

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In The Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.,) DOCKET NO. 2015-0389
HAWAII ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
)
For Approval to Establish a Rule to Implement)
a Community-Based Renewable Energy Program,)
and Other Related Matters.)
_____)

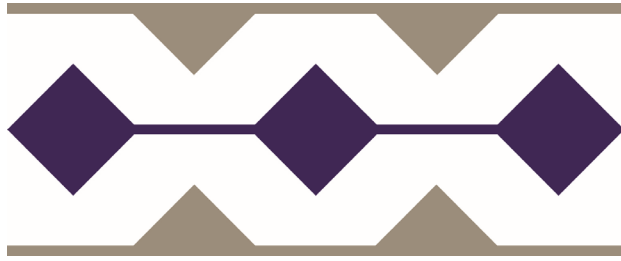
THE HAWAIIAN ELECTRIC COMPANIES'
COMMUNITY BASED RENEWABLE ENERGY (CBRE) - PHASE 2
TARIFF AND APPENDICES, AND RFPS AND MODEL CONTRACTS
FOR LMI CUSTOMERS, MOLOKAI AND LANAI

Book 11 of 14

Filed September 8, 2020

EXHIBIT 20

CBRE Oahu Large RDG PPA (Wind+BESS)



**Hawaiian
Electric**

CBRE Model

Power Purchase Agreement

For

Renewable Dispatchable Generation

(Wind + BESS)

O‘ahu

September 8, 2020 Version

(O‘ahu)

NOTE: THIS DOCUMENT IS FOR PROJECTS THAT ARE AC COUPLED.
APPROPRIATE CHANGES WILL BE MADE FOR PROJECTS THAT ARE DC COUPLED.

This document indicates, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of renewable dispatchable generation by a CBRE project to be executed by Hawaiian Electric Company, Inc. The terms and conditions that may be offered by Hawaiian Electric Company, Inc. in a renewable dispatchable generation power purchase agreement may be modified to reflect factors such as different renewable technologies, project specifics, changes in applicable rules, guidance from the Public Utilities Commission in proceedings concerning the approval or negotiation of such power purchase agreements, results of an interconnection requirements study and other negotiated terms and conditions. This document also assumes that the proposed generation facility will be paired with a battery energy storage system ("BESS"), and therefore, contains terms and conditions with respect to the BESS. If a generation only proposal is selected for the RFP's final award group, the BESS specific provisions will be removed for the power purchase agreement for such project proposal.

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

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POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION

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

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

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

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

WHEREAS, Subscriber Organization is an approved "Subscriber Organization" for Phase 2 of the State of Hawai'i Community-Based Renewable Energy ("CBRE") Program, and desires to construct and operate a renewable energy generation system that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute (codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95) and qualifies for the CBRE Program [**together with a safe, reliable and operationally flexible battery energy storage system ("BESS")**] so as to provide the Company System with those benefits and services associated with renewable energy generation [**and energy storage services**], as defined herein; and

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

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

WHEREAS, Subscriber Organization desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein, (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection; (ii) the availability of the BESS; and (iii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement.

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

DEFINITIONS

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

ARTICLE 1
PARALLEL OPERATION

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

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

- 2.1 Purchase and Sale of Electric Energy, Dispatchability of Facility and Availability of the BESS. Subject to the other provisions of this Agreement, Company shall, by a Lump Sum Payment, pay for: (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; (ii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement; and (iii) the availability of the BESS. Included in such purchase and sale are all of the Environmental Credits associated with the electric energy. Company will not reimburse Subscriber Organization for any taxes or fees imposed on Subscriber Organization including, but not limited to, State of Hawai'i general excise tax. **[Drafting Note: For PPA with energy payment, use the following in lieu of the above:** Subject to the other provisions of this Agreement: (i) Company shall, by an Energy Payment, pay for the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; and (ii) Company shall, by a Lump Sum Payment, pay for the availability of the Facility's Net Energy Potential and the availability of the BESS to respond to Company Dispatch in accordance with this Agreement. Included in such purchase and sale of electric energy and such purchase and sale of dispatchability are all of the Environmental Credits associated with the electric energy. Company will not reimburse Subscriber Organization for any taxes or fees imposed on Subscriber Organization including, but not limited to, State of Hawai'i general excise tax.]
- 2.2 Payment for Electric Energy. Commencing on the Commercial Operations Date, in exchange for the electric energy delivered to the Point of Interconnection in response to Company Dispatch, Company shall make an Energy Payment on a monthly basis as provided in Section 1 (Price for Purchase of Electric Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. **[Drafting Note: If there is no Energy Payment, replace this paragraph with [RESERVED]]**
- 2.3 Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall make a monthly Lump Sum Payment as provided in Section 2 (Lump Sum Payment) of Attachment J

(Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. As more fully set forth in Section 3 (Calculation of Lump Sum Payment) of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. For purposes of calculating the monthly Lump Sum Payment, the monthly Lump Sum Payment shall be adjusted downward to account for the time the Facility or any portion of the Facility is not available for Company Dispatch because of a Force Majeure condition (i) at the Facility or (ii) that otherwise delays or prevents the Subscriber Organization from making the Facility or any portion of the Facility for Company Dispatch, as more fully set forth in Section 3.iv of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

