment during steady state and faulted system operating conditions.
  6. Protect Generating Facilities - To protect generating facilities from operation of utility protective and voltage regulation equipment.
  7. Utility System Overcurrent Devices - To maintain proper operation of the utility system's overcurrent protection equipment.
  8. Utility System Operating Efficiency - To ensure operation at appropriate power factors and minimize system losses.
- f. The bidder shall obtain, at its expense, any and all authorizations, approvals, permits, and licenses required for the construction and operation of its Generating Facility and the interconnection of its Generating Facility with the Company's System, including but not limited to environmental permits, building permits, rights of way, or easements.
  - g. Where any Company-owned Interconnection Facilities are to be located on the site of the bidder's Generating Facility, the bidder shall provide, at no expense to the Company, a location and access acceptable to the Company for all such facilities.
6. Renewable Energy Facilities
- a. In its IRP process, the Company may propose System Upgrades, to be paid for, owned and maintained by the utility, to encourage the development of Renewable Energy Facilities.
  - b. In its IRP process, the Company may propose to pay for Interconnection Facilities between the Point of Interconnection and the Grid Connection Point, in order to encourage the development of Renewable Energy Facilities.

MAUI ELECTRIC COMPANY, LIMITED

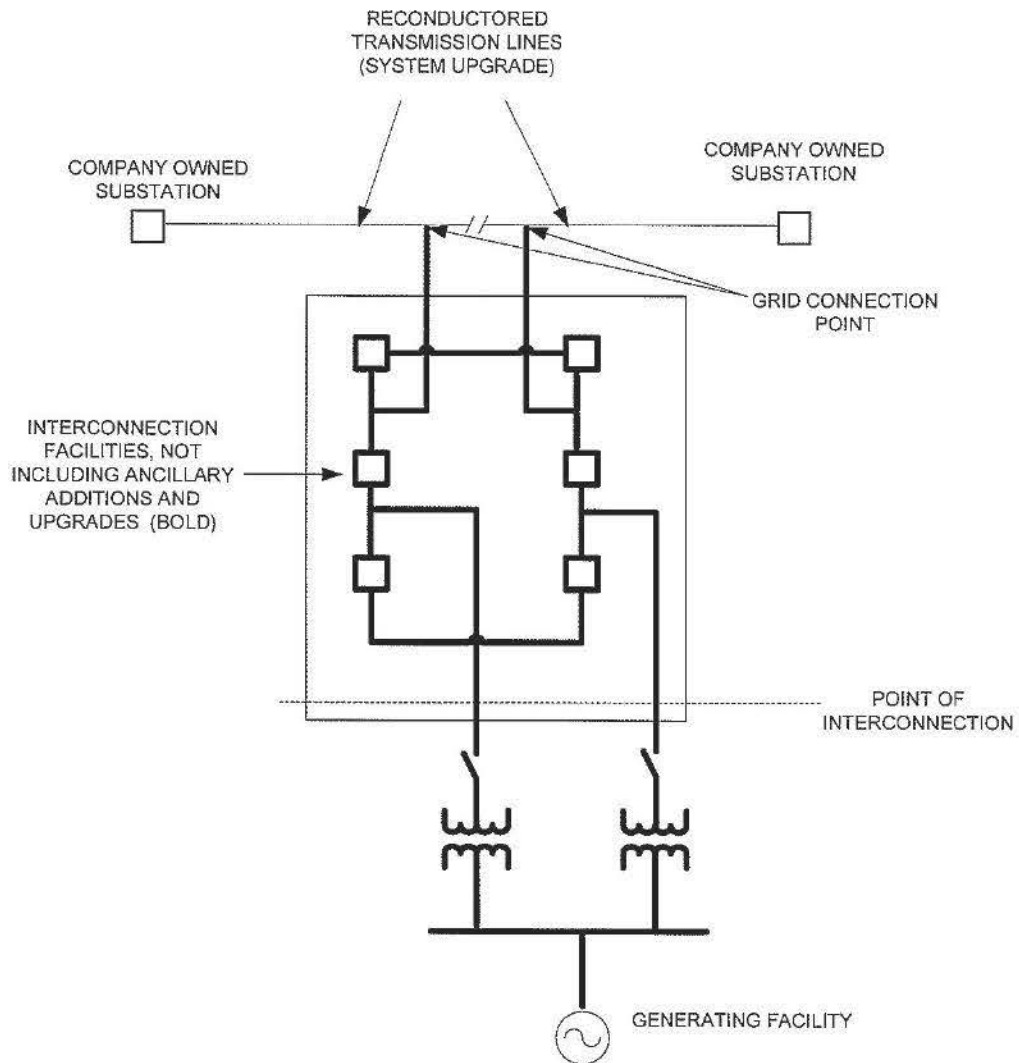
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RULE NO. 19 - Continued

Interconnection and Transmission Upgrades

Attachment A



MAUI ELECTRIC COMPANY, LIMITED

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Transmittal Letter Dated November 9, 2007

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix K – Ground Lease*



**Maui  
Electric**

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*Attachments:*

<b>Exhibit A</b>	Legal Description
<b>Exhibit B</b>	Estoppel Certificate
<b>Exhibit C</b>	Guaranty

**GROUND LEASE**

*BETWEEN*

**MAUI ELECTRIC COMPANY, LIMITED**

as Landlord

*AND*

---

as Tenant

***FOR PREMISES LOCATED AT:***

8001 Pulehu Road  
Wailuku, Maui, Hawaii

TMK No. (2) 3-8-003: 023 & 024 (por.)  
[Subject to change upon completion of subdivision]

[This form of Ground Lease is included in the Request for Proposals for general information only. Landlord reserves the right to revise the Ground Lease to conform to, among other things, the location of the Premises and the Project.]

K-1

## GROUND LEASE

THIS GROUND LEASE (the “**Lease**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “**Commencement Date**”), between MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation (“**Landlord**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Tenant**”).

### Recitals:

(a) At the Commencement Date, Landlord owns the following real property (collectively, the “**Premises**”): (i) the land described in **Exhibit A**, consisting of approximately \_\_\_\_\_ acres of land (the “**Land**”) together with an easement over a shared roadway (the “**Private Roadway**”); (ii) all buildings, structures, and other improvements and appurtenances located on the Land other than any buildings, structures and other improvements or appurtenances that may have been constructed by on or behalf of Tenant prior to the commencement date; and (iii) the appurtenances and all the estate and rights of Landlord in and to the Land. The Land consists of one lot in a project consisting of multiple lots known as the New Central Maui Generation Site Subdivision (the “**Subdivision**”).

(b) Landlord and Tenant have entered into a Power Purchase Agreement for Variable Renewable Dispatchable Generation dated as of \_\_\_\_\_, 20\_\_ between Landlord, as Company, and Tenant, as Seller, as it may be Modified (the “**Power Purchase Agreement**”).

(c) In connection with the Power Purchase Agreement, and in order to fulfill its obligations under the Power Purchase Agreement, Tenant desires to lease the Premises from Landlord, and Landlord is willing to lease the Premises to Tenant.

### Agreements:

**NOW, THEREFORE**, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, subject only to Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

## 1. DEFINITIONS

1.1 **Terms not Defined in Lease.** Capitalized terms not defined in this Lease have the meanings given in the Power Purchase Agreement, unless the context clearly indicates otherwise. For example, the following terms used in this Lease are defined in the Power Purchase Agreement: “Extension Term,” “Facility,” “Financing Parties” and “Good Engineering and Operating Practices.”



1.2 **Terms Defined in Lease.** The following definitions apply in this Lease.

“**Additional Rent**” means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Fixed Rent.

“**Affiliate**” of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person. “*Affiliated*” shall have the correlative meaning.

“**Application**” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing):

(a) necessary or appropriate for any Construction this Lease allows, including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instrument as Tenant may from time to time reasonably request for such Construction;

(b) to allow Tenant to obtain any abatement, deferral, or other benefit otherwise available for Real Estate Taxes;

(c) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or

(d) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under this Lease.

“**Approvals**” means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the zoning, rezoning (to the extent this Lease allows), use, occupancy, maintenance, or operation of the Premises, including approval of the State Public Utilities Commission.

“**Bankruptcy Law**” means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

“**Bankruptcy Proceeding**” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

“**Bankruptcy Sale**” means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.

“**Baseline Assessment**” means a [Phase I and/or Phase II] Environmental Report dated \_\_\_\_\_, 20\_\_ made by \_\_\_\_\_, revealing the environmental conditions of the Land and Premises as of the Commencement Date.

“**Business Day**” means any weekday on which State-chartered banks are open to conduct regular banking business with bank personnel.

“**Casualty**” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“**Casualty Termination**” means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination. Tenant’s election of a Casualty Termination shall not be effective without Leasehold Mortgagee’s consent.

“**Certifying Party**” shall have the meaning set forth in Section 23.1 hereof.

“**Clean-up**” shall have the meaning set forth in Section 10.11.1 hereof.

“**Common Areas**” shall have the meaning set forth in Section 5.3 hereof.

“**Condemnation**” means: (a) any temporary or permanent taking of (or of the right to use or occupy) any Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

“**Condemnation Award**” means any award(s) paid or payable (whether or not in a separate award) to either party or its mortgagee after the Commencement Date because of or as compensation for any Condemnation, including: (a) any award made for any improvements that are the subject of the Condemnation; (b) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (c) any interest on such award; and (d) any other sums payable on account of such Condemnation, including for any prepayment premium under any mortgage.

“**Condemnation Effective Date**” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

“**Confidential Information**” shall have the meaning set forth in Section 26.1 hereof.

“**Construction**” means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including the Facility and any other new construction.

“**Contest**” shall have the meaning set forth in Section 12.1 hereof.

“**Contest Conditions**” shall have the meaning set forth in 12.1 hereof.

“**Contest Security**” shall have the meaning set forth in 12.1.1 hereof.

“**Control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

“**County**” means the County of Maui.

“**CPI**” means the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for Urban Wage Earners and Clerical Workers (CPI-W) published for Honolulu, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

“**CPI Adjustment Factor**” means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

“**Default**” means any Monetary Default or Nonmonetary Default.

“**Default Interest**” means interest at an annual percentage rate per annum equal to the average daily Prime Rate for the period in question plus four (4) percentage points.

“**Depository**” means an FDIC insured financial institution with its principal office in the State, designated by a Leasehold Mortgagee (or, if no Leasehold Mortgage exists, then by Landlord).

“**Discovered Items**” shall have the meaning set forth in Section 25.1 hereof.

“**Environmental Law**” means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

“**Environmental Report**” shall have the meaning set forth in Section 10.11.1 hereof.

“**Equity Interest**” means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in Tenant.

“**Estoppel Certificate**” means a statement, addressed either to Landlord or Tenant or as directed, in substantially the form of **Exhibit B**, and containing other assurances as Landlord or Tenant reasonably requests.

“**Event of Default**” shall have the meaning set forth in Section 19.1 hereof.

“**Expiration Date**” means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by Landlord’s exercise of remedies for an Event of Default, or otherwise.

“**Facility**” means the Facility as described in the Power Purchase Agreement, as it may be Restored, modified, expanded or changed from time to time.

“**Fee Debt Service**” means all payments required from time to time under any Fee Mortgage, including principal, interest, late charges, costs of collection, reimbursement of protective advances, and any other sums any Fee Mortgage secures.

“**Fee Estate**” means Landlord’s fee estate in the Premises, including Landlord’s reversionary interest in the Premises after the Expiration Date.

“**Fee Mortgage**” means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering all or part of the Fee Estate.

“**Fee Mortgagee**” means a holder of a Fee Mortgage (and its successors and assigns).

“**Fixed Rent**” shall have the meaning set forth in Section 3.1 hereof.

“**Foreclosure Event**” means any: (a) foreclosure sale (or assignment in lieu of foreclosure, Bankruptcy Sale, or similar transfer) affecting the Leasehold Estate; or (b) Leasehold Mortgagee’s exercise of any other right or remedy under a Leasehold Mortgage (or applicable Law) that divests Tenant of its Leasehold Estate.

“**GET**” shall have the meaning set forth in Section 4.9 hereof.

“**Government**” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Premises (or any activity this Lease allows), including the United States government, the State and County governments and their subdivisions and

municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof. "Government" shall also include any land use commission, planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals, or similar body having or claiming jurisdiction over the Premises or any activities on or at the Premises.

**"Guarantor"** means \_\_\_\_\_.

**"Hazardous Substances"** includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. §1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901, et seq., as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. or any so-called "superfund" or "superlien" law; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C. §9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

**"Hazardous Substances Claims"** means (a) any actual, alleged or threatened Hazardous Substances Discharge; (b) any and all enforcement, cleanup, removal, mitigation, remediation or other Government actions instituted, contemplated or threatened pursuant to Environmental Law affecting the Premises; and (c) all claims made or threatened by any third party against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Substances.

**"Hazardous Substances Discharge"** means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Lease and whether occurring before or after the Commencement Date.

“**Immaterial Loss**” means a Casualty or Condemnation whose estimated cost to Restore or value does not exceed \$100,000.00, adjusted annually by the CPI Adjustment Factor.

“**Improvements**” means all buildings, structures, and other improvements and appurtenances located or to be located on the Land from time to time, including the Facility and the landscape buffer described in Section 8.3.

“**Indemnify**” means, where this Lease states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular matter (the “**Indemnified Risk**”), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor’s indemnity. Counsel retained by Indemnitor to fulfill its obligation to defend Indemnitee(s) shall be subject to Indemnitee’s approval, not to be unreasonably withheld.

“**Indemnitee**” means any party entitled to be Indemnified under this Lease and its agents, directors, employees, Equity Interest holders, mortgagees, and officers.

“**Indemnitor**” means a party that agrees to Indemnify any other Person.

“**Initial Term**” shall have the meaning set forth in Section 2.1 hereof.

“**Insubstantial Condemnation**” means any Condemnation except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

“**Land Use Conditions**” means the covenants, conditions and restrictions set forth in: (1) Zoning Ordinance 2841 of the County of Maui, as reflected in related Unilateral Agreement and Declaration for Conditional Zoning dated June 16, 2000 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-085696; and (2) Findings of Fact, Conclusions of Law, and Decision and Order dated June 22, 1998, issued by the Land Use Commission of the State of Hawaii in Docket No. A97-722, as reflected in the Document Listing Conditions to Reclassification of Land dated July 23, 1998 and recorded in said Bureau as Document No. 98-112111.

“**Land Value**” means, as of the date of a PPA Disconnect or commencement of a Holding Over under Sections 10.11.5, 19.6, or 20.2 hereof, whichever is applicable, the fair market value of the Land as determined by Landlord in good faith. The fair market value of the Land means the amount that a willing buyer would pay a willing seller for the Land, neither being under a particular compulsion to buy or to sell, each fully aware of all applicable facts about the Land, and assuming a reasonable marketing period, considered as if the Land were vacant and clear of any structures or excavations, and free and clear of all leases (including this Lease), taking into account then-current general economic

conditions; costs of construction; sales of comparable parcels; the real estate marketplace; and all other conditions as in effect on the determination date that may reasonably be considered in determining the fair market value of the Land. Land Value shall otherwise be determined in accordance with prevailing standards of appraisal practice at the time of determination.

“**Landlord**” initially means the Landlord named in the opening paragraph of this Lease. After every transfer of the Fee Estate, “Landlord” means only the owner(s) of the Fee Estate at the time in question. If any former Landlord no longer has any interest in the Fee Estate or a Transfer of the Fee Estate occurs, the Transferor (including a Fee Mortgagee, or anyone acting for a Fee Mortgagee, that has acquired and then disposed of the Fee Estate) shall be and hereby is entirely freed and relieved of all obligations of Landlord under this Lease accruing from and after the date of such Transfer.

“**Laws**” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Lease, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any State or County land use and zoning, any Real Estate Taxes, or otherwise relating to this Lease or any party’s rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

“**Lease Impairment**” means Tenant’s: (a) canceling, Modifying, restating, surrendering, or terminating this Lease, including upon Loss; (b) consenting, or failing to object, to a Bankruptcy Sale of any Premises; (c) determining that a Total Loss has occurred; (d) exercising any right to treat this Lease as terminated under 11 U.S.C. §365(h)(1)(A)(i) or any comparable provision of Law; (e) subordinating this Lease or the Leasehold Estate to any other estate or interest in the Premises; or (f) waiving any term(s) of this Lease.

“**Lease Termination Notice**” means a Notice stating this Lease has been terminated, and describing in reasonable detail any uncured Defaults.

“**Lease Year**” means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term.

“**Leasehold Estate**” means Tenant’s leasehold estate, and all of Tenant’s rights, privileges, and Pre-Emptive Rights, under this Lease, upon and subject to all the terms and conditions of this Lease, and any direct or indirect interest in such leasehold estate.

“**Leasehold Mortgage**” means any mortgage, collateral assignment, or other lien (as modified from time to time) encumbering this Lease and the Leasehold Estate, made

in connection with permitted financing under the Power Purchase Agreement to a Financing Party under the Power Purchase Agreement. A Leasehold Mortgage shall not attach to the Fee Estate.

“**Leasehold Mortgagee**” means a holder of a Leasehold Mortgage (and its successors and assigns), provided: (a) it is a Financing Party under the Power Purchase Agreement; (b) it is not an Affiliate of Tenant; and (c) Landlord has received notice of its name and address and a copy of its Leasehold Mortgage.

“**Legal Costs**” of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding, including appeals (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

“**Loss**” means a Casualty or Condemnation affecting the Premises.

“**Loss Proceeds**” means any Property Insurance Proceeds or Condemnation Award paid or payable for a Loss.

“**Management Meeting**” shall have the meaning set forth in Section 14.7.1 hereof.