2.4 Assurance of Capability of Facility to Deliver Net Energy Potential and Availability of BESS.

- (a) Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS. In order to provide Company with reasonable assurance that, subject to the Renewable Resource Variability, the Facility's Net Energy Potential will be available for Company Dispatch: (i) the Modified Pooled OMC Equipment Availability Factor Performance Metric shall be used to evaluate the availability of the WTGs for dispatch by Company; (ii) the Guaranteed Performance Index ("GPI") Performance Metric shall be used to evaluate the efficiency of the WTGs; (iii) the BESS Capacity Performance Metric shall be used to confirm the capability of the BESS to discharge continuously for four (4) hours at Maximum Rated Output or to discharge continuously for a total energy (MWh) equal to the BESS Contract Capacity if the test is conducted at less than Maximum Rated Output; (iv) the BESS EAF Performance Metric shall be used to determine whether the BESS is meeting its expected availability; (v) the BESS EFOF Performance Metric shall be used to evaluate whether the BESS is experiencing excessive unplanned outages; and ; and (vi) the RTE Performance Metric shall be used to evaluate the storage efficiency of the BESS. Whenever

the WTGs potential output is in excess of the Company Dispatch, the excess energy from the WTGs shall be used to maximize the BESS State of Charge so long as this does not conflict with the operating parameters of the BESS set forth in Section 9(d) (Battery Energy Storage System) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement. Subscriber Organization shall design, operate and maintain the Facility in a manner consistent with the standard of care reasonably expected of an experienced owner/operator with the desire and financial resources necessary to design, operate and maintain the Facility to achieve the Performance Metrics. The foregoing is without limitation to Subscriber Organization's other obligations under this Agreement, including the obligation to operate the Facility in accordance with Good Engineering and Operating Practices. The Performance Metrics set forth in Section 2.5 (Modified Pooled OMC Equipment Availability Factor; Liquidated Damages; Termination Rights) through Section 2.11 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights) of this Agreement shall be interpreted consistent with the North American Electric Reliability Corporation Generating Availability Data System ("NERC GADS") Data Reporting Instructions. In the event of a conflict between NERC GADS and the terms of this Agreement, the terms of this Agreement will control

(b) [Reserved]

2.5 Modified Pooled OMC Equipment Availability Factor; Liquidated Damages; Termination Rights.

(a) Calculation of the Modified Pooled OMC Equipment Availability Factor. Following the end of each LD Period, the Modified Pooled OMC Equipment Availability Factor shall be calculated for such LD Period as set forth in Section 1 (Modified Pooled OMC Equipment Availability Factor ("MPXEEAF") of Attachment Q (Calculation of Certain Metrics).

(b) Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages. For each LD Period, a Modified Pooled OMC Equipment Availability Factor shall be calculated as provided in accordance with Section 1 (Modified Pooled OMC Equipment

Availability Factor ("MPXEEAF")) of Attachment Q (Calculation of Certain Metrics) to this Agreement. In the event the Modified Pooled OMC Equipment Availability Factor is less than **97%** (the "Modified Pooled OMC Equipment Availability Factor Performance Metric") for any LD Period, Subscriber Organization shall be subject to liquidated damages as set forth in this Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages). For avoidance of doubt, because the Modified Pooled OMC Equipment Availability Factor is calculated over an LD Period of 12 calendar months, the first month for which liquidated damages would be calculated under this Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) would be the last calendar month of the initial Contract Year. If the Modified Pooled OMC Equipment Availability Factor for a LD Period is less than the Modified Pooled OMC Equipment Availability Factor Performance Metric, Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for Subscriber Organization's failure to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for such LD Period, an amount calculated in accordance with the following formula:

<u>Modified Pooled OMC Equipment Availability Factor</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
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96.9% and below	For each one-tenth of one percent (0.001) by which the Modified Pooled OMC Equipment Availability Factor for such LD Period falls below the Modified Pooled OMC Equipment Availability Factor Performance Metric, an amount equal to 0.001 of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period.
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For purposes of determining liquidated damages under the preceding formula, the amount by which the Modified Pooled OMC Equipment Availability Factor for the LD Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Subscriber Organization fails to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for a LD Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (c) Modified Pooled OMC Equipment Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Subscriber Organization fails to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric for a LD Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the Modified Pooled OMC Equipment Availability Factor Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) for those LD Periods during which the Subscriber Organization failed to achieve the Modified Pooled OMC Equipment Availability Factor Performance Metric, the failure of the Facility to achieve a Modified Pooled OMC Equipment Availability Factor of not less than **84%** for each of three consecutive Contract Years shall constitute an Event of Default under Section 15.1(b) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.6 Performance Index; Liquidated Damages; Termination Rights.

- (a) Calculation of Performance Index.

- (i) The Performance Index represents the efficiency of the WTG's conversion of the wind resource to electricity by comparing the calculated Expected Generation at the WTGs to the measured Actual Generation at the WTGs during Contact Hours excluding periods where the operational state is categorized as ERSDTH, oEFDTH, oEMPTH, oEPDTH or Environmental Derate.
- (ii) Following the end of each PI Assessment Period, the Performance Index shall be calculated for such PI Assessment Period (using the previous 12 months of data) as set forth in Section 2 (Performance Index) of Attachment Q (Calculation of Certain Performance Metrics) to this Agreement.
- (iii) PI Test. In the event that the set of operational data points under Attachment Q (Calculation of Certain Performance Metrics) that is available for any month to calculate the PI cannot be validated to Company's reasonable satisfaction or in the event there were not at least 16 such data points during such month that could be used to calculate the PI, the Company shall have the right to perform a test ("PI Test") to collect the data points for such month to be used to calculate the PI in lieu of the use of operational data for such month. The Company shall retain sole discretion as to when to conduct the PI Test, and the PI Test may be conducted at any point during the month following the month for which Company was either unable to validate the set of operational data points for such month or there were not at least 24 data points available during such month. The PI Test shall have a minimum duration of four (4) hours and shall run until at least 16 data points are collected that meet the criteria set forth in Attachment Q (Calculation of Certain Performance Metrics). During an PI Test, the PI shall be calculated from the data points collected during said PI Test using the formula set forth in Attachment Q. To the extent possible, the Company shall schedule the PI Test for a period where all WTGs are available and weather conditions are expected to be optimum allowing the WTG System to generate at near full capacity for the duration of the PI Test (if

possible). The result of the calculation based on the PI Test shall be the PI for the PI Assessment Period in question.