“**Market Value**” of the Land or the Facility means, as of any date of determination, the present fair market value of such estate or improvement (including the fair market value of the rights of the holder of such estate in and to any improvements) as of such date, considering: (a) as if no Loss had occurred; (b) without adjusting for any expectation of any Loss; and (c) as if the Leasehold Estate had been terminated. Market Value shall be determined independently of, and without regard to, any valuation established in a Condemnation unless Tenant Notifies Landlord otherwise. Any such Notice shall not be effective without Leasehold Mortgagee’s consent.

“**Memorandum of Lease**” means a memorandum of this Lease, in recordable form, setting forth following provisions of this Lease: (a) all information any Law requires; (b) the Term of the Lease; (c) any grant of a power of attorney; and (d) such other provisions, except the amount or means of determining Rent, as either party reasonably desires.

“**Modification**” or “**Modify**” means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

“**Monetary Default**” means Tenant’s failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.



“**New Lease**” means a new lease of the Premises and related customary documents such as a memorandum of lease and a deed of Improvements. Any New Lease shall: (a) commence immediately after this Lease terminated; (b) continue for the entire remaining term of this Lease, as if no termination had occurred; (c) give New Tenant the same rights to Improvements that this Lease gave Tenant; (d) have the same terms, and the same priority, as this Lease, subject to any subsequent written amendments made with Leasehold Mortgagee’s consent; and (e) require New Tenant to cure, with reasonable diligence and continuity, within a reasonable time, all Defaults (except Tenant-Specific Defaults) not otherwise cured or waived.

“**New Tenant**” means Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns.

“**Nonmonetary Default**” means Tenant’s: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

“**Notice**” or “**Notify**” means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the “Notices” Article of this Lease.

“**Notice of Default**” means any Notice claiming or giving Notice of a Default or alleged Default.

“**Notice of Intent to Cure**” means any Notice claiming or giving Notice of a Leasehold Mortgagee’s intent to cure a Default under this Lease.

“**Permitted Exceptions**” means only: (a) the recorded title exceptions affecting the Fee Estate and prior to this Lease as of the Commencement Date, listed as exceptions in Tenant’s leasehold policy of title insurance for this Lease; (b) any title exceptions (including Subleases) caused by Tenant’s acts or omissions, consented to or requested by Tenant, or resulting from Tenant’s Default; (c) any Application made at Tenant’s request; (d) this Lease and its terms and provisions; and (e) any state of facts an accurate survey would show.

“**Phase I Environmental Assessment**” means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord that meets or exceeds the minimum requirements outlined in the then current version of the American Society of Testing and Materials Standard E 1527-00 (Standard Practice of Environmental Site Assessments: Phase I Environmental Site Assessment Process).

“**Phase II Environmental Assessment**” means an environmental assessment and report prepared by a qualified environmental professional reasonably acceptable to Landlord that goes beyond the investigations of a Phase I Environmental Assessment and

involves sampling and testing of the Premises, including (a) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (b) testing of any transformers on the Premises for PCBs; (c) testing for lead based paints; (d) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Substances on the Premises; and (e) such other sampling and testing reasonably necessary to determine the environmental condition of the Premises.

“**Permitted Use**” means the construction, maintenance and operation of the Facility, consistent with Good Engineering and Operating Practices.

“**PPA Disconnect**” means any period of time during which the Power Purchase Agreement remains in effect but because of a Tenant Event of Default under the Power Purchase Agreement Landlord is not purchasing power from Tenant.

“**PPA Restoration**” means either (a) the Power Purchase Agreement is reinstated following a termination of the Power Purchase Agreement; or (b) Tenant’s Event of Default under the Power Purchase Agreement has been cured and Landlord is purchasing power from Tenant (or its permitted successor assignee) in accordance with the Power Purchase Agreement.

“**Person**” means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind. (This does not limit any Transfer restriction.)

“**Prime Rate**” means 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.

“**Prohibited Lien**” means any mechanic’s, vendor’s, laborer’s, or material supplier’s statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant (or anyone claiming through Tenant), but only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate.

“**Property Insurance Proceeds**” means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of any property insurance policies covering the Premises, when and as received by Landlord, Tenant, Depository, or any Fee Mortgagee or Leasehold Mortgagee, excluding proceeds of Tenant’s business interruption insurance in excess of Rent.

“**PSC**” shall have the meaning set forth in Section 4.9 hereof.

“**Real Estate Taxes**” means all general and special real estate taxes (including sales taxes, use taxes, and the like), conveyance taxes, transfer taxes, assessments, municipal water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof.

If at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and imposed upon Landlord, then all such new taxes, assessments, levies, Real Estate Taxes, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term “Real Estate Taxes,” to the extent that such Real Estate Taxes would be payable if the Premises were the only property of Landlord subject to such Real Estate Taxes.

“**Remaining Premises**” means any Premises that Landlord continues to own after a Total Loss.

“**Removal Period**” shall have the meaning set forth in Section 20.2 hereof.

“**Rent**” means Fixed Rent and Additional Rent.

“**Requesting Party**” shall have the meaning set forth in Section 23.1 hereof.

“**Restoration**” and “**Restore**” means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining Improvements, substantially consistent with their condition before the Loss, subject to such Construction as Tenant shall perform in conformity with this Lease, subject to any changes in Law that would limit the foregoing.

“**Restoration Funds**” means any Loss Proceeds (and deposits by Tenant) to be applied to Restoration.

“**Rules**” means the rules of the Subdivision regulating use of the property, activities, and conduct within the Subdivision as may be established and amended from

time to time by Landlord in its sole discretion. Any such Rules may be set forth in a declaration recorded against the parcels in the Subdivision at Landlord's sole discretion.

**"Scheduled Expiration Date"** means the date upon which the Power Purchase Agreement terminates, i.e., the end of the Term (as defined in the Power Purchase Agreement) *plus* any Extension Term (defined in the Power Purchase Agreement).

**"Security Deposit"** means fifty percent (50%) of the Operating Period Security (as defined in the Power Purchase Agreement) required under the Power Purchase Agreement.

**"State"** means the State of Hawaii.

**"Subdivision Costs"** shall have the meaning set forth in Section 4.8 hereof.

**"Sublease"** means, for the Premises, any: (a) sublease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement) allowing any Person to occupy, use or possess; (c) subsublease or any further level of subletting; or (d) Modification or assignment of (a) through (c). (Any reference to Subleases does not diminish, impair, limit, or waive any limit on Subleases.)

**"Subrent"** means all money due and payable by Subtenants under Subleases.

**"Substantial Casualty"** means a Casualty that, pursuant to Law, prevents the Premises from being Restored for the Permitted Use.

**"Substantial Condemnation"** means any Condemnation that (a) takes the entire Premises; or (b) in Tenant's reasonable determination (with Leasehold Mortgagee's consent) renders the remaining Premises unsuitable for the Permitted Uses.

**"Subtenant"** means any Person entitled to occupy, use, or possess any Premises under a Sublease.

**"Temporary Condemnation"** means a Condemnation of the temporary right to use or occupy all or part of the Premises.

**"Tenant-Specific Default"** means any Nonmonetary Default that by its nature relates only to, or can reasonably be performed only by, Tenant or its Affiliates.

**"Term"** means the Initial Term, as it may be extended by any Extension Term.

**"Total Loss"** means any (a) Condemnation that affects all or substantially all the Premises; or (b) Loss after which Tenant cannot legally Restore the Facility for its Permitted Use.

“**Transfer**” of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect:

(a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in such property or any part of it (including the grant of any easement, lien, or other encumbrance);

(b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property by the holders of such Equity Interest(s);

(c) any transaction described in (b) affecting any Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or

(d) any transaction that is in substance equivalent to any of the foregoing.

A transaction affecting Equity Interests, as referred to in clauses (b) through (d), shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. However, a “Transfer” shall not include any of the foregoing (provided that the other party to this Lease has received Notice thereof) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

“**Unavoidable Delay**” means delay in performing any obligation under this Lease (except payment of money) arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within 30 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

“**Underground Storage Tank**” means any combination of tanks (including pipes connected to the tanks) used to contain an accumulation of Hazardous Substances, and the volume of which (including the volume of the underground pipes connected to the tanks) is ten percent or more beneath the surface of the ground.

**1.3 Principles of Interpretation.** A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of these terms shall be interpreted as if followed by the words “(or any part of it)” except where the context clearly requires otherwise: Fee Estate; Improvements; Land; Leasehold Estate; Premises; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as Modified from time to time (except, at Landlord’s option, any Modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and.”

**1.4 Conflict between Lease and Power Purchase Agreement.** To the extent there exists any conflict between the provisions of this Lease and the Power Purchase Agreement, the Power Purchase Agreement shall control.

## **2. TERM**

**2.1 Initial Term.** The initial term of this Lease (the “**Initial Term**”) shall: (a) commence on the Commencement Date; and (b) end on the Scheduled Expiration Date, unless terminated sooner. If the Commencement Date is not the first (or the Expiration Date is not the last) day of a Lease Year, then from the Commencement Date through the day before the first Lease Year (or from the day after the last Lease Year through the Expiration Date), the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first (or the last, as applicable) full Lease Year, all prorated daily.

**2.2 Automatic Termination.** Notwithstanding anything to the contrary in this Lease, this Lease shall automatically terminate upon termination of the Power Purchase Agreement, without Notice.

## **3. RENT**

**3.1 Fixed Rent.** Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental (the “**Fixed Rent**”) as follows:

3.1.1 \$1.00 per year, as long as the Power Purchase Agreement remains in effect and Landlord is purchasing power from Tenant pursuant to the Power Purchase Agreement; or

3.1.2 10% of the Land Value per year, adjusted annually by the CPI Adjustment Factor, commencing on the date a PPA Disconnect occurs and continuing for the period a PPA Disconnect remains in effect.

If there is no longer a PPA Disconnect, and a PPA Restoration occurs, the Fixed Rent shall be restored to \$1.00 per year until any new PPA Disconnect occurs.

3.2 **Annual or Monthly Payment; Proration; Etc.** If Rent is \$1.00 per year, Tenant shall pay Fixed Rent annually in advance, otherwise Tenant shall pay Fixed Rent in equal monthly installments in advance on the first day of each month. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time.

3.3 **Additional Rent.** In addition to Fixed Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable), as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within 15 days after receipt of an invoice and reasonable backup documentation.

3.4 **No Offsets.** Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

#### 4. **ADDITIONAL PAYMENTS BY TENANT; REAL ESTATE TAXES**

4.1 **Landlord's Net Return.** This Lease shall constitute an absolutely "net" lease. The Fixed Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides. Tenant shall pay as Additional Rent and discharge (subject to Tenant's right of Contest as this Lease expressly provides), before failure to pay creates a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction affecting the Premises.

4.2 **No Tenant Obligation.** Notwithstanding anything to the contrary in this Lease, Tenant need not pay the following items payable, accrued, or incurred by Landlord: (a) Fee Debt Service; (b) depreciation, amortization, brokerage commissions, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate or the Premises; and (c) any costs or expenses that Landlord incurs in or for any Management Meeting, except to the extent that this Lease requires Tenant to pay such costs or expenses.

4.3 **Tenant's Share of Road Maintenance.** Landlord and Tenant acknowledge and agree that a Private Roadway has or will be constructed through the Subdivision to connect the Land and other lots within the Subdivision to Pulehu Road, the public road owned by the County of Maui. Tenant shall contribute twenty five percent (25%) of the cost to operate, repair and maintain the entire length of the Private Roadway as Additional Rent.

4.4 **Real Estate Taxes.** Tenant shall pay and discharge all Real Estate Taxes payable or accruing for all period(s) within the Term, before failure to pay creates a material risk to Landlord of forfeiture or penalty, subject however to Tenant's right of Contest as this Lease expressly provides. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes, except late payment because Landlord failed to remit any payment for Real Estate Taxes (paid to Landlord by Tenant) in accordance with Tenant's reasonable instructions (provided they involve only ministerial functions) or failed to forward promptly Tenant a copy of any applicable bill that Landlord receives. In the latter case Landlord shall pay such interest and penalties. Tenant shall within a reasonable time after Notice from Landlord give Landlord reasonable proof that Tenant has paid any Real Estate Taxes that this Lease requires Tenant to pay. Tenant shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions.

4.5 **Assessments in Installments.** To the extent Law allows, Tenant may apply to have any assessment payable in installments. Upon approval of such application, Tenant shall pay and discharge only such installments as become due and payable during the Term.

4.6 **Utilities.** Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing.

4.7 **Security Deposit.** Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit. Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. If Tenant Defaults on any provision of this Lease, Landlord may, without prejudice to any other remedy it has, apply all or part of the Security Deposit to any Rent or other sum in default, any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease, or any expense, loss, or damage that Landlord may suffer because of Tenant's Default.

4.8 **Subdivision Costs.** Landlord and Tenant acknowledge and agree that prior to commencement of this Lease, Landlord undertook certain costs to subdivide the Land from adjoining lands for the purposes of leasing such Land to Tenant ("**Subdivision**



Costs”), including but not limited to governmental, engineering, survey, and legal costs and the costs of any construction required by governmental authorities in order to obtain subdivision approval. Concurrently with Tenant’s execution of this Lease, Tenant shall reimburse Landlord for Tenant’s share of the Subdivision Costs as Additional Rent, except for the costs of the initial construction of the Private Roadway. Tenant’s share of such costs shall be equitably determined based on the extent of the subdivision required. If the subdivision is solely to subdivide Tenant’s premises from the remainder of Landlord’s land, Tenant shall be responsible for 100% of the Subdivision Costs.

4.9 **Tax.** Tenant will pay to Landlord at the time and together with each payment of Rent that is subject to tax, including GET or PSC, whichever is applicable, and any other applicable tax on account of the receipt, actual or constructive, by Landlord of the rental payments, reimbursement of gross income taxes, and any other taxable gross income attributable to the Premises or this Lease, an amount which, when added to Rent (whether actually or constructively received by Landlord), shall yield to Landlord, after deduction of the tax, an amount equal to that which Landlord would have realized had no such tax been imposed. For the purposes of this Section, “GET” means the State of Hawaii general excise tax on gross income under Hawaii Revised Statutes Chapter 237, and any sales or value added taxes under any successor, similar or new federal, state or county law that may be hereafter enacted, and “PSC” means the State of Hawaii public service company tax under Hawaii Revised Statutes Chapter 239. For purpose of illustration only, the amount necessary to reimburse Landlord is as of the Commencement Date 4.1666%.

4.10 **Conveyance Tax.** Tenant shall pay the conveyance tax imposed under Hawaii Revised Statutes Chapter 247 that is due and payable upon the Commencement Date. Tenant shall provide Landlord with proof satisfactory to Landlord that the conveyance tax has been paid.

## 5. USE

5.1 **Permitted Use.** Tenant shall use the Premises for the Permitted Use and only for the Permitted Use. Tenant shall continuously use and operate the Premises for the Permitted Use.

5.2 **Permitted Use Unique.** Landlord has leased the Premises to Tenant solely for the purpose of Tenant’s providing electrical power to Landlord’s system pursuant to the Power Purchase Agreement. The State Public Utilities Commission has authorized Landlord to enter into this Lease only in connection with and for the purposes of the Power Purchase Agreement. Tenant acknowledges and agrees that the Premises cannot be used for any purpose other than the Permitted Use. Tenant waives and relinquishes any right it may have under Bankruptcy Law, in any Bankruptcy Proceeding, or otherwise to assert the Premises should be used for a purpose other than the Permitted Use.

5.3 **Common Areas.** All access roads made available or maintained by the Landlord, including the Private Roadway, providing access from the Premises to public roads (“**Common Areas**”) shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right, from time to time, to establish, modify and enforce reasonable rules and regulations with respect to all Common Areas and reserves the right to withdraw from the Common Areas the portion of the Private Roadway not needed by Tenant for access to the Premises. Tenant agrees to comply with all of Landlord’s rules and regulations with respect to the Common Areas.

5.4 **Exclusive Control.** Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to Permitted Exceptions.

5.5 **Operational Costs.** Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises and the provision of services to the Premises.

## 6. SECURITY OF PREMISES

6.1 **Secured Facility.** Tenant shall secure the Facility and prevent access to the Facility by unauthorized personnel in the same manner or higher as Landlord secures its power generating facilities in the County. Notwithstanding Landlord’s then current security procedures for its own facilities, Landlord may require Tenant to maintain personnel on the Premises 24 hours a day 7 days a week to monitor the security and safety of the Premises and Facility.

6.2 **Limited Access to Premises.** Tenant will maintain barriers on the Premises to prevent unauthorized persons or vehicles from entering or crossing through the Premises and adjacent lands owned or operated by Landlord.

6.3 **Personnel.** Tenant shall conduct security and background checks on all Tenant employees, independent contractors, and other persons who are regularly allowed access to the Facility and shall require all such persons to take periodic drug tests. Tenant shall not allow on the Premises any persons who do not pass such security checks or drug tests.

## 7. COMPLIANCE

7.1 **Generally.** Tenant shall during the Term, at Tenant’s expense, in all material respects, subject to Tenant’s right of Contest: (a) comply with all Laws and Permitted Exceptions; (b) comply with all Rules; (c) comply with the Land Use Conditions; (d) procure all Approvals required by Law other than the approval of the Power Purchase Agreement by the State Public Utilities Commission; and (e) comply with all Approvals.

7.2 **Power Purchase Agreement.** Tenant shall during the Term, at Tenant's expense, in all material respects, comply with Tenant's obligations under the Power Purchase Agreement.

7.3 **Notice of Inspections.** Tenant shall give Landlord Notice of any proposed inspection of the Premises or the Facility by any Government agency immediately upon Tenant's receipt of notice of such inspection.

7.4 **Copies of Notices.** Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises or any Real Estate Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau.