(iv) For each PI Assessment Period that includes one or more months for which a PI Test was performed, the data points collected during said PI Test for such month(s) shall be used together with the data points for months for which a PI Test was not conducted to calculate the PI for the PI Assessment Period in question using the formula set forth in Section 2.6(a)(iii) above. The result of the calculation based on the PI Test shall be the PI for the PI Assessment period in question.

(b) GPI Metric and Liquidated Damages. For each PI Assessment Period, a Performance Index shall be calculated as provided in Section 2 (Performance Index) of Attachment Q (Calculation of Certain Metrics) to this Agreement. In the event the PI is less than 97% (the "GPI Metric"), Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for Subscriber Organization's failure to achieve the GPI Metric for such PI Assessment Period, an amount calculated in accordance with the following formula:

<u>Tier</u>	<u>Facility PI</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
Tier 1	97.0%>PI> or equal to 90.0%	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 97% and is above 89.9%, an amount equal to one-tenth of one percent (0.001) of the PI Assessment Period Lump Sum Payment; plus
Tier 2	90.0%>PI> or equal to 80.0%	For each one-tenth of one percent (0.001) by which the Performance Index for

such PI Assessment Period falls below 90.0% and is above 79.9%, an amount equal to two-tenths of one percent (0.002) of the PI Assessment Period Lump Sum Payment; plus

Tier 3	Below 80.0%	For each one-tenth of one percent (0.001) by which the Performance Index for such PI Assessment Period falls below 80.0%, an amount equal to four-tenths of one percent (0.004) of the PI Assessment Period Lump Sum Payment.
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- (c) PI Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.6(b) (GPI Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Subscriber Organization fails to achieve the GPI Metric for a PI Assessment Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the GPI Metric. Accordingly, and without limitation to Company's rights under said Section 2.6(b) (GPI Metric and Liquidated Damages) for those PI Assessment Periods during which the Subscriber Organization failed to achieve the GPI Metric, the failure of the Facility to achieve, for each of three consecutive Contract Years, a Performance Index of not less than the Tier 2 Bandwidth for such Contract Year shall constitute an Event of Default under Section 15.1(c) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.1 [RESERVED].

2.8 BESS Capacity Test; Liquidated Damages; Termination Rights.

- (a) BESS Capacity Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a BESS Capacity Test, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the BESS Capacity Performance Metric, Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the BESS Measurement Period in question:

BESS Capacity Ratio	Liquidated Damage Amount
Tier 1 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 100% and is above 94.9%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 2 85.0% - 94.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 95% and is above 84.9%, an amount equal to one and a half-tenths of one percent (0.0015) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3	For each one-tenth of one

<p>75.0% - 84.9%</p>	<p>percent (0.001) that the BESS Capacity Ratio is below 85% and is above 74.9%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 4 60.0% - 74.9%</p>	<p>For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 75% and is above 59.9%, an amount equal to two and a half-tenths of one percent (0.0025) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 5 50.0% - 59.9%</p>	<p>For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 60% and is above 49.9%, an amount equal to three-tenths of one percent (0.003) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 6 49.9% and below <u>("Lowest BESS Capacity Bandwidth")</u></p>	<p>For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 50%, an amount equal to three and a half-tenths of one percent (0.0035) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.</p>

For purposes of determining liquidated damages under this Section 2.8(a) (BESS Capacity Test and Liquidated Damages), the starting and end points for the duration of the period that the BESS discharges shall be rounded to the nearest MWh. Each Party agrees and acknowledges that (i) the damages that Company would incur if the Subscriber Organization fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the BESS Capacity Performance Metric and is included for illustrative purposes only. Assume the following:

The Maximum Rated Output for the BESS is 25 MW.

A BESS Capacity Test was conducted and the BESS was measured to have discharged 65 MWh

BESS Contract Capacity = 25 MW x 4 hours = 100 MWh
BESS Capacity Ratio = MWh Discharged/BESS Contract Capacity = 65 MWh/100 MWh = 0.65

LD = [((1 - 0.950) x 1) + ((0.950 - 0.850) x 1.5) + ((0.850 - 0.750) x 2 + ((0.750 - 0.65) x 2.5)] x BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question
= 0.65 x BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question

- (b) BESS Capacity Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.8(a) (BESS Capacity Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric during a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section 2.8(a) (BESS Capacity Test and

Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.8(b) (BESS Capacity Test Termination Rights). If the BESS is in the Lowest BESS Capacity Bandwidth for any two BESS Measurement Periods during a 12-month period, an **18-month** cure period (the "BESS Capacity Cure Period") will commence on the Day following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such BESS Capacity Cure Period, BESS Capacity Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as set forth in Section 2.8(a) (BESS Capacity Test and Liquidated Damages); provided, however, that if the Subscriber Organization fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period, such failure shall constitute an Event of Default under Section 15.1(e) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.9 BESS Annual Equivalent Availability Factor; Liquidated Damages; Termination Rights.

- (a) BESS Annual Equivalent Availability Factor and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Availability Factor shall be calculated as set forth in Attachment X (BESS Annual Equivalent Availability Factor). If the BESS Annual Equivalent Availability Factor for such BESS Measurement Period is less than **97%** (the "BESS EAF Performance Metric"), Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis) upon proper demand at the end the current BESS Measurement Period:

BESS Annual Equivalent Availability Factor	Liquidated Damage Amount
<p>Tier 1 85.0% - 96.9%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 97% but equal to or above 85%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 2 80.0% - 84.9%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 85% but equal to or above 80%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 3 75.0% - 79.9%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 80% but equal to or above 75%, an amount equal to three-tenths of one percent (0.003) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus</p>
<p>Tier 4 Below 75.0%</p>	<p>For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 75%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS</p>

	Measurement Period in question.
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For purposes of determining liquidated damages under this Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Subscriber Organization fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the BESS Annual Equivalent Availability Factor Performance Metric and is included for illustrative purposes only. Assume the following:

The monthly Lump Sum Payment is \$1,000,000

The BESS Annual Equivalent Availability Factor Performance Metric was calculated to be 72.9%.

BESS Allocated Portion of the Lump Sum Payment = 50% x 3 calendar months x \$1,000,000 = \$1,500,000

LD = [((0.970-0.850)x1)+((0.850-0.800)x2)+((0.800-0.750)x3)+((0.750-0.729)x4)] x \$1,500,000

= [0.120 + 0.100 + 0.150 + 0.084] x \$1,500,000 = \$681,000

- (b) BESS Annual Equivalent Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Subscriber Organization fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation

that the BESS is likely to continue to substantially underperform the BESS EAF Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) for those BESS Measurement Periods during which the Subscriber Organization failed to achieve the BESS EAF Performance Metric, the failure of the Subscriber Organization to achieve, for each of four consecutive BESS Measurement Periods, a BESS Annual Equivalent Availability Factor of not less than **75%** shall constitute an Event of Default under Section 15.1(f) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company); provided, however, that if a BESS Measurement Period for which the aforementioned 75% threshold is not achieved falls within a BESS Capacity Cure Period, such BESS Measurement Period shall be excluded from the calculation of the aforementioned "four consecutive BESS Measurement Periods" if the failure to achieve the aforementioned 75% threshold was the result of unavailability caused by the process of carrying out the repairs to or replacements of the BESS necessary to remedy the failure of the BESS to achieve the BESS Capacity Performance Metric.

2.10 BESS Annual Equivalent Forced Outage Factor; Liquidated Damages.

For each BESS Measurement Period following the Commercial Operations Date, the BESS shall maintain a BESS Annual Equivalent Forced Outage Factor of not more than 4% (the "BESS EFOF Performance Metric") as calculated as set forth in Attachment Y (BESS Annual Equivalent Forced Outage Factor). If the BESS Annual Equivalent Forced Outage Factor for such BESS Measurement Period exceeds the BESS EFOF Performance Metric, Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for exceeding the BESS EFOF Performance Metric, the amount set forth in the following table (on a progressive basis) upon proper demand by the Company at the end of the BESS Measurement Period in question:

BESS Annual Equivalent Forced Outage Factor	Liquidated Damage Amount
0.0% - 4.0%	-0-
4.1% - 6.9%	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 4.0% but less than 7.0%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
7.0% and above	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 6.9%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question

For purposes of determining liquidated damages under this Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Subscriber Organization fails to achieve the BESS EFOF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

For example, if the BESS Equivalent Annual Forced Outage Factor was 4.1% as calculated in the example in Attachment Y (BESS Annual Equivalent Forced Outage Factor) attached hereto and the BESS Allocated Portion of the Lump Sum Payment for

the BESS Measurement Period in question is \$1,000,000, the liquidated damages would be \$2,000, calculated as follows:

$$\begin{aligned} 4.1\% - 4.0\% &= 0.1\% \\ 0.1\%/0.1 &= 1 \\ \$1,000,000 \times .002 &= \$2,000 \\ \$2,000 \times 1 &= \$2,000 \end{aligned}$$

2.11 BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights.

- (a) RTE Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a RTE Test or otherwise demonstrate satisfaction of the RTE Performance Metric, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the RTE Performance Metric, Subscriber Organization shall pay, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages), and Company shall accept, as liquidated damages for such shortfall, in the amount to be calculated as provided in this Section 2.11(a) (RTE Test and Liquidated Damages).

The RTE Performance Metric is %. The RTE Performance Metric represents the lowest acceptable efficiency of the BESS for a full charge and discharge cycle if all energy to achieve the full cycle was taken from and delivered to the Point of Interconnection. **[DRAFTING NOTE: PERCENTAGE TO BE TAKEN FROM RESPONSE TO RFP. The metric will remain a "theoretical" POI to POI and represents the worst acceptable performance, even though the intake energy measurement used in the RTE test will move electrically closer to the BESS. This is in the Subscriber Organization's favor, as it can expect to gain efficiency (less losses) by moving the intake energy measurement point closer to the BESS as is proposed in Attachment W.]**

The liquidated damages threshold ("LDT") is equal to the RTE Performance Metric minus 2 percentage points.

The Selected RTE Test is the RTE Test most recently completed during the BESS Measurement Period in question.

Subscriber Organization shall be liable for liquidated damages if:

$(PM - RTE Ratio) > 2\%$

Where:

PM = RTE Performance Metric stated as percentage

RTE Ratio = RTE Ratio from Selected RTE Test stated as percentage

For each percentage point by which the RTE Ratio is below the LDT, Subscriber Organization shall pay, and Company shall accept, liquidated damages in an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question, in accordance with Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damage).

Each Party agrees and acknowledges that (i) the damages that Company would incur if the Subscriber Organization fails to achieve the RTE Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (b) RTE Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.11(a) (RTE Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the RTE Performance Metric during a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section

2.11(a) (RTE Test and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the RTE Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.11(b) (RTE Test Termination Rights). If the RTE Ratio for the Selected RTE Test for the BESS Measurement Period in question is more than 15 percentage points below the RTE Performance Metric for any two BESS Measurement Periods during a 12-month period, an **18-month** cure period (the "RTE Cure Period") will commence on the Day following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such RTE Cure Period, RTE Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as set forth in Section 2.11(a) (RTE Test and Liquidated Damages); provided, however, that if the Subscriber Organization fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period, such failure shall constitute an Event of Default under Section 15.1(g) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.12 Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damage.