## 8. MAINTENANCE AND CONSTRUCTION

8.1 **Obligation to Maintain.** Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, subject to Loss (governed by other provisions of this Lease), reasonable wear and tear, and any other condition that this Lease does not require Tenant to repair. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises (including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, drainage, retention basins, bridges, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises) may require by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall remove trash and debris from the Premises and the adjoining sidewalk, and maintain them in a reasonably clean condition.

8.2 **Acceptance of Premises.** Tenant acknowledges that it has, or has had the opportunity, to inspect carefully the Premises, and accepts the Premises in **AS IS** condition **WITH ALL FAULTS**. Tenant further acknowledges that neither Landlord nor its agents or employees have made any representations or warranties of any kind whatsoever as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or its agents or employees agreed to make any repairs, undertake any alterations, or construct any improvements to the Premises or with respect to the Premises.

8.3 **Construction.** At Tenant's sole cost and expense, Tenant shall construct (a) the Facility in accordance with the requirements of the Power Purchase Agreement, and (b) a landscape buffer along Pulehu Road in accordance with the requirements of the Land Use Conditions. Tenant shall not commence Construction until it has the applicable

necessary Approvals. Prior to commencement of any Construction, Tenant shall cause each entity involved in such Construction, who is a direct contractor of Tenant and who has mechanic lien rights under Chapter 507 of the Hawaii Revised Statutes, to deliver to Landlord a performance and payment bond in a form acceptable to Landlord and from a surety reasonably acceptable to Landlord, covering the faithful performance of such entity's contract with the Tenant and the payment of all obligations arising thereunder, and naming Landlord as an obligee. Tenant shall complete Construction of the Facility within the time periods required by the Power Purchase Agreement. Tenant shall pay for all Construction when and as required by the parties that perform such Construction. All Improvements that Tenant constructs on the Land shall become part of the Premises.

**8.4 Plans and Specifications.** To the extent that Tenant obtains plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any Construction, Tenant shall promptly upon Landlord's request give Landlord a copy, subject to the terms of any agreement between Tenant and the applicable architect, engineer, or surveyor. Tenant shall exercise reasonable efforts to cause its agreements with such professionals to permit these deliveries, which are for Landlord's information only except to the extent, if any, this Lease otherwise expressly states.

**8.5 Applications.** Upon Tenant's request, Landlord shall, without cost to Landlord, promptly join in and execute any Application as Tenant reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Landlord; (b) no uncured Event of Default exists; and (c) Tenant reimburses Landlord's Legal Costs. Promptly upon Tenant's request and without charge (except reimbursement of Landlord's Legal Costs), Landlord shall furnish all information in its possession that Tenant reasonably requests for any Application.

## **9. PROHIBITED LIENS**

**9.1 Tenant's Covenant.** If a Prohibited Lien is filed, Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case within 15 days after Landlord Notifies Tenant of commencement of any application for a mechanic's lien or foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Nothing in this Lease shall be construed to: (a) limit Tenant's right of Contest; or (b) obligate Tenant regarding any lien that results from any act or omission by Landlord.

**9.2 Protection of Landlord.** Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect the

Fee Estate. Nothing in this Lease shall be deemed or construed in any way to constitute Landlord's consent or request, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, equipment or material supplier for the performance of any labor or the furnishing of any materials or equipment for any construction, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services, or the furnishing of any materials that would give rise to the filing of any liens against the Fee Estate. Tenant shall Indemnify Landlord against any claims arising out of Construction undertaken by Tenant or anyone claiming through Tenant, and against all Prohibited Liens.

## 10. HAZARDOUS SUBSTANCES

10.1 **Baseline Assessment.** Tenant has obtained a Baseline Assessment and has provided Landlord with a copy of the results of the Baseline Assessment. Any Hazardous Substances not disclosed in the Baseline Assessment and subsequently discovered on the Premises shall be presumed to be present as a result of Tenant's use and occupancy of the Premises during the Term, unless Tenant shall prove, by clear and convincing proof, that the Hazardous Substances: (a) were present on the Premises prior to the Term; (b) migrated onto the Premises as the result of the activities of a third party; or (c) are present on the Premises as the result of Landlord's improper actions.

10.2 **Compliance with Environmental Law.** Tenant shall keep and maintain the Premises, including the Land, the air above the Land, the surface and run-off water on the Land, and the groundwater under the Land, in compliance with, and shall not cause or permit the Premises or any portion of the Premises to be in violation of, any Environmental Law.

10.3 **Use of Hazardous Substances.** Tenant shall not cause or allow any Hazardous Substances Discharge, except (a) in the ordinary course of Tenant's business (b) in accordance with the instructions of the manufacturer and for the purpose described in such instructions, and (c) in strict compliance with all applicable Environmental Law. Tenant shall not install or remove any Underground Storage Tank on, within, under or about the Premises without first obtaining Landlord's written approval. Tenant shall not accept hazardous waste (as defined under any Environmental Law) generated off the Premises for any purpose, including treatment, storage or disposal.

10.4 **List of Hazardous Substances.** On the Commencement Date and on each anniversary of the Commencement Date, and at any other time Landlord requests, Tenant shall provide Landlord with a written list identifying any Hazardous Substances then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet (MSDS) issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Landlord may reasonably require or as may be required by Law.

**10.5 Notice of Disturbance of Any Hazardous Substances.** Tenant shall provide Landlord 30 days' prior Notice before commencing any activities, including repair or remodeling of the Facility or the Premises or installation or removal of any personal property from the Premises, which could result in the disturbance of any Hazardous Substances. Together with such Notice, Tenant shall advise Landlord of protective measures to be taken by Tenant to ensure that Hazardous Substances shall not be released and to ensure compliance with Environmental Law. Tenant shall comply with all reasonable conditions (including adequate assurance of financial resources to comply with Environmental Law) that may be imposed by Landlord in connection with Tenant's proposed activities.

**10.6 Hazardous Substances Claims.** Tenant shall immediately Notify Landlord of: (a) any Hazardous Substances Claims; or (b) Tenant's discovery of any occurrence or condition of the Premises which could subject Tenant or Landlord to any liability, or restrictions on ownership, occupancy, transferability or use of the Premises under any Environmental Law.

**10.7 Remediation and Removal.** Except for the use of Hazardous Substances permitted by this Lease, Tenant shall cause any Hazardous Substances Discharge to be: (a) remediated on-site in accordance with applicable Environmental Law; or (b) removed from the Premises for remediation or disposal and to be transported solely by duly licensed Hazardous Substances transporters to duly licensed disposal facilities for final disposition to the extent required by and in accordance with applicable Environmental Law. Tenant shall deliver to Landlord copies of any hazardous waste manifest reflecting the proper disposition of such Hazardous Substances. Except in emergencies or as otherwise required by law, Tenant shall not take any remedial or removal action in response to a Hazardous Substances Discharge without first Notifying Landlord.

**10.8 Proceedings on Hazardous Substances Claims; Indemnity.** Tenant shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Substances Claims without first Notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to join and participate as a party if Landlord so elects in such proceedings. Tenant shall be solely responsible for and shall Indemnify the Indemnitee against any Hazardous Substances Claims, including: (a) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; and (b) all reasonable costs and expenses incurred by Landlord in connection therewith, including Legal Costs.

**10.9 Assurance of Performance.**

**10.9.1 Landlord's Phase II Environmental Assessment.** Landlord may, but shall not be required to, engage such contractors as Landlord determines to be appropriate to perform from time to time a Phase II Environmental Assessment, including

environmental sampling and testing, of: (i) the Premises, the surrounding soil and any adjacent areas, and any ground water located under or surface water located adjacent to the Premises or any adjoining property; (ii) Tenant's compliance with all Environmental Law and the provisions of this Lease; and (iii) the provisions made by Tenant for carrying out any removal or remedial action that may be required by reason of the nature of Tenant's business and operations on the Premises.

**10.9.2 Cost of Assessment.** All costs and expenses incurred by Landlord in connection with any such Phase II Environmental Assessment shall be paid by Landlord, except that if any such Phase II Environmental Assessment shows that: (i) the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; (ii) Tenant has failed to comply with the provisions of this Lease with respect to Hazardous Substances; (iii) the Premises (including surrounding soil and any underlying groundwater or adjacent surface water) has become contaminated due to operations or activities not attributable to Landlord; or (iv) an event that is the basis for a Hazardous Substances Claim occurred during the Term, then all of the costs and expenses of such assessment shall be paid by Tenant.

**10.9.3 Conducting Assessment.** Each Phase II Environmental Assessment shall be conducted: (a) only after advance Notice of such assessment has been provided to Tenant at least 10 days' prior to the date of the assessment; and (b) in a manner reasonably designed to minimize the interruption of Tenant's operations and use of the Premises. Landlord shall repair any substantial damage to the Premises or to Tenant's property that is directly caused by the Phase II Environmental Assessment.

#### **10.10 Tenant's Obligations Prior to and Upon Surrender.**

**10.10.1 Tenant's Phase I and Phase II Environmental Assessment Deposit.** No later than 18 months prior to the Scheduled Expiration Date, Tenant shall deposit with Landlord a sum equal to the then current estimated cost of conducting a Phase I and Phase II Environmental Assessment of the Premises. Landlord shall hold such sum for Tenant and shall apply or reimburse such sum as provided in this section.

#### **10.10.2 Tenant's Phase I (or Phase II) Environmental Assessment.**

(a) No later than the beginning of the last year of the Term, or immediately upon earlier termination of the Term, Tenant, at Tenant's sole cost and expense shall cause a Phase I Environmental Assessment of the Premises to be conducted, or provide Landlord with a report based upon a Phase I Environmental Assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term. In addition, no later than the end of the Term, Tenant shall (A) cause all Hazardous Substances previously owned, stored or used by Tenant to be removed from the Premises and disposed of in accordance with all Environmental Law; and (B) remove any Underground Storage Tanks or other containers installed or used by Tenant to store any

Hazardous Substances on the Premises, and repair any damage to the Premises caused by such removal.

(b) Upon termination of this Lease and Tenant's satisfactory compliance with all of the requirements of this section, Landlord shall return to Tenant, without interest, the amount deposited in accordance with this section. In the event that Tenant does not cause a Phase I Environmental Assessment to be conducted or does not provide Landlord with a timely report based upon an assessment conducted no earlier than 3 months prior to the beginning of the last year of the Term, Landlord may (but shall not be required to) cause a Phase I Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a sum equal to the amount by which the deposit exceeds the actual costs of such assessment.

(c) If either Tenant's or Landlord's Phase I Environmental Assessment identifies areas of concern that in Landlord's reasonable judgment indicate that further investigation is required, Tenant, at Tenant's sole cost and expense, shall cause a Phase II Environmental Assessment of the Premises to be conducted. If Tenant does not cause such Phase II Environmental Assessment to be conducted, Landlord may (but shall not be required to) cause a Phase II Environmental Assessment to be conducted and may apply the sums previously deposited by Tenant to pay for such assessment. If the assessment costs more than the amount of the deposit, Tenant shall pay to Landlord, upon demand, the difference. If the assessment costs less than the amount of the deposit, Landlord shall, no later than 30 days after payment in full of such costs, return to Tenant a sum equal to the amount by which the deposit exceeds the actual costs of such assessment. Tenant hereby expressly acknowledges and agrees that Tenant's covenant and obligation to pay all costs and expenses associated with any Phase II Environmental Assessment required under this section, whether commissioned by Tenant or Landlord, shall survive termination of this Lease.

#### 10.11 **Clean-up.**

10.11.1 **Environmental Report.** If any written report containing results of any Phase I Environmental Assessment ("**Environmental Report**") shall: (i) reveal that the environmental condition of the Premises has materially declined in comparison to the Baseline Assessment; or (ii) Tenant has materially violated any warranty, representation, or covenant of this section; or (iii) recommend the repair, closure, remediation, removal or other clean-up (collectively, the "**Clean-up**") of any Hazardous Substances found on or about the Premises, and if Landlord determines that Tenant is responsible for such Clean-up, then:



(a) Landlord shall provide Tenant with a copy of such Environmental Report and with a written explanation of the reasons why Landlord believes that Tenant is responsible, under the principles of this section for conducting the Clean-up identified in such Environmental Report.

(b) If, within 30 days after receiving a copy of such Environmental Report and such written statement, Tenant fails either (i) to complete the Clean-up, or (ii) with respect to any Clean-up which cannot be completed within such 30-day period, fails to proceed with reasonable diligence to complete such Clean-up as promptly as practicable, then Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with Default Interest from the date Landlord incurred such costs and expenses until paid in full.

**10.11.2 Emergency.** If the Environmental Report reveals a situation which, in Landlord's sole discretion, constitutes an emergency, then Landlord shall have the right, but not the obligation, to carry out any Clean-up recommended by the Environmental Report or required by any Government, and to recover all of the costs and expenses of such Clean-up from Tenant as Additional Rent together with interest at the Default Interest from the date Landlord incurred such costs and expenses until paid in full.

**10.11.3 Submission of Report to Government.** To the extent required by Law, Landlord shall be entitled to submit the Environmental Report to any Government.

**10.11.4 Completion of Clean-up Before Surrender or Termination.** Tenant shall complete Clean-up prior to surrender of the Premises and termination of this Lease, and shall fully comply with all Environmental Law and requirements of any Government over the Clean-up, including any requirement to file such assessment, mitigation plan, risk assessment or other information with any such Government prior to such surrender or termination.

**10.11.5 Tenant's Inability to Complete.** Should any such Clean-up for which Tenant is responsible not be completed or should Tenant not receive any Government approvals regarding the Premises or areas adjacent to the Premises required under Environmental Law prior to the expiration or sooner termination of this Lease, including any extensions of this Lease, then (i) Tenant shall deposit with Landlord an amount of money equal to the balance of the estimated costs of the Clean-up; and (ii) if the nature of the Clean-up makes the Premises untenable or unleaseable until the Clean-up is completed, then Tenant shall be liable to Landlord as a holdover tenant, subject to the terms and conditions set forth in this Lease, until the Clean-up has been sufficiently completed to make the Premises suitable for lease to third parties.

## 10.12 Confidentiality.

10.12.1 **Keeping Information Confidential.** Except if required to do so by Law, or compelled by subpoena or discovery proceedings in any legal action or governmental proceeding, Tenant agrees that Tenant shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, to any Person, including any Government, without the prior written consent of Landlord. Upon completion of any Clean-up of the Premises, Tenant shall deliver and return to Landlord, all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises whether provided to Tenant by Landlord or not.

10.12.2 **Scope of Obligation.** Tenant's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, include but are not limited to Tenant's officers, employees, agents, attorneys, environmental consultants and contractors. Tenant's obligation to maintain the confidentiality of all information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises, shall survive the termination of this Lease.

10.13 **Copies of Environmental Reports.** Tenant shall provide Landlord with a copy of any and all environmental assessments, audits, studies and reports regarding Tenant's past or current activities on the Premises or the environmental condition of the Premises within 30 days of Tenant's receipt of such materials. Tenant shall be obligated to provide Landlord with a copy of such materials without regard to whether they are generated by Tenant or prepared for Tenant, or how Tenant comes into possession of such materials.

10.14 **Survival of Agreements.** The covenants of this section, including the indemnification provision, shall survive the expiration or termination of this Lease, or any termination of Tenant's interest in the Premises.

## 11. INDEMNIFICATION; LIABILITY OF LANDLORD

11.1 **Obligations.** Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of Tenant (and anyone claiming by or through the Tenant) or its partners, members, directors, officers, or employees; (b) breach or default by Tenant under this Lease; or (c) breach of any representation or warranty Tenant makes in this Lease. Tenant shall also Indemnify Landlord against the following during the Term and so long as Tenant remains in possession after the Expiration Date: (u) any Contest Tenant initiates; (v) any Application made at Tenant's request; (w) use, occupancy, control, management, operation, and possession of the Premises; (x) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; (y) the condition of the Premises or any street, curb or sidewalk

adjoining the Premises, or of any roadways or easements adjoining or appurtenant to the Premises; and (z) any accident, injury or damage whatsoever caused to any person in or on the Premises or upon or under roadways or easements adjoining or appurtenant to the Premises. Tenant shall be required to Indemnify Landlord notwithstanding the acts or omissions or negligence of Landlord, but Tenant shall not be required to Indemnify Landlord regarding Landlord's intentional acts or gross negligence. This paragraph does not apply to Environmental Law and Hazardous Substances Discharges, which are covered in Section 10.8.

**11.2 No Liability of Landlord.** During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Premises, except to the extent caused by Landlord's intentional act or gross negligence. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties. Nothing in this Lease shall be construed to exculpate, relieve, or Indemnify Landlord from or against any liability of Landlord: (y) to third parties existing at or before the Commencement Date; or (z) arising from Landlord's intentional acts or omissions or gross negligence.

**11.3 Indemnification Procedures.** Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee, including, without limitation, under Sections 9.2, 10.8, 11.1, 17.5, 18.2, and 26.7 of this Lease:

**11.3.1 Prompt Notice.** Indemnitee shall promptly Notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

**11.3.2 Selection of Counsel.** Indemnitor shall select counsel reasonably acceptable to Indemnitee. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

**11.3.3 Cooperation.** Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual reasonable out of pocket expenses (including Legal Costs) of such cooperation.

**11.3.4 Settlement.** Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (w) Indemnitor procures (by payment, settlement, or otherwise)

a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (y) the continued effectiveness of this Lease is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way.

11.3.5 **Insurance Proceeds.** Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

## 12. RIGHT OF CONTEST

12.1 **Tenant's Right; Contest Conditions.** Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for Real Estate Taxes; the amount of any Real Estate Tax; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "**Contest**"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

12.1.1 **No Fines.** Such deferral or noncompliance shall not subject Landlord to a material risk of any fine or penalty, except civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to Landlord (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties.

12.1.2 **No Liability.** Such deferral or noncompliance creates no material risk of a lien, charge, or other liability of any kind against the Fee Estate, unless Tenant has given Landlord Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability.

12.1.3 **No Forfeiture.** Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited or lost.

12.1.4 **No Cost to Landlord.** Such Contest shall be without cost, liability, or expense to Landlord.

12.1.5 **Diligence.** Tenant shall prosecute such Contest with reasonable diligence and in good faith.

12.1.6 **Payment.** If required for such Contest, Tenant shall have paid the Contested Real Estate Taxes or other matter.

12.1.7 **Collection of Real Estate Taxes.** If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Landlord and the Fee Estate.

12.1.8 **No Tax Deed.** If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed of the Fee Estate for nonpayment, then Tenant shall pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

12.1.9 **No Event of Default.** No Uncured Event of Default shall exist under this Lease during the pendency of such Contest.

12.1.10 **Security.** If the amount at issue in such Contest (and all other Contests then pending) exceeds an amount equal to \$100,000.00, then Tenant shall, before proceeding with such Contest, give Landlord Contest Security equal to such excess (less any Contest Security otherwise provided for the same Contest).

12.1.11 **Named Parties.** If Landlord has been named as a party in any action, then Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord's place, if permissible under the circumstances.

12.2 **Landlord Obligations and Protections.** Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; and (b) such Contest must be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate, as Tenant reasonably requests, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all reasonable costs and expenses, including Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses as Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest.

12.3 **Miscellaneous.** Tenant shall be entitled to any refund of any Real Estate Taxes (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant's Contest of any Real Estate Taxes, Tenant shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant's Contest of a Law, Tenant shall comply with such final determination. Landlord may contest any matter for which Tenant is entitled to prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; and (b) Tenant fails to commence such Contest within 15 days after receipt of such Notice.

12.4 **Contest Security.** Landlord shall promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations, if any, as determined by such resolution.

### 13. INSURANCE

13.1 **Tenant to Insure:** Tenant, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, at the commencement of this Lease, and continuing throughout the Term, the types and minimum amounts of insurance coverage specified herein.

#### 13.2 Types and Minimum Amounts of Insurance.

13.2.1 **Worker's Compensation and Employers' Liability Insurance:** Workers' Compensation and other similar insurance required by applicable State or U.S. federal laws. Employers' Liability coverage with minimum limits of:

\$1,000,000 for Each Accident  
\$1,000,000 Disease-Each Employee  
\$1,000,000 Disease Policy Limit.

13.2.2 **Commercial General Liability:** Minimum limits of liability shall be a combined single limit for bodily injury and property damage of \$10,000,000 each occurrence and \$20,000,000 general aggregate. Such insurance will include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. If coverage is written on a claims-made basis, the Tenant warrants that any retroactive date applicable to coverage under the policy precedes the Term; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of the Term.

13.2.3 **Automobile Liability:** Minimum limits of liability shall be a combined single limit for bodily injury and property damage of \$2,000,000 for each occurrence and annual aggregate for any owned, leased and non-owned automobiles.

13.2.4 **All Risk Property:** This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) against damage to the Premise and the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake and flood perils which shall be no less than 40% of the replacement value of the Facility up to Twenty Million Dollars (\$20,000,000), if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits.

#### 13.3 Form of Policies:

13.3.1 **Form and Substance:** All insurance required to be furnished by Tenant hereunder shall be pursuant to policies in form and substance satisfactory to Landlord, and issued by a company authorized by law to issue such insurance in the State of Hawaii on an admitted or non-admitted basis, and with an A.M. Best Financial Strength Rating of "A-" or better, and an A.M. Best Financial Size Category of "VII" or higher.

13.3.2 **Required Provision:** All insurance policies shall:

(a) **Additional Insured:** The insurance policies specified herein shall name Landlord, Landlord's agents, Landlord's employees, and Landlord's successors and assigns, as an additional insured, as its interests may appear, with respect to any and all third party bodily injury and/or property damage claims, including completed operations, arising from Tenant's performance of this Lease. All Risk Property Insurance shall include Landlord, Landlord's agents, Landlord's employees, and Landlord's successors and assigns as loss payee, as its interest may appear. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Landlord will be excess only and not contribute with this insurance.

(b) **Severability of Interest:** Apply separately to each insured against whom claim is made or suit is brought.

(c) **Waiver of Subrogation:** Tenant shall cause its insurers to waive all rights or subrogation which Tenant or its insurers may have against of Landlord, Landlord's agents, Landlord's employees, and Landlord's successors and assigns.

13.3.3 **All Insurance:** All insurance shall:

(a) **No Premiums:** Not require Landlord to pay any premiums.

(b) **No Partnership:** The inclusion of Landlord, Landlord's agents, Landlord's employees, and Landlord's successors and assigns, as Additional Insured, is not intended to, and shall not make them or any of them, a partner or joint venture with Tenant in the operation of Tenant's Facility in, on, over, under or about the Premises.

(c) **Deductibles:** Any insurance required hereunder may provide for deductibles or self-insured retentions which are reasonable and prudent in relationship to the soundness of Tenant's financial condition at the sole discretion of Landlord. Any deductibles or self-insured retention in excess of \$25,000 shall be disclosed to Landlord. Any deductible shall be the responsibility of Tenant.

13.3.4 **Certificate of Insurance:** Evidence of insurance for the coverage specified herein shall be provided to Landlord before the commencement of the Lease. Within 30 Days of any change of any policy and upon renewal of any policy,

Tenant shall provide certificates of insurance to Landlord. During the Term, Tenant, upon Landlord's reasonable request, shall make available to Landlord for its inspection at Tenant's designated location, certified copies of the insurance policies described herein. Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Tenant's obligations to fulfill the requirements.

13.3.5 **Notification:** In the event Tenant receives notice of cancellation or non-renewal of any insurance in accordance with policy provisions, Tenant shall immediately provide verbal and written notice to Landlord. In the event Tenant chooses to voluntarily cancel, non-renew, or reduce the scope of coverage or limits of liability, Tenant shall notify Landlord in writing at least thirty (30) days prior to such cancellation, non-renewal, or reduction in scope of coverage or limits of liability. In any event, the cancellation or non-renewal of any insurance shall not be construed as a limitation of any kind on Tenant's obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

13.4 **Annual Review by Landlord:** The coverage limits shall be reviewed annually by Landlord and if, in Landlord's discretion, Landlord determines that the coverage limits should be increased, Landlord shall so notify Tenant. Tenant shall, within thirty (30) Days of notice from Landlord, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Tenant.

13.5 **No Limitation:** Tenant's procurement and maintenance of insurance, or the delivery of Certificates of Insurance or other written evidence of insurance in form and substance acceptable to Landlord shall not be construed as a limitation of any kind on Tenant's obligations to indemnify, defend, insure, and hold harmless, as may be found anywhere in this or any other document.

**No Representation of Coverage Adequacy:** By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Tenant in this Lease.

## 14. LOSSES AND LOSS PROCEEDS

14.1 **Notice.** If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

14.2 **Casualty.** If a Casualty occurs which is not a Substantial Casualty, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall Restore with reasonable promptness regardless of cost. If the Casualty is determined to be a Substantial Casualty, then Tenant may, by Notice to Landlord, given



within 10 days after such determination, terminate this Lease effective 30 days after such Notice, provided that Tenant assigns to Landlord all proceeds from applicable property insurance policies (and rights thereto) arising from the Casualty.

**14.3 Substantial Condemnation.** If a Substantial Condemnation occurs, then this Lease (except as it relates to allocation of the Condemnation Award) shall terminate on the Condemnation Effective Date. Rent shall be apportioned accordingly. The Condemnation Award shall be allocated as follows:

**14.3.1 Prepayment Premium.** To Leasehold Mortgagee, to the extent that both (1) because of such Condemnation, any Leasehold Mortgagee imposes any fee or charge that such Leasehold Mortgagee could not have collected but for the Condemnation and the related prepayment of such Leasehold Mortgagee's loan; and (2) the Condemnation Award was directly or indirectly increased by such fee or charge.

**14.3.2 Costs and Expenses.** To reimburse Landlord and Tenant (subject to the rights of Leasehold Mortgagees) for their actual costs and expenses, including Legal Costs, incurred in the Substantial Condemnation and determining and collecting the Condemnation Award.

**14.3.3 Tenant's Claim.** Tenant shall, subject to the rights of Leasehold Mortgagees, receive such portion of the Condemnation Award as shall equal the lesser of (a) all sums secured by all Leasehold Mortgages; and (b) the Market Value of the Facility at the Condemnation Effective Date.

**14.3.4 Landlord's Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive such portion of the Condemnation Award as shall equal the Market Value of the Land, at the Condemnation Effective Date.

**14.3.5 Landlord's Residual Claim.** Landlord shall, subject to the rights of Fee Mortgagees, receive the entire remaining Condemnation Award.

**14.4 Insubstantial Condemnation.** If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Depository and applied first toward Restoration, in the same manner as Restoration after Casualty. Whether or not the Condemnation Award is adequate, Tenant shall, at its expense, Restore in compliance with this Lease. After Tenant has completed and fully paid for Restoration, any remaining Condemnation Award shall be distributed to Landlord and Tenant as if it arose from a Substantial Condemnation that affected only the part of the Premises taken, with an equitable allocation of all elements taken into account in determining such distribution.

**14.5 Temporary Condemnation.** If a Temporary Condemnation occurs (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall

receive any Condemnation Award (to the extent for periods within the Term), without affecting Tenant's obligations in any way.

#### 14.6 Use of Loss Proceeds.

14.6.1 **Assignment to Depository.** All Loss Proceeds shall be paid to Depository, to be disbursed by Depository, subject to the terms of the Senior Leasehold Mortgage and this Lease. If Landlord receives any Loss Proceeds, Landlord shall promptly remit them to Depository.

14.6.2 **Immaterial Loss.** If a Loss is an Immaterial Loss, then (subject to the terms of the Leasehold Mortgage on disbursement of Loss Proceeds to Restore) the Depository shall release all Loss Proceeds to Tenant, to be applied first to Restoration.

14.6.3 **Material Loss.** If a Loss is not an Immaterial Loss, then Depository shall retain the Loss Proceeds and pay them over to Tenant from time to time, upon the following terms, for Restoration. Depository shall first reimburse Landlord and Tenant from such Loss Proceeds for their actual, necessary, and proper costs and expenses in collecting such Loss Proceeds. Depository shall release Loss Proceeds to Tenant from time to time as Restoration progresses in accordance with the procedures required by the Leasehold Mortgagee. If no Leasehold Mortgage exists, then Depository shall disburse the Loss Proceeds from time to time pursuant to normal and customary disbursement procedures consistent with this Lease, but excluding any requirement for a guaranty, bond, security, or other credit enhancement or credit support measures.

14.6.4 **Loss Proceeds in Trust.** Until Tenant has completed and paid for Restoration, Tenant shall hold all Loss Proceeds in trust to be used first to Restore and for no other purpose. If any Prohibited Lien is filed against the Premises, Tenant shall not be entitled to receive any further installment of Loss Proceeds until Tenant has satisfied, bonded, or otherwise discharged such Prohibited Lien when and as this Lease requires.

14.6.5 **Remaining Loss Proceeds.** When Tenant has completed and paid for Restoration, Depository shall release to Tenant, and Tenant may retain (subject to rights of Leasehold Mortgagees) any remaining Loss Proceeds.

14.6.6 **Insufficient Restoration Funds.** If Restoration Funds are insufficient to Restore, then Tenant shall nevertheless Restore at its expense. Depository shall not release any Loss Proceeds until and unless Tenant has expended on such Restoration an amount equal to any such insufficiency.

#### 14.7 Disputes.

14.7.1 **Good Faith Negotiations.** Except as otherwise expressly set forth in this Lease, before submitting any dispute about a Loss (including its characterization), Restoration, timing of Restoration, Loss Proceeds, Restoration Funds,

or the use of such proceeds or funds to dispute resolution or litigation, the presidents, vice presidents, or authorized delegates from both Landlord and Tenant having full authority to settle the dispute shall personally meet in Hawaii and attempt in good faith to resolve the dispute (“**Management Meeting**”). Landlord and Tenant shall endeavor to hold the Management Meeting within thirty (30) days after the date of a request for a Management Meeting. Landlord and Tenant shall not file a complaint or initiate other formal dispute resolution proceedings until ninety (90) days after the date of a request for a Management Meeting, except as might be necessary to preserve a right or claim that would expire during the ninety-day period.

## **15. LANDLORD’S TRANSFERS**

**15.1 Landlord’s Right to Convey.** Landlord may Transfer the Fee Estate from time to time. Landlord will promptly Notify Tenant of a Transfer.

**15.2 Release of Landlord.** Upon any Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer, provided that such successor Landlord assumes Landlord’s past, present, and future obligations under this Lease. This Lease shall bind Landlord only while Landlord owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

## **16. TENANT’S TRANSFERS**

**16.1 Tenant’s Limited Right.** Tenant may only Transfer this Lease to an assignee of all of the rights and obligations of the Seller under the Power Purchase Agreement. Tenant may not Transfer this Lease to any other Person, and any such Transfer shall be void. Any permitted assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall pay all transfer and other taxes payable on account of any Transfer by Tenant or any holder of any Equity Interest in Tenant. Tenant shall promptly Notify Landlord of any Transfer. No Transfer shall affect any obligations of Tenant or rights of Landlord under this Lease.

**16.2 Subleases.** Tenant shall not enter into or Modify any Sublease, without Landlord’s prior consent which may be withheld in Landlord’s sole discretion. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall be subject in all respects to the terms and conditions of this Lease except that, unless terminated sooner under the terms thereof, any such Sublease shall expire no later than one hour before the Expiration Date. The fact that any Subtenant causes any Default shall not relieve Tenant of Tenant’s obligation to cure it. Tenant shall take all steps reasonable and necessary to prevent any such Default.

**16.3 Conditions to Effectiveness of Certain Transactions.** No assignment of this Lease or Sublease shall be effective or have any validity unless and until such assignment or Sublease otherwise complies with this Lease and Landlord has received: (a) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee, in recordable form, effective as of the date of assignment; (b) in the case of a Sublease, a copy of the executed Sublease complying with this Lease; and (c) Notice of the assignee or Subtenant.

## **17. LEASEHOLD MORTGAGE**

**17.1 Leasehold Mortgage.** Provided that any Monetary Default or material Nonmonetary Default has been, or simultaneously is, cured, Tenant may grant a Leasehold Mortgage to a Financing Party under the Power Purchase Agreement in connection with a permitted financing under the Power Purchase Agreement.

**17.2 Leasehold Mortgagee's Remedies.** Without Landlord's consent, at any time (a) any Leasehold Mortgagee may initiate and complete any Foreclosure Event and exercise any other rights and remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Leasehold Mortgage; and (b) any transferee through a Foreclosure Event, and its successors and assigns, may assign this Lease to a Person who simultaneously assumes all of the rights and obligations of the Seller under the Power Purchase Agreement.

**17.3 Lease Impairments.** Any Lease Impairment made without Leasehold Mortgagee's consent shall (at Leasehold Mortgagee's option) be null, void, and of no force or effect, and not bind Tenant, Leasehold Mortgagee, or New Tenant.

**17.4 Notices.** Any Notice of Default from Landlord to Tenant shall have no effect unless Landlord gives a copy to Leasehold Mortgagee. If any Default occurs for which Landlord intends to exercise any remedy, Landlord shall promptly give Leasehold Mortgagee a Notice of Default.

**17.5 Right to Cure; Indemnity.** Any Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of Tenant under this Lease and to cure any Default under the terms and conditions provided in this Section 17.5. Landlord shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of Tenant's obligations, for the account of Tenant and with the same force and effect as if performed by Tenant, provided that such performance is rendered within the cure period that applies to a Leasehold Mortgagee under this Lease under this Section 17.5.

**17.5.1 Opportunity to Cure.** Landlord shall accept Leasehold Mortgagee's cure of any Default at any time until 90 days after Leasehold Mortgagee has received the Notice of Default for that Default, provided Landlord has received a Notice of Intent to Cure from Leasehold Mortgagee on or by 30 days after Leasehold Mortgagee's receipt of the Notice of Default. If Landlord does not receive a timely

Notice of Intent to Cure under the preceding sentence, Landlord may terminate this Lease under Section 19.2.1 or exercise any other Remedies as may be available at law or in equity or under any terms of this Lease. If Landlord receives a timely Notice of Intent to Cure and Leasehold Mortgagee cannot reasonably cure any Nonmonetary Default within 90 days after receiving the Notice of Default for that Default, Leasehold Mortgagee shall have such further time as it reasonably needs so long as it proceeds with the diligence expected of an experienced independent power producer willing and able to exert commercially reasonable efforts to achieve such cure, but in any event no longer than 180 days. If Leasehold Mortgagee cannot reasonably cure a Default without possession, or if any Tenant-Specific Default(s) occur(s), Leasehold Mortgagee shall be entitled to such additional time as it reasonably needs to consummate a Foreclosure Event and obtain possession, provided Leasehold Mortgagee timely exercises its cure rights for all other Defaults, and completes the Foreclosure Event within 365 days. If Leasehold Mortgagee consummates a Foreclosure Event, Landlord shall waive all Tenant-Specific Defaults, provided that all other Defaults are cured.