- (a) Payment of Performance Metrics LDs by Subscriber Organization. With respect to the liquidated damages payable under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), Section 2.6(b) (GPI Metric and Liquidated Damages), Section 2.8(a) (BESS Capacity Test and Liquidated Damages), Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages) and Section 2.11 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights) (collectively, the "Performance Metrics LDs"), Company shall have the right, at any time on or after the LD Assessment Date for the liquidated damages in question, at Company's option, to set-off such liquidated damages from the amounts to be paid to Subscriber Organization for the Baseline SO Payment or,

to draw such liquidated damages from the Operating Period Security, as follows:

- (i) if the BESS fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period, the Company shall have the right to set-off or draw the amount owed for such failure as calculated as provided in Section 2.8(a) (BESS Capacity Test and Liquidated Damages); and
- (ii) if the Monthly Report for the calendar month, PI Assessment Period, or BESS Measurement Period in question, as applicable, shows a failure to achieve one or more of the Performance Metrics required for the LD Period in question, the PI Measurement Period in question, or the BESS Measurement Period in question, as applicable, and Company does not submit a Notice of Disagreement with respect to such Monthly Report, the Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated as provided in Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), Section 2.6(b) (GPI Metric and Liquidated Damages), Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages) and Section 2.11 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights), as applicable;
- (iii) in all cases in which Company submits a Notice of Disagreement for a given Monthly Report, Company shall have the right to set-off or draw all or any portion of the amount of liquidated damages for the calendar month in question, PI Assessment Period in question, or BESS Measurement Period in question, as applicable, as calculated on the basis of the shortfall(s) in the achievement of the Performance Metric(s) in question, as shown in such Notice of Disagreement; and
- (iv) in the event of any disagreement as to the liquidated damages owed under clause (i) and (iii) above:

- (aa) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages for such calendar month, BESS Measurement Period or PI Assessment Period that are eventually found to be payable for the LD Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Company shall promptly (and in no event more than forty-five (45) Business Days from the date of such determination) repay such excess to Subscriber Organization together with, unless the Parties otherwise agree in writing, interest from the date of Company's set-off or draw until the date that such excess is repaid to Subscriber Organization at the average Prime Rate for such period; and
- (bb) if Company does not exercise its rights to set-off or draw liquidated damages for such calendar month, BESS Measurement Period or PI Assessment Period, or does not set-off or draw the full amount of the liquidated damages for such calendar month, BESS Measurement Period or PI Assessment Period that are eventually found to be payable for the LD Period, the BOP Measurement Period in question, BESS Measurement Period or PI Assessment Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Subscriber Organization shall promptly, upon such determination as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the applicable LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to set-off such interest from the amounts to be paid to Subscriber Organization for the Baseline SO

Payment or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to set-off liquidated damages and/or interest from the amounts to be paid to Subscriber Organization for the Baseline SO Payment or to draw such liquidated damages and/or interest from the Operating Period Security shall not constitute a waiver by Company of its right to do so.

- (b) Limitation on Liquidated Damages. Notwithstanding any other provision of this Agreement to the contrary, the aggregate liquidated damages paid by Subscriber Organization during each Contract Year for the Performance Metrics LDs, such payments by Subscriber Organization to include but not be limited to any set-offs or draws made by Company during such Contract Year pursuant to Section 2.12(a) (Payment of Liquidated Damages), shall not exceed the total of the twelve (12) monthly Lump Sum Payments payable during such Contract Year pursuant to Section 2.3 (Lump Sum Payment) and Section 2.17 (Payment Procedures). For avoidance of doubt: A monthly Lump Sum Payment that is invoiced by Subscriber Organization to Company pursuant to Section 2.16 (Subscriber Organization's Preparation of the Monthly Invoice) for, e.g., the twelfth (12th) calendar month of Contract Year N but is paid during Contract Year N+1 as provided in Section 2.17 (Payment Procedures) shall, for purposes of determining the limitation on Performance Metrics LDs under this Section 2.12(b) (Limitation on Liquidated Damages), be included in the total of the twelve (12) monthly Lump Sum Payments payable during Contract Year N+1. As a result of the foregoing, the total of the monthly Lump Sum Payments used to establish the limitation on Performance Metrics LDs for the initial Contract Year under this Section 2.12(b) (Limitation on Liquidated Damages) will be less than twelve (12). The Parties acknowledge that, because the monthly Lump Sum Payment is subject to adjustment (including downward adjustment) as provided in Section 2.3 (Lump Sum Payment), it is possible that a downward adjustment in some or all of the monthly Lump Sum Payments payable during a Contract Year might cause the Performance Metrics LDs paid by Subscriber Organization during the course of such Contract Year to exceed the limitation on the Performance Metrics LDs for such Contract Year established at the close of such

Contract Year pursuant to the first sentence of this Section 2.12(b) (Limitation on Liquidated Damages). In such case, Company shall promptly upon the determination that the Performance Metrics LDs paid during the course of such Contract Year exceeded the limitation on Performance Metrics LDs for such Contract Year (and in no event more than forty-five (45) Business Days from the end of such Contract Year) repay such excess amount to Subscriber Organization without interest.

- (c) Payment of Shortfall Performance Metrics LDs by Reduction of Bill Credits.
- (i) If Performance Metrics LDs remain unpaid after Company has exercised its rights under Section 2.12(a) (Payment of Performance Metrics LDs by Subscriber Organization) of this Agreement to set off such liquidated damages from the amounts to be paid to Subscriber Organization and to draw such liquidated damages from the Operating Period Security, the Company shall have the right to pay such unpaid Performance Metrics LDs ("Shortfall Performance Metrics LDs") by reducing Bill Credits in the aggregate amount of such unpaid Shortfall Performance Metrics LDs. The reduction in Bill Credits shall be proportionate so that the burden of paying the Shortfall Performance Metrics LDs is shared equitably among the Subscribers.
- (ii) In the event of any disagreement under Section 2.12(a) (Payment of Performance Metrics LDs by Subscriber Organization) of this Agreement as to the amount of liquidated damages owing:
- (aa) upon the resolution of such disagreement pursuant to Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, if such resolution has the effect of reducing the Shortfall Performance Metrics LDs, and if such reduction in the Shortfall Performance Metrics LDs has the effect of causing the reduction in Bill Credits previously implemented by Company under Section 2.12(c)(i) to exceed the actual amount of the Shortfall Performance Metrics LDs (the amount of such excess being referred to

herein on the "Excess Reduction in Bill Credits"), Company shall promptly (and in no event later than the second billing cycle for each Subscriber following the date of the resolution of such disagreement as aforesaid) afford to such Subscriber a Bill Credit (referred to herein as a "Compensatory Bill Credit") in an amount equivalent to the total of (i) such Subscriber's proportionate share of the Excess Reduction in Bill Credits and (ii), unless the Company and Subscriber Organization otherwise agree in writing as provided in Section 2.12(a)(iv)(aa), interest on the amount of the Excess Reduction in Bill Credits from the date Company implemented such Excess Reduction in Bill Credits with respect to such Subscriber until the date that Company applies the Compensatory Bill Credit against such Subscriber's retail electric service bill, at the average Prime Rate for such period; and

- (bb) upon the resolution of such disagreement pursuant to Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, if Company has not previously exercised its rights to set-off or draw liquidated damages pursuant to Section 2.12(a) (Payment of Performance Metrics LDs by Subscriber Organization), or has not previously set-off or drawn the full amount of the liquidated damages that are eventually found to be payable as a result of the resolution of such disagreement, upon the resolution of such disagreement as aforesaid, Company shall have the right to reduce Bill Credits in an amount equal to the total of such Shortfall Performance Metrics LDs.

- 2.13 No Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, Company may accept test energy delivered by Subscriber Organization in accordance with Section 6 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Company shall not be obligated to pay for any test energy accepted prior to the Commercial Operations Date.

- 2.14 Sales of Electric Energy by Company to Subscriber Organization. Sales of electric energy by Company to Subscriber Organization shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Subscriber Organization).
- 2.15 [Reserved] **[Drafting Note: Use following section if PPA has energy payment: Company's Obligation to Provide Certain Data.** By the fifth (5th) Business Day of each calendar month, Company shall provide Subscriber Organization or its designated agent with the appropriate data for Subscriber Organization to compute the amount to be paid for the electric energy purchased by Company in the preceding calendar month as determined in accordance with this Agreement.]
- 2.16 Subscriber Organization's Preparation of the Monthly Invoice. By the tenth (10th) Business Day of each calendar month, Subscriber Organization shall submit to Company an invoice that separately states the following for the preceding calendar month: (i) the Actual Output during the preceding calendar month; (ii) the monthly Lump Sum Payment for the preceding calendar month; (iii) a computation, based on the updated Monthly Subscriber Information for such preceding calendar month as provided pursuant to Section 4 (Updating Monthly Subscriber Information Used to Calculate Bill Credits and Other Matters) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, of each Subscriber's Subscriber Allocation for the preceding month stated as a percentage of Contract Capacity; (iv) the Unsubscribed RDG for the preceding calendar month stated as a percentage of Contract Capacity; (v) a computation, based on each Subscriber's Subscriber Allocation, of the dollar amount of the Bill Credit to which each Subscriber is entitled for the monthly Lump Sum Payment for the preceding calendar month; (vi) the dollar amount owing to Subscriber Organization for the Baseline SO Payment for the preceding calendar month; and (vii) as a credit against the amount owing to the Subscriber Organization, the amounts payable by Subscriber Organization under Article 7 (Subscriber Organization Payments) of this Agreement and any other applicable Subscriber Organization fees as set forth in Section 11 (Subscriber Organization Fees) of Attachment Z (Facility CBRE Program) to this Agreement. The dollar amount payable to the Subscriber

Organization shall be subject to adjustment as provided in Section 5 (Adjusting Payment to Subscriber Organization) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. **[Drafting Note: For PPA Energy Payment, use the following in lieu of the above: Subscriber Organization's Preparation of the Monthly Invoice.** By the tenth (10th) Business Day of each calendar month, Subscriber Organization shall submit to Company an invoice that separately states the following for the preceding calendar month: (i) the Actual Output during the preceding calendar month; (ii) the Energy Payment for electric energy purchased by Company during the preceding calendar month, as set forth in Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) of this Agreement (iii) the monthly Lump Sum Payment for the preceding calendar month; (iv) a computation, based on the updated Monthly Subscriber Information for such preceding calendar month as provided pursuant to Section 4 (Updating Monthly Subscriber Information Used to Calculate Bill Credits and Unsubscribed Portion) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, of each Subscriber's Subscriber Allocation for the preceding month stated as a percentage of Contract Capacity; (iv) the Unsubscribed RDG for the preceding calendar month stated as a percentage of Contract Capacity; (v) a computation, based on each Subscriber's Subscriber Allocation, of the dollar amount of the Bill Credit to which Subscriber is entitled for the monthly Energy Payment for the preceding calendar month; (vi) a computation, based on each Subscriber's Subscriber Allocation, of the dollar amount of the Bill Credit to which each Subscriber is entitled for the monthly Lump Sum Payment for the preceding calendar month; (vii) the total dollar amount of the Bill Credit to which each Subscriber is entitled for the preceding calendar month; (viii) the dollar amount owing to Subscriber Organization for the Unsubscribed Energy for the preceding calendar month; (ix) the dollar amount owing to Subscriber Organization for the Unsubscribed RDG for the preceding calendar month; (x) the total dollar amount owing Subscriber Organization for the preceding calendar month for the Baseline SO Payment; and (xi) as a credit against the amount owing to the Subscriber Organization, the amounts payable by Subscriber Organization under Article 7 (Subscriber Organization Payments) of this Agreement and any other applicable Subscriber Organization fees as set forth in Section 11 of Attachment Z (Facility's CBRE Program) to

this Agreement. The dollar amount payable to the Subscriber Organization shall be subject to adjustment as provided in Section 5 (Adjusting Payment to Subscriber Organization) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.】

2.17 Payment Procedures.

(a) Payments to Subscriber Organization.