**17.5.2 Indemnity for Cure Activities.** Notwithstanding anything to the contrary in this Lease, if any Leasehold Mortgagee (or a representative of Leasehold Mortgagee) desires to enter the Premises to cure any Default, Leasehold mortgagee may enter the Premises to seek to cure a Default. This right or its exercise shall not be deemed to give Leasehold Mortgagee possession. By entering the Premises, such Leasehold Mortgagee shall be deemed to have agreed to Indemnify Landlord in the same manner as this Lease requires Tenant to Indemnify Landlord, but solely regarding direct damages that Landlord suffers as a result of any acts or omissions of such Leasehold Mortgagee or its representative on or in the Premises in seeking to cure any such Default.

**17.6 Cure Rights Implementation.** Whenever Leasehold Mortgagee's time to cure a Default or consummate a Foreclosure Event has not expired, provided that Leasehold Mortgagee has timely provided Landlord with a Notice of Intent to Cure pursuant to Section 17.5.1 above, Landlord shall not terminate this Lease, accelerate any Rent, or otherwise interfere with Tenant's or Leasehold Mortgagee's possession and quiet enjoyment of the Leasehold Estate.

**17.7 New Lease.** If this Lease terminates for any reason (except with Leasehold Mortgagee's consent or because of a Total Loss), even if Leasehold Mortgagee failed to timely exercise its cure rights for a Default, Landlord shall promptly give Leasehold Mortgagee a Lease Termination Notice. By giving notice to Landlord on or before the day that is 30 days after Leasehold Mortgagee receives Landlord's Lease Termination Notice, Leasehold Mortgagee may require Landlord to promptly enter into a New Lease with New Tenant. Landlord need not do so, however, unless New Tenant has, consistent with the Lease Termination Notice: (a) cured all reasonably curable Defaults (except Tenant-Specific Defaults); (b) reimbursed Landlord's reasonable costs and expenses (including reasonable attorneys' fees and expenses) to terminate this Lease, recover the Premises, and enter into the New Lease; and (c) assumed the Power Purchase Agreement,

or with Landlord's consent, arranged for the assumption of the Power Purchase Agreement by the New Tenant.

**17.8 New Lease Implementation.** If Leasehold Mortgagee timely requests a New Lease in conformity with this Lease, then from the date this Lease terminates until the parties execute and deliver a New Lease, Landlord shall not: (a) operate the Premises in an unreasonable manner; (b) terminate Sublease(s) except for the Subtenant's default; or (c) lease any Premises except to New Tenant. When the parties sign a New Lease, Landlord shall transfer to New Tenant and New Tenant shall accept all Subleases (including any security deposits Landlord held), service contracts, and Premises operations.

**17.9 Certain Proceedings.** If Landlord or Tenant initiates any mediation, litigation, or other dispute resolution proceeding affecting this Lease, then the parties shall simultaneously Notify Leasehold Mortgagee. Leasehold Mortgagee may participate in such proceedings on Tenant's behalf, or exercise any or all of Tenant's rights in such proceedings, in each case (at Leasehold Mortgagee's option) to the exclusion of Tenant.

**17.10 No Merger.** If the Leasehold Estate and the Fee Estate are ever commonly held, they shall remain separate and distinct estates (and not merge) without Leasehold Mortgagee's and Fee Mortgagee's consent.

**17.11 Multiple Leasehold Mortgages.** If at any time multiple Leasehold Mortgagees exist: (a) any consent by or notice to Leasehold Mortgagee refers to all Leasehold Mortgagees; (b) except under clause (a), the most senior Leasehold Mortgagee may exercise all rights of Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (c) to the extent that the most senior Leasehold Mortgagee declines to do so, any other Leasehold Mortgagee may exercise those rights, in order of priority; and (d) if Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance company licensed in the State (or such insurer's designated authorized title agent, e.g. Title Guaranty of Hawaii, Inc.), selected by Landlord in its sole discretion, shall govern.

**17.12 Further Assurances.** Upon request from Tenant or any Leasehold Mortgagee (prospective or current), Landlord shall promptly, under documentation reasonably satisfactory to the requesting party and the Landlord: (a) agree directly with Leasehold Mortgagee that it may exercise against Landlord all Leasehold Mortgagee's rights in this Lease so long as Leasehold Mortgagee complies with all terms and conditions of this Lease in connection with the exercise of such remedies; and (b) certify (subject to any then-existing exception(s) reasonably specified) that this Lease is in full force and effect, that no Lease Impairment has occurred, that to Landlord's knowledge no Default exists, the date through which Rent has been paid, and other similar matters as reasonably requested and mutually agreeable between Landlord and such Leasehold Mortgagee.

## 18. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES; CERTAIN AGREEMENTS

18.1 **Quiet Enjoyment.** So long as this Lease has not been terminated, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term, subject to the terms of this Lease, without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

18.2 **Access and Inspection.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees may enter the Premises upon reasonable Notice to: (a) ascertain whether Tenant is complying with this Lease and the Power Purchase Agreement; (b) cure Tenant's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective Transferee or Fee Mortgagee. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord's entry upon the Premises (except upon termination of this Lease or an Event of Default).

18.3 **Title.** Notwithstanding anything to the contrary in this Lease, all Improvements located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term.

## 19. EVENTS OF DEFAULT; REMEDIES

19.1 **Definition of "Event of Default."** An "Event of Default" means the occurrence of any one or more of the following:

19.1.1 **Monetary Default.** If a Monetary Default occurs and continues for 30 days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 **Prohibited Liens.** If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within 15 days after Notice from Landlord.

19.1.3 **Power Purchase Agreement.** If a Default by Tenant occurs under the Power Purchase Agreement, which continues beyond any cure or grace period allowed under the Power Purchase Agreement.

19.1.4 **Bankruptcy or Insolvency.** If Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within 180 days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 180 days).

19.1.5 **Nonmonetary Default.** If any other Nonmonetary Default occurs and Tenant does not cure it within 30 days after Notice from Landlord describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within 30 days from such Notice, if Tenant shall not (a) within 30 days from Landlord's Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances, but in any event within 90 days from the receipt of such Notice.

19.2 **Remedies.** If an Event of Default occurs, then Landlord shall, at Landlord's option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord's remedies include:

19.2.1 **Termination of Tenant's Rights.** Landlord may terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

19.2.2 **Taking Possession.** Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry by Landlord. Except as expressly provided in this Lease or prohibited by Law, Tenant, for and on behalf of itself and all persons claiming by, through or under Tenant, expressly waives any right to service of notice of intention to re-enter provided in any Law and any and all right of redemption provided by any Law, or re-entry or repossession or to restore the operation of this Lease if Tenant is dispossessed by a judgment or by writ of any court or judge or in case of re-entry or repossession by Landlord or any expiration or termination of this Lease. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under



this Lease. The terms “enter,” “re-enter,” “entry,” and “re-entry,” as used in this Lease, are not restricted to their technical legal meanings.

19.2.3 **Suits Before Expiration Date.** Landlord may sue for damages or to recover Rent from time to time at Landlord’s election.

19.2.4 **Receipt of Moneys.** No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord’s right to enforce payment of any Rent payable or later falling due, or Landlord’s right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation or, at Landlord’s election, on account of Tenant’s liability.

19.2.5 **No Waiver.** No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be Modified except by a written instrument executed by Landlord. No waiver of any Default shall Modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

19.2.6 **Security Devices.** Landlord may change the locks and other security devices providing admittance to the Premises and Tenant agrees that any such exercise by Landlord shall not be deemed to be unreasonable or a breach of the peace.

19.2.7 **Conditional Limitation.** Landlord may serve upon Tenant a written 30-day notice of cancellation and termination of this Lease. Upon the expiration of such 30-day period, this Lease and the Term shall automatically and without any action by anyone terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 30-day period were the Expiration Date. The passage of such 30-day period constitutes the limit beyond which Tenant’s tenancy no longer exists. Tenant shall then quit and surrender the Premises to Landlord but remain liable as this Lease provides. It is a conditional limitation of this Lease that the Term shall terminate and expire as set forth in this paragraph. This paragraph is intended to establish a conditional limitation and not a condition subsequent. Nothing in this

paragraph shall limit Landlord's right to commence and prosecute a summary possession proceeding under Chapter 666 of the Hawaii Revised Statutes.

19.2.8 **Damages.** Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord's election, either (a) the present value, calculated at a discount rate equal to the then-current Prime Rate of the excess of the total Fixed Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less (in the case of this clause (b) only) Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's default, including after expiration of the Term. Notwithstanding any Law to the contrary, (x) Landlord need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages; and (y) Landlord may not recover any consequential damages for Tenant's Default.

19.2.9 **Injunction of Breaches.** Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

19.2.10 **Continue Lease.** Landlord may at Landlord's option maintain Tenant's right to possession. In that case, this Lease shall continue and Landlord may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

19.2.11 **Restoration Funds.** Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied solely as Landlord directs, including as a payment toward any sums then payable to Landlord.

19.3 **Proceeds of Reletting.** Landlord shall apply any proceeds of any reletting as follows, without duplication, but including Default Interest on all such sums:

19.3.1 **Landlord's Costs.** *First*, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any Construction, and the cost and expense of removing all persons and property therefrom,

including in such costs reasonable and customary brokerage commissions and Legal Costs;

19.3.2 **Preparation for Reletting.** *Second*, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting;

19.3.3 **Costs of Maintenance and Operation.** *Third*, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of doing so; and

19.3.4 **Residue.** *Fourth*, to pay to itself any balance remaining on account of Tenant's liability to Landlord.

19.4 **Tenant's Late Payments; Late Charges.** If Tenant fails to make any payment to Landlord required under this Lease within 10 days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within 10 days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to 3% of any payment that Tenant fails to pay within 10 days after such payment is first due and payable. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

19.5 **Landlord's Right to Cure.** If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord, after 10 Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this paragraph; and (b) Default Interest on (a).

19.6 **Holding Over.** If for any reason or no reason Tenant remains in the Premises after the Expiration Date, or fails to complete a Clean-up under Section 10.11.5, or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, then Landlord will suffer injury that is substantial, difficult, or impossible to

measure accurately. Therefore, if Tenant remains in the Premises after the Expiration Date, or fails to complete a Clean-up under Section 10.11.5, or fails to remove Improvements required to be removed after the Removal Period under Section 20.2, for any reason or no reason, then in addition to any other rights or remedies of Landlord, Tenant shall pay to Landlord, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Tenant holds over after the Expiration Date, a sum equal to: twenty percent (20%) of the Land Value, together with all Additional Rent owed for such period.

19.7 **Waivers.** Landlord and Tenant irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Landlord and Tenant regarding the Premises, enforcement of this Lease, Tenant's use or occupancy of the Premises, any claim of injury or damage arising between Landlord and Tenant, or any actions of Landlord in connection with or relating to the enforcement of this Lease. Tenant waives any right of redemption provided for by Law. Tenant waives any right to interpose any counterclaim in any action by Landlord to enforce this Lease or Landlord's rights and remedies under this Lease.

19.8 **Accord and Satisfaction; Partial Payments.** No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a partial payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

19.9 **Miscellaneous.** Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

19.9.1 **Survival.** No termination of this Lease and no taking possession of or reletting the Premises shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse in this Lease.

19.9.2 **Multiple Suits.** Landlord may sue to recover damages, or sum(s) equal to any installment(s) of Rent payable by Tenant, from time to time at Landlord's election. Nothing in this Lease requires Landlord to await the date when this Lease or the Term would have expired absent an Event of Default and a resulting termination of this Lease.

19.9.3 **Receipt of Monies.** Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination notice or a notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any notice

previously given to Tenant, waive Landlord's right to enforcement of Rent payable by Tenant or thereafter falling due, or waive Landlord's right to recover possession of the Premises. After the service of any such notice, or commencement of any suit or summary proceedings, or after a final order or judgment for possession of the Premises, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit, or judgment, unless such payments fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

19.9.4 **No Double Recovery.** In no event shall Landlord be entitled, directly or indirectly, to recover twice for the same element of Landlord's damages.

## 20. END OF TERM

20.1 **Improvements.** Upon the termination of this Lease, at Landlord's option (a) all Improvements shall become Landlord's property; or (b) Tenant shall remove all Improvements at no cost to Landlord, and shall leave the Land in a clean and orderly condition free of all debris. Landlord shall Notify Tenant of Landlord's election to have Tenant remove the Improvements not later than ninety (90) days before the Expiration Date.

20.2 **Tenant's Removal of Improvements.** If Tenant is required to remove the Improvements upon termination of the Lease, Tenant shall have reasonable access to the Premises for a period of up to six (6) months after the Expiration Date to dismantle, pack and remove the Improvements from the Premises (the "**Removal Period**"). Tenant shall work promptly and diligently to remove the Improvements. The Removal Period shall end upon Tenant's completion of removal of the Improvements from the Premises. If Tenant fails to remove the Improvements within the Removal Period, the Holding Over provisions of Section 19.6 of this Lease shall apply. The terms and provisions of this Lease shall apply during the Removal Period, including Tenant's obligations to provide insurance and to Indemnify Landlord.

20.3 **Landlord's Removal of Improvements.** If Landlord determines that Tenant is not making diligent efforts to remove the Improvements, Landlord shall Notify Tenant of Landlord's intention to remove the Improvements at Tenant's cost. If 30 days after such notice to Tenant Landlord in its reasonable judgment continues to believe Tenant is not diligently removing the Improvements, Landlord may remove the Improvements at Tenant's cost.

20.4 **Actions Upon Surrender.** Upon the later of (a) any Expiration Date and (b) the expiration of the Removal Period:

20.4.1 **Condition of Premises.** Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires, subject to any Loss that this Lease does not require Tenant to Restore.

20.4.2 **Surrender of Premises.** Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord reasonably requires.

20.4.3 **Free and Clear.** Tenant shall deliver the Premises free and clear of all: (a) Subleases, and (b) liens except (i) liens that Landlord or any of its agents caused, or (ii) the recorded title exceptions affecting the Fee Estate that are prior to this Lease as of the Commencement Date and listed as exceptions in Tenant's leasehold policy of title insurance for this Lease.

20.4.4 **Assignment of Rights.** Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises.

20.4.5 **Orderly Transition.** The parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires.

20.4.6 **Real Estate Taxes.** The parties shall adjust for Real Estate Taxes and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default).

20.4.7 **Memorandum of Lease.** The parties shall terminate the Memorandum of Lease.

20.4.8 **Deposits.** Tenant shall assign to Landlord, and Landlord shall reimburse Tenant for, all utility and other service provider deposits for the Premises.

## 21. NOTICES

21.1 **Special Notices.** All Notices of Default, Renewal Notices, and similar substantive Notices shall be in writing and addressed to Landlord and Tenant (and their designated copy recipients), and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below

(or to such other address, facsimile number, e-mail address or Person as a party may designate by notice to the other party):

Landlord: Maui Electric Company, Limited  
210 West Kamehameha Avenue  
Kahului, Hawaii 96732-2253  
Attention: Renewable Energy Projects  
E-mail: connect@mauielectric.com

With a copy to:  
Maui Electric Company, Limited  
P.O. Box 398  
Kahului, Hawaii 96733-6898  
Attention: Land Department

Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone No.: ( )  
Facsimile No.: ( )  
E-mail:

21.2 **Ordinary Notices.** Notices in the ordinary course of business with respect to this Lease (for example for the regular payment of Rent under this Lease as opposed to late payments) shall be in writing and addressed to Landlord and Tenant as provided in the foregoing paragraph, and may be sent by first class mail or e-mail, in which case they shall be deemed delivered three Business Days after deposit in the United States mail, provided that no postal strike (or other event likely to disrupt postal service) is then in effect.

21.3 **Change of Address.** Either party may change its address by Notice in compliance with this Lease. Notice of such a change shall be effective only upon receipt.

21.4 **Acknowledgment; Notice by Counsel.** Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

## 22. NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and its parent, subsidiary(ies), or affiliated corporations or other entities, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including the proceeds thereof). No property or assets whatsoever, except Landlord's interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this paragraph shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under any Supplementary Agreement. No shareholder, officer, member, manager, director, agent, or employee of Tenant or Landlord shall have any liability under this Lease, but this shall not limit any liability arising under the express terms of any Supplementary Agreement. (This Lease sometimes refers to this paragraph as the "**Nonrecourse Clause.**")

## 23. ADDITIONAL DELIVERIES; THIRD PARTIES

23.1 **Estoppel Certificates.** Up to twice a year, each party to this Lease (a "**Requesting Party**") may require the other party (a "**Certifying Party**") to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. The Certifying Party shall sign, acknowledge, and return such Estoppel Certificate within 15 days after request, even if the Requesting Party is in Default. Any Estoppel Certificate shall bind the Certifying Party.

23.2 **Further Assurances.** Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

23.3 **Memorandum of Lease.** Upon request by either, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a Memorandum of Lease. Either party may record such Memorandum of Lease. Any taxes and fees imposed upon such recording shall be paid by Tenant. If the parties amend this Lease, then the parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease.

23.4 **Modification.** Any Modification of this Lease must be in writing signed by the party to be bound.

23.5 **Successors and Assigns.** This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any Transfer restrictions.



23.6 **No Third-Party Beneficiaries.** Nothing in this Lease confers on any Person (except Landlord, Tenant, Leasehold Mortgagees, and Fee Mortgagees) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

## 24. GUARANTY

24.1 **Guaranty.** Concurrently with the execution and delivery of this Lease, Tenant shall deliver to Landlord a Guaranty in the form attached hereto as **Exhibit C** executed by Guarantor and acknowledged.

## 25. ARCHAEOLOGICAL AND HISTORICAL ITEMS

25.1 **Discovery of Items.** In the event any human remains, artifacts, historical items, or any of them (collectively the “**Discovered Items**”) are discovered on the Premises, Tenant shall, at Tenant’s sole expense and subject to the approval of Landlord, be responsible to: (a) cause all excavation in the immediate area which may damage the Discovered Items and the potential historic site to cease; (b) cause the site to be stabilized and secured to temporarily protect the Discovered Items against damage, theft, or both; (c) cause the Discovered Items to be left untouched so that their archaeological or historical context may be accurately documented; and (d) cause the discovery to be reported immediately to Landlord and to Government as required by applicable Laws. If the artifacts or historical items are found without human remains, and leaving the artifacts or historical items in their stabilized and secured site poses a substantial risk of loss or damage to all or part of them, and their removal is therefore necessary, Tenant shall cause such removal and shall cause any tampering with the artifacts, the historical items, and the site to be minimized as much as possible.

25.2 **Human Remains.** In the case of the discovery of human remains, Tenant shall, at Tenant’s sole expense and in addition to the duties set forth in this section, cause to be prepared and executed a mitigation plan acceptable to Landlord and to Government possessing jurisdiction over such matters. Tenant shall also be responsible to obtain written verification that the mitigation plan has been successfully implemented.

25.3 **Landlord’s Reservation.** If any Discovered Items are discovered, then Landlord shall have the right at all reasonable times to enter the Premises for the purposes of searching for, exploring for, and removing any of the Discovered Items for preservation as permitted by Law. All objects, antiquities and specimens of Hawaiian or other ancient art or handicraft or of prehistoric, historic or archaeological interest found on the Premises belong to and shall remain the property of Landlord.

25.4 **Studies by Tenant.** In the event any archaeological studies or historic preservation studies are sought to be conducted in or on the Premises, by Tenant or anyone acting by or through Tenant, Tenant shall not permit such studies to be commenced without the prior written consent of Landlord, unless Tenant is required by

applicable Law to permit such studies, in which case Landlord's consent shall not be required but Tenant shall provide Landlord with prior Notice of the commencement of such studies and shall advise Landlord of the applicable Law mandating such studies. In any event, Tenant shall upon completion of such studies cause a complete copy of the results of such studies to be provided to Landlord at the earliest opportunity.

## 26. MISCELLANEOUS

26.1 **Confidential Information.** Without limitation of the promises in Section 10.12, each party agrees that, except as otherwise provided by applicable Laws, or in connection with proceedings before the State of Hawaii Public Utilities Commission or other governmental body with jurisdiction over the Premises, or in connection with the evaluation for financing of the Premises, or as part of disclosure to its affiliates, attorneys, consultants, and advisers in order to conduct its business or proceedings to enforce this Lease or the Power Purchase Agreement, or to record a Memorandum of Lease under Section 23.3 of this Lease, such party (including its officers, directors, employees, representatives, brokers, attorneys and advisers) shall keep the contents of this Lease and any information related to the Premises, Tenant and the transaction contemplated by this Lease confidential, whether or not marked as "confidential" (collectively, the "**Confidential Information**"). The Confidential Information shall not include any information publicly known, or which becomes publicly known, other than through the acts of a party to the Lease, or any of their respective officers, directors, employees, representatives, brokers, attorneys or advisers. Tenant may retain possession of all or any part of the Confidential Information to the extent such Confidential Information relates solely to the Property and Tenant's operations thereon.

26.2 **Costs and Expenses; Legal Costs.** In the event of any litigation or dispute between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

26.3 **No Consequential Damages.** Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any

damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

**26.4 No Waiver by Silence.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive such breach or any other breach.

**26.5 Performance Under Protest.** If a dispute arises about performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

**26.6 Survival.** All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

**26.7 No Broker.** Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Lease and no person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such party; and (b) shall indemnify the other party against any breach of such representation.

**26.8 Unavoidable Delay.** Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

## **27. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE**

**27.1 Captions.** The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

**27.2 Counterparts.** This Lease may be executed in counterparts.

**27.3 Delivery of Drafts.** Neither party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

**27.4 Entire Agreement.** This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements,

oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

**27.5 Governing Law.** This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

**27.6 Partial Invalidity.** If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows.

**27.7 No Party Deemed Drafter.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers.

**27.8 Reasonableness.** Wherever this Lease states that a party shall not unreasonably withhold approval: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter.

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease as of the Commencement Date.

**MAUI ELECTRIC COMPANY, LIMITED** \_\_\_\_\_

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

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

**Landlord**

**Tenant**

EXHIBIT A

[Insert Legal Description – to be finalized upon completion of subdivision]

**Exhibit B**

**ESTOPPEL CERTIFICATE**

This ESTOPPEL CERTIFICATE (the “**Certificate**”) is delivered as of \_\_\_\_\_ (the “**Effective Date**”), by \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“**Certifying Party**”) based on these facts:

(a) Maui Electric Company, Limited, a Hawaii corporation (“**Landlord**”) owns the real property described in Exhibit A of the Lease attached hereto as Exhibit 1 (“**Landlord’s Premises**”).

(b) Landlord has leased Landlord’s Premises (the “**Leased Premises**”) to \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“**Tenant**”), by that certain Ground Lease dated as of \_\_\_\_\_, \_\_\_\_\_ (as amended, restated, renewed, modified, or supplemented from time to time, the “**Lease**”). All Section references in this Certificate refer to the Lease.

(c) The Lease has been amended or modified only as follows: \_\_\_\_\_.

(d) [A memorandum of the Lease was [recorded in the Bureau of Conveyances of the State of Hawaii as Document No. \_\_\_\_\_] [filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. \_\_\_\_\_, and noted on Transfer Certificate of Title No. \_\_\_\_\_]].

(e) [Landlord/Tenant] has requested that Certifying Party deliver this Certificate.

NOW, THEREFORE, Certifying Party certifies and acknowledges as follows, all as of the Effective Date:

1. **Definitions.** Capitalized words used in this Certificate without definition shall have the same meaning as in the Lease.

2. **Recitals.** The statements set forth in the recitals of this Certificate are true and correct and are incorporated into the text of this Certificate by this reference.

3. **Copy of Lease.** Attached as **Exhibit 1** is a true and complete copy of the Lease.

4. **Term.** The term of the Lease commenced on \_\_\_\_\_ and expires on \_\_\_\_\_, unless extended or sooner terminated as provided by the terms and conditions thereof.

5. **Status.** [If Certifying Party is Landlord: Except as the public record discloses, Landlord: (a) is landlord under the Lease; (b) has not conveyed, mortgaged, or assigned Landlord's Premises or Landlord's interest in the Lease; and (c) has not agreed to do so.] [If Certifying Party is Tenant: Tenant (a) is tenant under the Lease; and (b) is in full and complete possession of the Premises, such possession having been delivered by Landlord under the Lease and accepted by Tenant as complying with the terms and conditions of the Lease.]

6. **Monthly Rent.** The amount of the current base monthly rent due and payable by Tenant is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

7. **Payments.** Tenant is current in payment of: (a) Fixed Rent through and including the payment that was due on \_\_\_\_\_; and (b) all Additional Rent for which Landlord has billed Tenant, except: \_\_\_\_\_. There has been no prepayment of rent other than as provided by the Lease.

8. **Security Deposit.** Tenant has given Landlord a security deposit under the Lease in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which security deposit does not accrue interest for the benefit of Tenant.

9. **Prior Assignments.** Certifying Party has received no written notice of an assignment of the Lease.

10. **Full Force and Effect.** To Certifying Party's knowledge, the Lease: (a) is in full force and effect; (b) has not been amended, cancelled, supplemented, surrendered, or terminated except as this Certificate states; and (c) contains the entire agreement between Landlord and Tenant (and any parties related to either of them) about the Leased Premises and the Lease.

11. **No Default.** To Certifying Party's knowledge, there are no existing defaults on the part of either Tenant or Landlord under the Lease, nor has any event occurred that, with passage of time or giving of notice or both, would constitute such a default.

12. **No Termination.** Certifying Party has neither given nor received any notice of termination of the Lease.

13. **No Defenses.** Certifying Party does not have or hold any defense, offset, claim, counterclaim, or right of recoupment against its obligations under the Lease.

14. **Guarantor.** The obligations of Tenant under the Lease are guaranteed by: \_\_\_\_\_ under that certain Guaranty of Lease dated \_\_\_\_\_ ("**Guaranty**"). The Guaranty has been amended or modified only as follows: \_\_\_\_\_.

[Signature is on the following page.]

Certifying Party has read this Certificate and acknowledges and understands the certifications and representations made herein. Certifying Party hereby executes this Certificate, intending reliance hereon by [Landlord/Tenant], and its respective successors and assigns. Certifying Party has full authority to execute this Certificate, which has been duly authorized by all necessary action.

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

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Certifying Party**

Attachment:

Exhibit 1 = Copy of Lease



**Exhibit C**

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE (“**Guaranty**”), is made as of the day of , 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (*[collectively]*) the “**Guarantor**”), in favor of MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, its successors and assigns (“**Landlord**”).

**Recitals:**

(a) \_\_\_\_\_ (“**Tenant**”) is entering into that certain Ground Lease of even or approximate date herewith (as it may hereafter be amended from time to time, the “**Lease**”), pursuant to which Tenant is leasing from Landlord certain real property located at \_\_\_\_\_ (“**Premises**”).

(b) Guarantor is *[the owner]* *[an affiliate]* of Tenant, and it is a material inducement and condition precedent to Landlord’s entering into the Lease that Guarantor guarantee Tenant’s Lease obligations pertaining to Hazardous Substances and Improvements.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms set forth in this Guaranty, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. **Definitions.** Capitalized words used in this Guaranty without definition shall have the same meaning as in the Lease. In the event of a conflict between capitalized terms defined herein and in the Lease, the Lease shall control.

2. **Absolute and Unconditional Guaranty.** Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Landlord the full and punctual performance by Tenant of the following obligations under the Ground Lease to be performed and observed by Tenant: (a) Tenant’s obligations under Article 10 (Hazardous Substances) of the Lease; and (b) Tenant’s obligations under Sections 20.1 (Improvements), 20.2 (Tenant’s Removal of Improvements) and 20.3 (Landlord’s Removal of Improvements) of the Lease (collectively, the “**Guaranteed Obligations**”). Guarantor shall be jointly and severally liable with Tenant and with any other guarantors of any of Tenant’s obligations under the Lease. The Guarantor agrees that if an Event of Default occurs under the Lease with respect to the Guaranteed Obligations, Landlord may proceed directly against and recover from the Guarantor before, after, simultaneously with, or without proceeding against Tenant or any other guarantors.

3. **Primary and Direct.** Guarantor’s liability under this Guaranty shall be primary and direct. This is a guaranty of payment and not just a guaranty of collection.

In any right or action which shall accrue to Landlord under the Lease, Landlord may, at its option, proceed against Guarantor without having commenced any action, exhausted other remedies, or having obtained any judgment against Tenant, or having proceeded against Tenant or any collateral posted as security under the Lease.

4. **Modification to Lease.** The obligations of the Guarantor under this Guaranty shall not be terminated, affected, or impaired in any manner by: (a) any changes, modifications, or amendments to the Lease; (b) any extension, or renewal of the term of the Lease, or expansion of the Premises; or (c) Landlord's waiver of any terms, covenants, conditions, or agreements of the Lease; all of which may be done without notice to, or the consent of, the Guarantor.

5. **Guaranty Not Affected by Any Events Other Than Full Performance.** The obligations of the Guarantor under this Guaranty shall not be terminated, affected, or impaired in any manner by reason of: (a) the assertion by Landlord against Tenant of any of the rights or remedies available to Landlord under the Lease; (b) the release or discharge of Tenant from any of Tenant's obligations under the Lease by operation of any bankruptcy, insolvency, or similar law or the actual or purported rejection of the Lease by a trustee in bankruptcy on behalf of Tenant; (c) the waiver by Landlord of, or the failure of Landlord to exhaust or pursue, any of its rights or remedies available against Tenant or any other guarantor; (d) the granting by Landlord of any indulgences or extensions of time to Tenant; (e) any subletting of all or any part of the Premises or any assignment or other transfer of the Lease; (f) any defenses, setoffs, or counterclaims of Tenant; (g) Landlord's release or discharge of any other guarantor or surety; (h) Landlord's receipt, application, release, or impairment of any security or collateral given to secure the performance and observance of the terms and covenants of the Lease; or (i) any dealings or course of conduct between Tenant and Landlord.

6. **Guarantor's Waivers.** Guarantor waives (a) notice and proof of notice of non-payment of rent or any other amounts to be paid by Tenant under the Lease; (b) notice and proof of notice of default or nonperformance of any of Tenant's other covenants, conditions and agreements contained in the Lease; (c) counterclaim, setoff, deduction, diminution, abatement, recoupment, suspension, deferment, reduction or other defense; (d) opportunity to cure any event of default; (e) any rights which may accrue to Guarantor should Tenant be involved in any bankruptcy, insolvency or reorganization proceeding; (f) notice of acceptance of this Guaranty or any other notice or demand to which Guarantor might otherwise be entitled; (g) all defenses other than payment and performance in full; and (h) all suretyship defenses.

7. **Guarantor's Representations.** Guarantor represents and warrants that

(a) Guarantor has the right, power and authority (without the consent of any other person, entity or governmental authority) to enter into, and to perform its obligations under, this Guaranty.

(b) Guarantor has taken all requisite corporate, partnership, or limited liability company action to approve the execution, delivery and performance of this Guaranty, the person signing on behalf of Guarantor is authorized and empowered to do so, and the execution and delivery of this Guaranty are not in contravention of its charter, by-laws or other governing documents, and have been authorized by its partners, members, managers, and/or its board of directors, as applicable.

(c) This Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

(d) The statements set forth in the recitals of this Guaranty are true and correct and are incorporated into the text of this Guaranty by this reference.

(e) Guaranty agrees to promptly supply Landlord with such financial information as may be reasonably requested by Landlord from time to time.

(f) Guarantor is not in default under any agreement to which it is a party or by which it is bound, or bound by any decree, ruling, judgment, order or injunction which (together or singly) would materially and adversely affect its ability to perform under this Guaranty, and there is no action, proceeding or investigation pending or threatened against Guarantor which (together or singly) could materially and adversely affect its ability to perform under this Guaranty.

(g) Neither the execution and delivery of this Guaranty nor its performance under this Guaranty shall result in a breach of or default under any agreement, decree, ruling, judgment, order or injunction to which Guarantor is a party or by which it may be bound.

(h) Guarantor is not insolvent nor will it, as a result of this Guaranty, be rendered insolvent; Guarantor is not undercapitalized and will not become undercapitalized as a result of this Guaranty; and Guarantor has not incurred and does not intend to incur debts beyond its ability to pay as its debts mature, and, in fact, all accounts payable are current and not overdue.

8. **Landlord's Fees.** Guarantor is liable to Landlord for any expenses, including reasonable attorneys' fees and court costs, incurred by Landlord in enforcing any obligations of Guarantor under this Guaranty.

9. **If Payments Recovered from Landlord.** In the event that any obligation is paid by Tenant or Guarantor and thereafter all or any part of such payment is recovered from Landlord as a preferential or fraudulent transfer under the United States Federal Bankruptcy Code or state insolvency law or applicable bankruptcy laws and regulations or another jurisdiction, or any other similar United States federal or state law now or hereafter in effect, the liability of Guarantor under this Guaranty, any respect to such

obligation so paid and recovered shall continue and remain in full force and effect as if, to the extent of such recovery, such payment had not been made. As used in this Guaranty, "state" includes the District of Columbia, the commonwealth of Puerto Rico, any United States territory, and any other political subdivision that is the equivalent of any of the foregoing.

10. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall (a) remain in full force and effect until all of Tenant's obligations under the Lease and all of Guarantor's obligations under this Guaranty shall have been paid, performed or discharged in full; (b) be binding upon Guarantor and its heirs, personal representatives, successors, transferees and assigns, as applicable; (c) inure to the benefit of and be enforceable by Landlord and its successors, transferees and assigns; and (d) continue to be effective or be reinstated (as the case may be) if Tenant's performance under the Lease or Guarantor's performance under this Guaranty is rescinded or revoked in the event of insolvency, bankruptcy or reorganization. Guarantor waives any right of indemnification, subrogation or reimbursement that it may have against Tenant. Guarantor agrees that it is not made a creditor of Tenant by virtue of this Guaranty.

11. **Multiple Recoveries.** Guarantor agrees that repeated and successive demands may be made and recoveries may be had under this Guaranty as and when, from time to time, Tenant shall fail to pay or perform an obligation when due and that notwithstanding the recovery under this Guaranty for or in respect of any given failure by Tenant under the Lease, this Guaranty shall remain in force and effect and shall apply to each and every subsequent such failure.

12. **Notices.** All notices and communications under this Guaranty shall be made in writing and may be delivered by hand (including overnight courier) or by first-class certified or registered mail, return receipt requested, to the following addresses:

To Landlord: Maui Electric Company, Limited.  
210 West Kamehameha Avenue  
Kahului, Hawaii 96732-2253  
Attention: Renewable Energy Projects  
E-mail: connect@mauielectric.com

With a copy to:  
Maui Electric Company, Limited  
P.O. Box 398  
Kahului, Hawaii 96733-6898

To Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

Either party may change its address (or its addressee) to another address within the United States by notice to the other. All notices and communications shall be effective upon receipt (or refusal to accept delivery).

13. **Joint and Several.** If Guarantor consists of more than one person and/or entity, their obligations shall be joint and several, and each agreement, representation or warranty shall be deemed to have also been made separately on its own behalf by each person or entity comprising Guarantor.

14. **Successors and Assigns.** In the event of an assignment by Landlord of the Ground Lease, the rights hereunder may be transferred by Landlord to such successor, transferee or assign. Guarantor may not assign or transfer its rights or obligations hereunder without the express prior written consent of Landlord. Any attempted assignment in violation of this section shall be null and void.

15. **Governing Law; Venue.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Hawaii, without reference to any principles of conflict of laws. Venue for all actions or proceedings relating to or arising out of this Guaranty shall be in the County in which the Premises are located.