- (i) By the twentieth (20th) Business Day of each calendar month following the month during which the invoice was submitted (i.e., by the twentieth (20th) Business Day of the second calendar month following the calendar month covered by the invoice in question), (but, except as otherwise provided in subparagraph (ii) of this Section 2.17(a) (Payments to Subscriber Organization), no later than the last Business Day of that month if there are less than twenty (20) Business Days in that month), Company shall make payment to Subscriber Organization of the amount payable for the Baseline SO Payment shown on such invoice, or provide to Subscriber Organization an itemized statement of its objections to all or any portion of such invoice and pay Subscriber Organization its share of any undisputed amount. Any such payment to the Subscriber Organization shall be subject to adjustment as provided in Section 5 (Adjusting Payment to Subscriber Organization) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, and shall also be subject to Company's right to set-off liquidated damages as provided in Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages) of this Agreement.
- (ii) Notwithstanding the foregoing, the Day by which the Company shall make payment to Subscriber Organization hereunder shall be increased by one (1) Day for each Day that Subscriber Organization is delinquent in providing to the Company either:
 - (i) the Monthly Report for the calendar month in question pursuant to Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this

Agreement; or (ii) the information required under Section 2.16 (Subscriber Organization's Preparation of the Monthly Invoice) of this Agreement.

[Drafting Note: If PPA has an energy payment, add the following: "However, if Company is not timely in providing data required in Section 2.15 (Company's Obligation to Provide Certain Data) and this directly causes Subscriber Organization to be unable to deliver its invoice in accordance with the time frame set forth in Section 2.16 (Subscriber Organization's Preparation of the Monthly Invoice), then Company shall still meet the payment date of the twentieth (20th) Business Day of the month following the month during which the invoice was submitted. If Subscriber Organization is unable to provide a complete invoice for the reasons set forth in the preceding sentence, an estimated payment, subject to reconciliation with the complete invoice, may be made by Company as an interim provision until a complete invoice can be prepared by Subscriber Organization and received by Company."]

(b) Bill Credits.

- (i) The sole means of payment for each Subscriber Allocation for the calendar month covered by the invoice shall be by a Bill Credit on such Subscriber's retail electric bill. The Bill Credit shall be calculated on the undisputed amount of Subscriber Organization's invoice, pursuant to Section 2.17(a)(i) of this Agreement. Because not all of Company's customers have the same billing cycle, the timing of the appearance of the Bill Credit will vary with the Subscriber's billing cycle, but Company shall cause the Bill Credit to appear on each Subscriber's retail electric bill no later than the next billing cycle for such Subscriber following the due date for Company's payment to Subscriber Organization for the Baseline SO Payment on the corresponding invoice. The calendar month upon which the Bill Credit is based shall not necessarily match the billing period for the retail electric service bill in which the Bill Credit is applied.

- (ii) For purposes of applying the Bill Credit to each Subscriber's retail electric bill, the Company shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered by the Subscriber Organization via the CBRE Online Portal as set forth in Section 4 (Updating Monthly Subscriber Information Used to Calculate Bill Credits and Other Matters) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

If there is a breach, error or changed circumstances resulting in some portion of the **[monthly Energy Payment]** or monthly Lump Sum Payment being assigned to a Subscriber in excess of such Subscriber's allowable Subscriber Allocation under the CBRE Tariff, then the Company may treat this excess as an "overpayment" of the Subscriber Allocation and reduce the Bill Credit(s) to such Subscriber for the flowing calendar month for overpayment in proportion to the excess allocation received in error. Payment to the Subscriber Organization for such **[Unsubscribed Energy and/or]** Unsubscribed RDG shall only occur if no corresponding Bill Credit is made to a Subscriber, or if already allocated, if such allocation is corrected and withdrawn from such Subscriber, the intent of the Parties herein is to ensure that no portion of the **[Energy Payment and/or]** Lump Sum Payment from the CBRE Facility is double-counted to any Subscriber and/or Subscriber Organization. **[Drafting note: For PPA with Energy Payment, include language in bold text.]**

- 2.18 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.12(a)(iii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in that month), or following the due date for such payment if extended pursuant to Section 2.17 (Payment Procedures), at the average daily Prime Rate for the period commencing on the Day following the Day such payment is due until the invoiced amounts (or amounts due to Subscriber Organization if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

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

ARTICLE 3
FACILITY OWNED AND/OR OPERATED BY SUBSCRIBER ORGANIZATION;
FACILITY'S CBRE PROGRAM

- 3.1 The Facility. Subscriber Organization agrees to furnish, install, operate, and maintain the Facility in accordance with the provisions of this Agreement, including, without limitation, the operating procedures and performance standards as more fully described in Attachment B (Facility Owned by Subscriber Organization) and Attachment C (Methods and Formulas for Measuring Performance Standards). After the Commercial Operations Date, Subscriber Organization agrees that no changes or additions to the Facility shall be made without prior written approval by Company and amendment to the Agreement unless such changes or additions to the Facility could not reasonably be expected to have a material effect on the assumptions used in performing the IRS.
- 3.2 Allowed Capacity. The net instantaneous MW output from the Facility may not exceed the Allowed Capacity. Subscriber Organization shall take all necessary affirmative action to limit net instantaneous MW output of the Facility to no more than the Allowed Capacity. Subscriber Organization shall take all necessary affirmative action to limit Actual Output to no more than the Allowed Capacity. Company may take appropriate action to limit the net instantaneous MW output pursuant to, but not limited to, Article 8 (Company Dispatch), Article 9 (Personnel and System Safety), Article 25 (Good Engineering and Operating Practices), and Attachment B (Facility Owned by Subscriber Organization).
- 3.3 Point of Interconnection. The Point of Interconnection is shown on Attachment E (Single-Line Drawing and Interface Block Diagram), as provided in Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Subscriber Organization). The Point of Interconnection will be at the voltage level of the Company System. If it is necessary to step up the voltage at which Subscriber Organization's electric energy is delivered to Company System, the Point of Interconnection will be on the high voltage side of the step-up transformer.
- 3.4 Renewable Portfolio Standards.
- (a) Renewable Portfolio Standards. If, as a result of any RPS Amendment, the electric energy delivered from the