16. **Waiver of Jury Trial.** **GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO OR ARISING UNDER THIS GUARANTY.**

17. **Remedies Cumulative.** The exercise by Landlord of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise by Landlord of any other right or remedy. No termination of the Ground Lease or recovery of the Premises shall deprive Landlord of any of its rights and remedies against Guarantor under this Guaranty.

18. **Severability.** If any provision of this Guaranty or the application of any provision shall to any extent be void, unenforceable or invalid, then such provision shall be reinterpreted to the greatest extent possible to make it enforceable and valid, and the rest of this Guaranty shall be unaffected thereby and continue in full force and effect.

19. **Modification to Guaranty.** No waiver or modification of any provision of this Guaranty shall be effective unless in writing and signed by Landlord, and no waiver by Landlord shall be applicable except in the specific instance for which it is given.

20. **Entire Agreement.** This Guaranty is the full and complete agreement of the parties, and Landlord has made no promises or representations to Guarantor except as set forth herein.

21. **Interpretation and Construction.** The various headings of this Guaranty are inserted for convenience only and shall not affect the meaning or interpretation of this Guaranty or any provisions hereof. The use of the singular shall be deemed to refer to the plural whenever the context so requires. The use of the masculine, feminine, or neuter genders shall be deemed to refer to another gender wherever the context so requires.

22. **Counterparts; PDF.** This Guaranty may be executed in counterparts, each of which is deemed an original, and such counterparts constitute one and the same instrument, which may be sufficiently evidenced by a counterpart. A facsimile, telecopy, PDF, or other reproduction of this Guaranty may be executed by one or more parties, and an executed copy of this Guaranty may be delivered by one or more parties by facsimile, PDF e-mail, and such execution and delivery is valid, binding and effective for all purposes. At the request of the Landlord, the Guarantor agrees to execute an original of this Guaranty as well as any facsimile, telecopy or other reproduction hereof. Duplicate counterpart signature pages may be combined into one Guaranty.

**[Signature is on the following page.]**

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first above written.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**Guarantor**

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**  
**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix L – Selection Criteria*



**Maui  
Electric**



**APPENDIX L  
SELECTION CRITERIA  
VARIABLE RENEWABLE DISPATCHABLE GENERATION  
ISLAND OF MAUI**

**A. Introduction**

This document outlines the evaluation and selection process the Company will implement for reviewing, evaluating, and selecting resources at each stage in the evaluation process. The document outlines the Company's process for receiving Proposals, conducting the initial Eligibility and Threshold assessment and the bid evaluation process, ultimately resulting in selection of the Short List and Final Award Group.

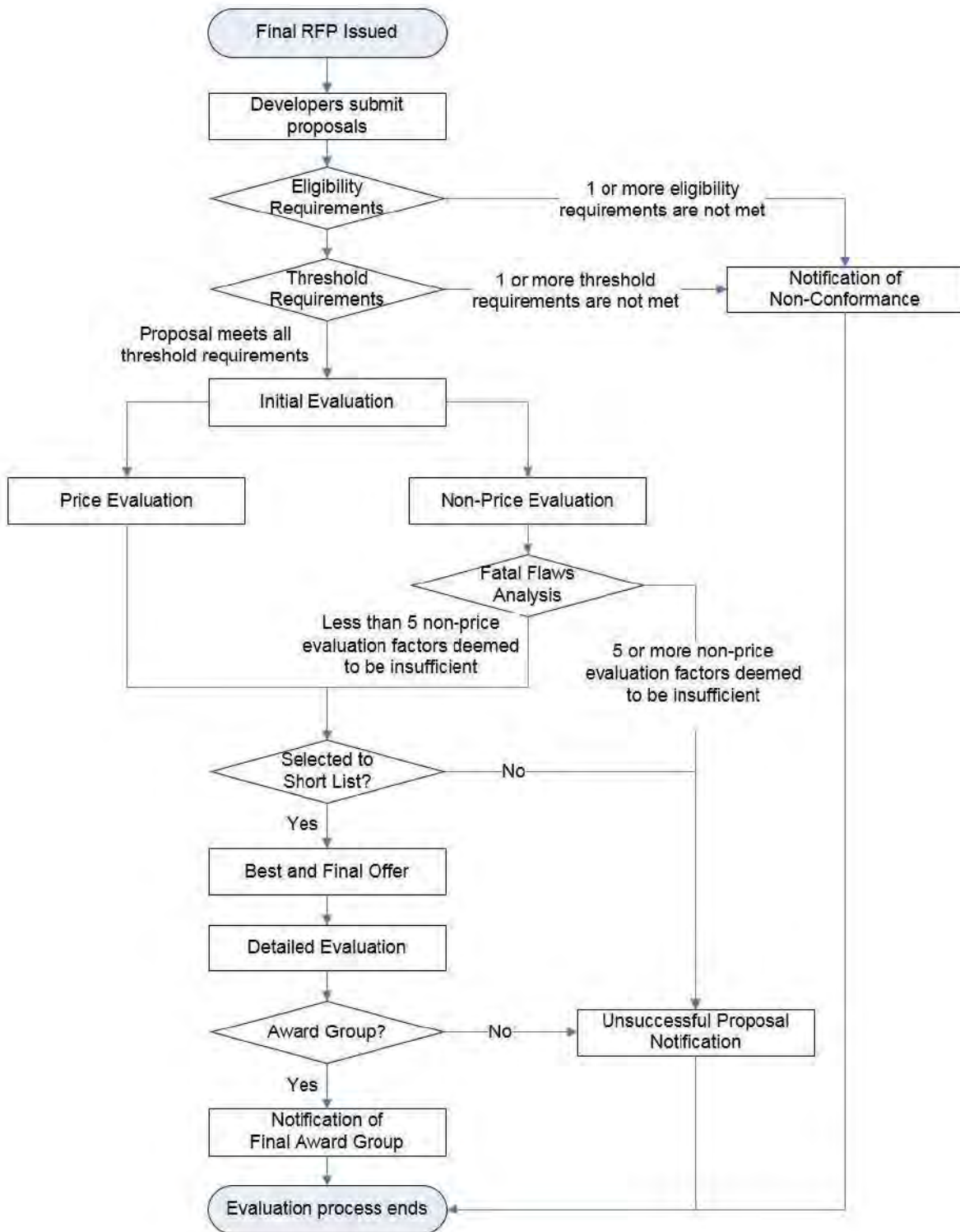
The Company will employ a multi-step evaluation process for the Variable Renewable Dispatchable Generation RFP. The Proposals will be subject to a consistent and defined review, evaluation and selection process. Upon receipt of the Proposals, the Company will ensure that the Proposals meet the Eligibility requirements, and if met, will review the Proposals to ensure that the Threshold Requirements are met. Proposals that have successfully passed the Eligibility and Threshold criteria assessments will then enter a two-step Proposal evaluation process. The process includes the Initial Evaluation selection of a Short List, followed by the opportunity for Short-Listed Proposals to provide Best and Final Offers, and then a Detailed Evaluation process to arrive at a Final Award Group.

**B. Receipt of Proposals**

Proposals must be submitted through the PowerAdvocate Platform by the proposal close date specified in Chapter 3 of the RFP. The PowerAdvocate Platform will not accept the submission of late information for this event.

Figure 1 below from the RFP Document illustrates the complete evaluation process.

**Figure 1 – Evaluation Workflow**



### **C. Eligibility Requirements Assessment**

The Company RFP team, with oversight from the Independent Observer, will begin a review of the Proposals to determine if the Proposals meet the Eligibility Requirements. If a Proposal is deemed not to meet the Eligibility Requirements, the reasons for such failure will be identified and documented. From Section 4.2 in the RFP:

- The Proposal must be received on time via the PowerAdvocate Platform.
- The non-refundable Proposal Fee must be received on time.
- The Proposal must not contain material omissions.
- The Proposal must be signed and certified by an officer or other authorized person of the Proposer.
- There must not have been illegal or undue attempts by or on behalf of the Proposer or others to influence the Proposal review process.
- The Proposal must not contain misrepresentations.
- The Proposers must fully execute the agreements or other documents required pursuant to this RFP.
- The Proposer must provide a certificate of good standing from the State of Hawai'i Department of Commerce and Consumer Affairs.
- The Proposer must provide Federal and State tax clearance certificates for the Proposer.
- The Proposal must not be contingent upon changes to existing county, state or federal laws or regulations.
- The proposed Project must be located on the Island of O'ahu.
- No single point of failure from the Facility shall result in a decrease in net electrical output greater than 135 MW.
- Storage systems that are coupled with a Facility must only be charged by the renewable energy generated by the Facility and not delivered from the grid.

The Company in coordination with the Independent Observer will determine if a Proposer is allowed to cure any aspect of its Proposal or whether the Proposal would be eliminated based on failure to meet Eligibility Requirements.<sup>1</sup> If a Proposer is provided the opportunity to cure any aspect of its Proposal, the Proposer shall be given three (3) business days to cure from the date of notification to cure.

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<sup>1</sup> As a general rule, if a Proposer does not include a requested document or may inadvertently exclude minor information or provides inconsistencies in its information, it may be given a chance to cure the inadequacies. If a Proposer does not include significant sections of its Proposal and providing the Proposer with the opportunity to cure is deemed a benefit to that Proposer at the expense of the competitors it could be classified as non-conforming and eliminated for failure to meet the eligibility requirements.

#### D. Threshold Requirement Assessment

Proposals that meet all the Eligibility Requirements will then be evaluated to determine compliance with the Threshold Requirements, which have been designed to screen out Proposals that are insufficiently developed, lack demonstrated technology, or will impose unacceptable execution risk for the Company. Proposals that fail to meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer. The Threshold Requirements for this RFP are the following:

- **Site Control:** The Proposal must demonstrate that the Proposer has Site Control for all real property required for the successful implementation of a specific Proposal at a Site not controlled by the Company, including any Interconnection Facilities for which the Proposer is responsible. If the Threshold Requirement for Site Control is met, Site Control will be further evaluated as a part of the Non-Price evaluation.
- **Performance Standards:** The proposed Facility must be able to meet the attributes identified in this RFP and the Performance Standards identified in the Model Renewable Dispatchable Generation PPA (“Model PPA”).
- **Proven Technology:** The Company will only consider Proposals utilizing technologies that have been successfully reached commercial operations in multiple commercial applications at the scale being proposed.
- **Experience of the Proposer:** The Proposer, its affiliated companies, partners, and/or contractors and consultants on the Proposer’s Project team must have experience in the development and operation of at least one (1) electricity generation project through the commercial operations stage where such project was of a similar in size (i.e., no less than half of the size of the project being proposed in response to this RFP), scope, technology, and structure to the Project being proposed by Proposer.
- **Credit/Collateral Requirements:** Proposers shall agree to post Development Period Security and Operating Period Security as described in Section 3.13 of the RFP.
- **Available Transmission Circuit Capacity:** The output capacity of the Proposed project must not exceed the available capacity of the transmission circuit to which it will interconnect.
- **Financial Viability of Proposer:** Proposers must provide a basic financial plan for the project with details on the sources of debt and equity, capital structure, etc.
- **Guaranteed Commercial Operations Date:** The project’s Guaranteed Commercial Operations Date must be no later than December 31, 2022.

If necessary, during the Eligibility and Threshold evaluation, the Company may identify specific follow-up questions for each Proposer to ensure that a complete and thorough evaluation can then be undertaken. Proposers will have up to three (3) business days to complete and submit their responses from the date of the request by the Company. Proposals that fail to meet a Threshold Requirement will be eliminated from further consideration upon concurrence with the Independent Observer.

### **E. Initial Evaluation Resulting in Selection of the Short List**

Proposals that meet both the Eligibility and Threshold requirements will then be subject to a price and non-price assessment. Two teams have been established to undertake the bid evaluation process: (1) the Price Evaluation Team and (2) Non-Price Evaluation Team. Each team will work independently and not divulge the scoring or ranking of Proposals to the other team.

The results of the price and non-price analysis will be a relative ranking and scoring of all eligible proposals within technology buckets where the inclusion of storage will be treated as a separate technology bucket (i.e., Solar PV, Solar PV plus energy storage, wind, wind plus storage, etc.). For the short-listing process, price-related criteria will be weighed at 60% of the total ranking and non-price at 40%. The Company's objective for the Short List selection process is to identify and select proposals that are low cost and viable projects, as defined by the price and non-price weights at this stage in the process.

#### **Price Evaluation**

For the initial price analysis, an equivalent energy price (Levelized \$/MWh) will be calculated for each Proposal based on information provided in the Proposal including the Lump Sum Payment (\$/month), Energy Payment Price (\$/MWh), and the Net Energy Potential ("NEP") RFP Projection (MWh) information defined in Section 3.11.2 of the RFP.

In order to fairly evaluate Proposals with different technologies and characteristics while using an equivalent energy price in Levelized \$/MWh at this stage in the evaluation, the Company will group Proposals being evaluated into technology buckets.<sup>2</sup> The Company will then conduct the comparative evaluation and award evaluation points to Proposals within each technology bucket in accordance with the relative ranking based on levelized price per MWh. The Proposal with the lowest levelized price in each technology bucket will receive 600 points and all other proposals in that technology bucket will receive points based on the percentage increase in the Proposal's levelized price when compared to the lowest levelized price in the same technology

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<sup>2</sup> The process of grouping proposals into technology buckets rather than merely calculating levelized costs for each proposal and ranking accordingly has several advantages for such a solicitation process with multiple technology options. First, levelized cost analysis is a reasonable screening tool that can be used effectively to evaluate "like" or similar proposals or technologies with similar characteristics. Second, ranking and selecting proposals in technology buckets ensures that all technologies will have the opportunity to compete during the final evaluation process when the implications of each proposal on the utility system costs are evaluated. Third, effectively comparing technologies or proposals with different operating characteristics is challenging and does not provide reasonable results when using a levelized cost methodology. For example, in All-Source RFPs, it is not reasonable or effective to compare a Demand-Response product that offers 100 hours of operations relative to a combined cycle project that can operate at a very high capacity factor. The levelized costs of each option will be dependent on the capacity factor of each option rather than a "one size fits all" result. The bucketing process, which allows for comparison of like resources, therefore eliminates the potential shortcomings associated with the use of levelized costs as a screening tool for comparing different projects in such a process.

bucket. For example, if Proposal B's levelized price is 10% higher than the lowest cost Proposal (i.e., Proposal A), the lowest cost Proposal will be awarded 600 price points, while Proposal B, which is 10% higher in price will be awarded 90% of the points or 540 points. The result of this assessment will be a ranking and scoring of each proposal within each technology bucket.

### **Non-Price Evaluation**

For the non-price analysis, each Proposal will be evaluated based on each of the eleven (11) non-price criteria categories set forth in Appendix L, with each non-price criteria category in Appendix L weighted equally. The non-price criteria categories include:

1. Community Outreach and Engagement
2. Cultural Resource Impacts
3. Environmental Review and Permitting
4. Experience and Qualifications
5. Financial Strength and Financing Plan
6. State of Project Development and Schedule
7. Site Control
8. Environmental Compliance/Impacts
9. O&M Plan
10. Model PPA Contract Exceptions
11. Financial Compliance

Proposals will be evaluated using the following non-price criteria to assess their merit in the general areas of project development feasibility and operational viability.

**Community Outreach and Engagement** – Gaining community support is an important part of a project's viability and success. Proposals will be evaluated on their plan to inform the neighboring community of the project, incorporate changes based on community input, and any community outreach and engagement efforts that have been performed to date. At a minimum, proposals should include a community outreach plan that describes the proposer's intentions to work with the neighboring community to provide project information during project development and construction and to address any local and community issues that may arise. Additional preference will be given to proposers who have already established contacts to work with the local community and have proposed a community benefits package. Preference will also be given to developers and/or their selected community consultant that have successfully worked with one or more Hawai'i communities for project development (energy or projects with similar community issues). This criteria is aligned with the Companies' new community engagement process whereby all developers will be required to engage in community outreach prior to signing a PPA with the Companies. This process is also outlined in the RFP document.

**Cultural Resource Impacts** – Projects should be mindful of their potential impact to cultural resources. Parties should, at a minimum, identify (1) valued cultural, historical, or natural resources in the area in question, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Proposals will be evaluated on their plan to assess and mitigate their impact to cultural resources and any assessments that have been conducted to date. At a minimum, proposers should have already contracted with a consultant with expertise in this field to begin a cultural impact assessment for the project. Additional preference will be given to Proposals that are further along in the assessment process and are able to provide a mitigation/action plan or are able to provide a date for when a mitigation/action plan will be available that addresses any identified cultural resource issues.

**Environmental Review and Permitting Plan** – Completing any necessary environmental review and obtaining the required permitting in a timely manner is important to meeting construction schedules. Proposals will be evaluated on their plan to identify, apply for, and secure the required permits for the project, any permitting activity that has been completed to date, and the degree of certainty offered by the Proposer in securing the necessary permits. At a minimum, proposers should have identified all major permits and approvals required and have a preliminary plan for securing the permits. Additional preference will be given to Proposals that are able to provide a greater degree of certainty that its plan to secure the required permits is realistic and achievable, or have already received all or a majority of the required permits.

**Experience and Qualifications** – Developers with a demonstrated ability to construct and interconnect projects to the Company grid can reasonably be expected to be able to successfully complete a project with a higher level of confidence than those without any prior experience. Therefore, proposals will be evaluated based on the experience of the Developer in constructing, interconnecting and operating projects through the commercial operations stage of similar size (i.e., no less than half of the size of the project being proposed in response to this RFP), scope and technology. At a minimum, the proposer and its team should have experience with developing at least one project of a similar size and technology to the one being proposed. Additional preference will be given to proposers with experience in successfully developing, financing constructing, and operating multiple projects that are similar to the one being proposed and/or that have prior experience developing a project in Hawai‘i.

**Financial Strength and Financing Plan** – This criterion addresses the comprehensiveness and reasonableness of the financial plan for the project as well as assesses the financial strength and capability of the proposer to develop the project. A

complete financial plan addresses the following issues: project ownership, capital cost and capital structure, sources of debt and equity, and evidence that the project is financeable. The financial strength of proposers or their credit support providers will be considered, including their credit ratings. At a minimum, the Proposal should include a basic financial plan for the project covering the sources of debt and equity, capital structure, etc. and provide evidence of general support for the project financing. The financing participants are expected to be reasonably strong financially. Additional preference will be given to financial plans that are more comprehensive and also achievable, provide stronger evidence (for example, a letter from a financial institution or bank) that the project is financeable, and that can demonstrate that the proposer has the capability and financial strength to develop and finance the project. Developers and their sources of capital that have investment grade credit ratings from a reputable credit rating agency (S&P, Moody's, Fitch) will also be given preference, with those that have higher credit ratings ranked higher. This criterion will also look at the high-level project costs set forth in the Proposal including: costs for equipment, construction, engineering, Seller-Owned Interconnection Facilities, Company-Owned Interconnection Facilities, Land, and Annual O&M and the reasonableness of such costs. Project costs that do not appear reasonable for a project of the size proposed may result in a lower ranking for this criterion if the Company reasonably determines that the cost information is unrealistic based on prior experience in the market which may result in a risk that the Project can be built on time and for the price proposed by the Proposer. The Company reserves the right to discuss any cost and financial information with a Proposer to ensure the information provided is accurate and correct.

**State of Project Development and Schedule** – Projects that are further along in development generally have lower project execution risk and a greater probability of being able to be successfully placed into service prior to the Commercial Operations Date required to be no later than December 31, 2022 and are more likely to be able to pass along tax credit savings to customers. At a minimum, projects should be able to demonstrate that there is a reasonable chance that the project will be able to meet the 2019 investment tax credit safe harbor and a commercial operations date no later than December 31, 2022. Additional preference will be given to proposals that are able to demonstrate via a detailed critical path schedule, including identifying adequate slack time, that there is a high likelihood that the project will be able to meet the 2019 investment tax credit safe harbor and commercial operations by the end of 2022.

**Site Control** – This criterion relates to the status of site ownership and control by the project sponsor as well as the maturity of site control. In addition, developmental requirements and restrictions such as zoning of the site and the status of easements are considered. At a minimum, the proposer should have executed a letter of intent to develop the site and have a reasonable plan for addressing zoning, rights of ways, and



easements. Additional preference will be given to Proposers who: (1) own the site or have executed an agreement or option to purchase or lease the site, (2) propose a site that is currently appropriately zoned, or (3) have obtained or have letters of intent to obtain any required rights of ways and easements. It is anticipated and acceptable that there may be non-exclusive agreements or options for a particular site which would be contingent upon selection of projects.

**Environmental Compliance / Impacts** – This criterion relates to the potential environmental impacts associated with each project, the quality of the plan offered by the proposer to mitigate and manage any environmental impacts (including any pre-existing environmental conditions), and the plan of Proposers to remain in environmental compliance over the term of the contract. These impacts are reflected on a technology specific basis. At a minimum, proposed projects should be expected to have a minimal impact for most environmental areas and proposals should provide a preliminary plan to mitigate the identified impacts to remain in environmental compliance which should not significantly affect the project timeline. Additional preference will be given to proposals that provide a more detailed plan as well as those that have already proactively taken steps to mitigate environmental impacts.

**O&M Plan** – Operations and maintenance is an important aspect of project operations. This is especially important in the context of the new Model PPA structure, which relies on the continued performance of the Facility in exchange for fixed monthly payments. Proposals will be evaluated on their plan for operating and maintaining the Facility throughout the contract term including the status of any agreements with an O&M provider, the reasonableness of the O&M funding levels and mechanism, staffing levels, as well as any design plans that identify and incorporate features to ensure appropriate reliability is built into the project. At a minimum, proposals should include a reasonable O&M plan that identifies expected funding and staffing levels. Additional preference will be given to proposals that provide a more comprehensive plan or those that have identified a potential O&M provider or have already executed a minimum letter of intent with a reputable O&M provider.

**Model PPA Contract Exceptions** – Proposers may propose modifications to the Model PPA, including modifications that are intended to address a project's specific technology and operating characteristics. However, in general, Proposers are encouraged to accept the contract terms identified in the Model PPA where possible in order to expedite the overall RFP process and potential PPA negotiations. Proposers who elect to propose modifications to the Model PPA shall provide a red-line version of the Model PPA with their requested modifications as a component of their Proposals and shall also provide a detailed explanation and supporting rationale for each of the proposed modifications to the Model PPA in order to enable the Company and Independent Observer to evaluate the

impact that the proposed modifications will have on the overall risk assessment associated with the evaluation of each Proposal.

**Financial Compliance** – The proposed Project must not cause the Company to be subject to consolidation and capital lease treatment as set forth, respectively, in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification Topic 810, Consolidation (“ASC 810”) and 840, Leases (“ASC 840”) as issued and amended from time to time by FASB, nor lease treatment as set forth in FASB Accounting Standards Codification 842, Leases, effective January 1, 2019 (“FASB ASC 842”), as issued and amended from time to time by FASB. At a minimum, Proposers are required to state to the best of their knowledge, with supporting information to allow the Company to verify such conclusion, that the proposal will not: (1) trigger a capital lease accounting treatment under FASB ASC 840; (2) trigger lease treatment under FASB ASC 842; or (3) result in the Seller under the PPA being a Variable Interest Entity (“VIE”) that would trigger consolidation of the Sellers’s finances on to the Company’s financial statements under FASB ASC 810. The Company will perform a preliminary consolidation and capital lease assessment based on the Proposals received. If the Company believes that the Proposal may be subject to such treatment, it will inform the Proposer and either may request additional information or work with the Proposer to structure its agreement to avoid the lease and consolidation treatment. The Company reserves the right to allow a Proposal to proceed through the evaluation process through selection of the Short List and work with the Proposer on this issue during Model PPA negotiations. Projects that appear less likely to cause lease and/or consolidation treatment based on Company’s assessment will be rated more favorably. A final consolidation and capital lease assessment will be performed prior to execution of a PPA. Final analysis will focus on PPA revisions or proposal changes which, for lease consideration, could influence the right to direct the use of the project asset over the PPA term, and for consolidation issues, revisions or changes that could potentially affect determination of the primary beneficiary of the contractual arrangement, e.g., having or affecting the ability to direct activities that significantly impact economic performance of the project asset, such as the ability to direct or control operations and maintenance activities.

Each of the eleven non-price criteria will be scored on a scale of 1 (poor) to 5 (highly preferable). The total non-price score will be the sum of the scores for each of the eleven individual non-price criteria.

The Company will then award non-price evaluation points in accordance with the relative ranking of scores within each technology bucket. The Proposal in each technology bucket with the highest total non-price score will receive 400 points and all other Proposals within that technology bucket will receive points equal to the Proposal’s score divided by the top score, multiplied by 400.

During the non-price criteria evaluation, a fatal flaw analysis will also be conducted such that any Proposal that is deemed to not meet the minimum standards level<sup>3</sup> for five (5) or more of the eleven (11) non-price criteria will be disqualified given that any Proposal that has failed to meet the minimum standards of nearly half of the non-price criteria is indicative of the lack of general feasibility and operational viability of a proposed project.

### **Selection of the Short List**

At the conclusion of both the price and non-price analysis, a total score will be calculated for each Proposal using the 60% price-related criteria/40% non-price-related criteria weighting outlined above. The price and non-price analysis, and the summation of both price and non-price scores described above, will result in a ranking of proposals within each technology bucket.

The Company will select a Short List from the highest scoring Proposals from across the different technology buckets. While the Company has retained flexibility in the RFP to determine how many projects to advance to the Short List, the Company currently intends to select up to the number of projects targeted, plus one, in the RFP from each technology bucket for the Short List. For example, the O‘ahu Variable RFP is targeting two (2) projects in Stage 1. Thus, up to three (2+1=3) projects from each technology bucket will be selected to the Short List.<sup>4</sup> The Companies have the right in consultation with the Independent Observer to select more projects to the Short List, if for example, significantly more Proposals are received for one technology as compared to others in response to the RFP.

The following illustrative example is provided to explain the process from the Initial Evaluation stage to the Short List stage:

- There are thirteen proposals, four PV projects (#1, #2, #3, #4), four PV+ storage projects (#5, #6, #7, #8), and five wind projects (#9, #10, #11, #12, #13);
- The ranking for each project matches its numbering (e.g., project #1 has a higher total points score than project #2);
- Projects #1, #2 and #3, #5 and #6, and #9 and #10 are all on the same circuit;
- The remaining projects are each on different circuits; and
- The RFP targets two projects to be selected (so up to 2+1=3 projects to be selected to advance from each technology bucket to the Short List).

In this illustration, project #3 would be eliminated because it is on the same circuit with #1 and #2 within its respective bucket. Therefore, the projects selected to advance to the short list are: #1, #2, #4 from the PV bucket; #5, #6, #7 from the PV+ storage bucket; and #9, #10, #11 from the wind bucket for a total of nine projects advancing to the Short List.

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<sup>3</sup> A score of three (3) is the “meets minimum standards” level that a Proposal must achieve in at least six criteria.

<sup>4</sup> In cases where the highest scoring Proposals within a technology bucket propose to interconnect to the same circuit, only up to two of the highest scoring Proposals on the same circuit will be kept and all others on that circuit will be eliminated. Thus, within each technology bucket, there will be no more than two projects on the same circuit that become eligible for selection to the Short List.

Proposals that are not included on the Short List will be released from further consideration when the Short List is established.

#### **F. Best and Final Offers and Detailed Evaluation**

The Company will solicit a Best and Final Offer from Proposers selected to the Short List. Proposers will have the opportunity to update (downward only) the pricing elements in their Proposals, including the:

- Lump Sum Payment (\$/year) amount
- Energy Payment price (\$/MWh) amount

Proposers will not be allowed to increase their price,<sup>5</sup> but may elect to maintain the same pricing submitted in their original Proposal. If a Proposer does not modify its Proposal, the original Proposal will be deemed its Best and Final Offer.

The Company will then further evaluate Proposals by assessing the proposed cost of the delivered energy and operating characteristics of the proposed Project. The Company intends to use the PLEXOS model<sup>6</sup> for this analysis. The evaluation will be based on the Total Net Cost (Costs and Benefits) to the Company of integrating a Proposer's proposed Project onto the Company's system which includes:

1. The cost to dispatch the Project and the energy purchased;
2. The fuel cost savings (benefits) and any other direct savings (IPP savings from dispatchable fossil fuel savings) resulting from the displacement of generation by the proposed Project;
3. The estimated increase (or decrease) in operating cost, if any, incurred by the Company to maintain system reliability;
4. The cost of imputed debt, if applicable.

For conducting this analysis, the Company will replace units in a reference plan with the proposed resource and re-run its resource plan with the specific Short-Listed Proposal.

During the Detailed Evaluation process, the Company may elect to have face-to-face meetings with Proposers to better assess the Proposals and status of the proposed Project(s).

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<sup>5</sup> Proposers will not be allowed to increase the pricing in their Proposals to address interconnection and/or system upgrade costs or for any other reason.

<sup>6</sup> The PLEXOS Integrated Energy Model software is developed by Energy Exemplar. Refer to their website: [www.energyexemplar.com](http://www.energyexemplar.com) for additional information on the software.

As noted above, the Company will take into account the cost of rebalancing its capital structure resulting from any debt or imputed debt impacts associated with each Proposal (including any costs to be incurred by the Company, as described above, that are necessary in implementing the Proposal). The Company proposes to use the imputed debt methodology published by Standard & Poor's ("S&P") that is applicable to the Proposal being submitted.<sup>7</sup> S&P views long-term PPAs as creating fixed, debt-like financial obligations that represent substitutes for debt-financed capital investments in generation capacity. By adjusting financial measures to incorporate PPA fixed obligations, greater comparability of utilities that finance and build generation capacity and those that purchase capacity to satisfy new load are achieved.

The Company's RDG PPA proposes a fixed payment. S&P's methodology of imputed debt begins with calculating the present value of total fixed payments over the life of the contracts, using a 7% discount rate. It then determines a risk factor to apply to the contracts to reflect the riskiness to the utility based on the terms of the contract and assurances of cost recovery. The risk factor is applied to the present value of the fixed payments under the contract to calculate the imputed debt (risk factor x present value of fixed contract payments = imputed debt). For resources where the contract price is stated as a single, all-in energy price, S&P has published a revised methodology which calculates the fixed costs for imputed debt purposes based on a proxy capacity charge stated in \$/kW-year for a new peaking unit. While the Company does not expect such projects given the RDG PPA structure, for such projects, the Company would calculate the imputed debt impact based on the current S&P methodology by first determining the approximate monthly cost (capacity x capacity factor x proxy capacity charge/12 months). The Company will then calculate the net present value of the stream of monthly costs over the duration of the PPA term.

The Company proposes to apply a risk factor consistent with guidance from S&P regarding the risk factor that would be applicable to the Company's entering into the particular type of PPA and the cost-recovery mechanism. Under current guidance from S&P, the Company plans to use a risk factor of 25% in light of the power cost adjustment recovery provisions available to PPAs that the Company would expect to enter into pursuant to this RFP. The cost of rebalancing the capital structure for the calculated imputed debt, in order to maintain the Company's target equity/total capitalization ratio will be included in the calculation of the Total Net Cost as indicated above.

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<sup>7</sup> Each Proposal will be evaluated under generally accepted accounting standards, to determine whether or not it is a lease. If the Proposal is deemed to be a lease, it will be evaluated to determine whether it is an operating lease or a capital lease obligation. If the Proposal is deemed a capital lease obligation, the incremental cost of additional common equity to maintain the Company's target equity/total capitalization ratio will be considered in the proposal evaluation. If the Proposal is deemed an operating lease or other off-balance sheet obligation, the Company proposes to use the imputed debt methodology published by Standard & Poor's.

In addition to the above described analysis, during the evaluation and before the Proposals advance to the Final Award Group, the Company will perform load flow analyses to determine if certain Project combinations introduce transmission circuit constraints that will factor into the selection process. This is to address the possibility that even though sufficient line capacity was identified for an individual Project, large Projects on separate transmission circuits that are in close proximity with each other could introduce additional transmission circuit constraints. The Projects selected must not have any additional constraints imposed based on the Load Flow Analysis to advance to the Final Award Group. However, the Company reserves the right, in consultation with the Independent Observer, to allow minor modifications to a Proposal to avoid such additional constraints. If such modification resulted in a reduced size of the facility, the pricing proposed would also need to be revised. Under no circumstances would a Proposer be allowed to increase its price as a result of such minor modification. In addition, the Company will ensure Projects selected as the Final Award Group are not on the same transmission circuit.

In addition, a sensitivity analysis may be performed that considers the Interconnection Costs Savings Rate included in Proposals selected to the Short List in the event that there are Proposals with approximately the same Total Net Cost to the Company in the detailed evaluations. The Company may run additional scenario analyses if requested by the IO and the time and capability exist to run such analyses.

#### **G. Selection of the Final Award Group**

Based on the results of the Detailed Evaluation and review of the results with the Independent Observer, the Company will select a Final Award Group from which to begin contract negotiations. The Company intends to select two (2) Projects in this Stage 1 RFP. All Proposers will be notified at this stage of the evaluation process whether their Proposal is included in the Final Award Group.

Selection to the Final Award Group and/or entering into contract negotiations does not guarantee execution of a PPA. Any Project not selected to the Final Award Group may be resubmitted in Stage 2 of this RFP or in a subsequent RFP.

Unless time permits and in consultation with the Independent Observer, after the selection of the Final Award Group, if at any time a project no longer continues, the Company will not seek a replacement project in Stage 1 but will seek the supply of renewable energy from the Stage 2 solicitation process.

**DRAFT REQUEST FOR PROPOSALS**  
**FOR**  
**VARIABLE RENEWABLE DISPATCHABLE GENERATION**

**ISLAND OF MAUI**

FEBRUARY 2, 2018

Docket No. 2017-0352

*Appendix M – Revisions to RDG PPA for Storage*



**Maui  
Electric**

**PPA Revisions to Accommodate Projects that contain Storage**

Proposals may contain storage which may be charged during periods when full potential export is not being taken by the Company, and used to provide energy to the Company during periods when source energy is not available. The Company maintains complete dispatch rights over the entire Facility and may dispatch the Facility at any time. Revisions to the RDG PPAs will be necessary for proposals that include storage. Such revisions shall include, but shall not be limited to the following sections of the RDG PPAs.

Section	Revision
Article 2.5 – Availability Factor; Liquidated Damages; Termination Rights	Modify this section to include the energy storage equipment in the calculation of the availability factor, availability benchmark and liquidated damages.
Article 2.6 – Measured Performance Ratio; Liquidated Damages; Termination Rights	Modify this section to include energy storage in the calculation of the performance ratio, performance ratio benchmark and liquidated damages.
Attachment A, Section 5 - Equipment	Add specifications for Energy Storage system.
Attachment B, Section 3 – Performance Standards	
3 (b) (i) – Reactive Amount	Clarify that this section applies to each generator and each energy storage unit.
3 (c) (i) and 3 (c) (ii) – Ramp Rates, 3 (h) – Fault Ride Through, 3 (m) – Frequency Response	Clarify that energy storage is expected to assist in meeting these performance standards
Attachment B, Exhibit B-2	Provide capability curves for generator and energy storage.