Facility should no longer qualify as "renewable electrical energy," Subscriber Organization shall, at the request of Company, develop and recommend to Company within a reasonable period of time following Company's request, but in no event more than 90 Days after Subscriber Organization's receipt of such request (or such other period of time as Company and Subscriber Organization may agree in writing) reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" ("Subscriber Organization's RPS Modifications Proposal").

- (b) Subscriber Organization's RPS Modifications Proposal. Upon receipt of Subscriber Organization's RPS Modifications Proposal, Company will evaluate Subscriber Organization's RPS Modifications Proposal. Subscriber Organization shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).
- (c) RPS Modifications Document. If, following Company's evaluation of Subscriber Organization's RPS Modifications Proposal, Company desires to consider the implementation by Subscriber Organization of the changes recommended in Subscriber Organization's RPS Modifications Proposal, Company shall provide Subscriber Organization with written notice to that effect, such notice to be issued to Subscriber Organization within 180 Days of receipt of Subscriber Organization's RPS Modifications Proposal, and Company and Subscriber Organization shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Subscriber Organization as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Subscriber Organization's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Contract Pricing pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS

Modifications Document as to the effective date for the RPS Modifications shall be measured from the date the PUC order with respect to such RPS Modifications becomes non-appealable as provided in Section 3.4(e) (PUC RPS Order).

- (d) Failure to Reach Agreement. If Company and Subscriber Organization are unable to agree upon and execute a RPS Modifications Document within 180 Days of Company's written notice to Subscriber Organization pursuant to Section 3.4(c) (RPS Modifications Document), Company shall have the option of declaring the failure to reach agreement on and execute such Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 3.4(h) (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a RPS Modifications Document as described in Section 3.4(c) (RPS Modifications Document).
- (e) PUC RPS Order. No RPS Modifications Document shall constitute an amendment to the Agreement unless and until a PUC order issued with respect to such document has become non-appealable ("PUC RPS Order"). Once the condition of the preceding sentence has been satisfied, such RPS Modifications Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 3.4(e) (PUC RPS Order), such PUC RPS Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

- (f) Company's Rights. The rights granted to Company under Section 3.4(c) (RPS Modifications Document) and Section 3.4(d) (Failure to Reach Agreement) above are exclusive to Company. Subscriber Organization shall not have a right to initiate negotiations of a RPS Modifications Document or to initiate dispute resolution under Section 3.4(h) (Dispute), as a result of a failure to agree upon and execute any RPS Modifications Document.
- (g) Limited Purpose. This Section 3.4 (Renewable Portfolio Standards) is intended to specifically address the implementation of reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under any RPS Amendment and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to this Agreement in accordance with the provisions of this Section 3.4 (Renewable Portfolio Standards) are not intended to increase Subscriber Organization's risk of non-performance or default.
- (h) Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a RPS Modifications Document pursuant to Section 3.4(d) (Failure to Reach Agreement), it shall provide written notice to that effect to Subscriber Organization. Within 20 Days of delivery of such notice Subscriber Organization and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.

- (1) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:
 - (a) The reasonable measures required to be taken by Subscriber Organization to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question;
 - (b) How Subscriber Organization would implement such measures;
 - (c) Reasonably expected net costs and/or lost revenues associated with such measures so the energy delivered by the Facility complies with such revised definition of "renewable electrical energy" under the RPS Amendment in question;
 - (d) The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and
 - (e) Contractual consequences for non-performance that are commercially reasonable under the circumstances.
- (2) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (3) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

- (4) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Subscriber Organization to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question, the Independent Evaluator shall determine that the Agreement shall not be amended to comply with such changes in RPS (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Subscriber Organization to implement reasonable measures required to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under RPS, the Independent Evaluator shall incorporate such required changes into a RPS Modifications Document including (aa) Subscriber Organization's RPS Modifications, (bb) pricing terms that incorporate the RPS Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Subscriber Organization as to the RPS Modifications. In addition to the RPS Modifications Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.
- (5) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above \$30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

3.1 Facility's CBRE Program. Subscriber Organization shall comply with the provisions of Attachment Z (Facility's CBRE Program).

ARTICLE 4
COMPANY-OWNED INTERCONNECTION FACILITIES

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

ARTICLE 5
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Subscriber Organization's Logs. Subscriber Organization shall maintain, at least daily, a log in which it shall record all pertinent data that will indicate whether the Facility is being operated in accordance with Good Engineering and Operating Practices. These data logs shall include, but not be limited to, all maintenance and inspection work performed at the Facility, circuit breaker trip operations, relay operations including target indications, megavar and megawatt recording charts (and/or equivalent computer records), all unusual conditions experienced or observed and any reduced capability and the reasons therefor and duration thereof. For each WTG, the data reported shall include planned derated hours, unplanned derated hours, average derated kW during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line. Company shall have the right, upon reasonable notice and during regular Business Day hours to review and copy such data logs; provided, that if such logs reveal any inconsistency with Company's records, Company may request and review Subscriber Organization's supporting records, correspondence, memoranda and other documents or electronically recorded data associated with such logs related to the operation and maintenance of the Facility in order to resolve such inconsistency.
- (b) Company Access to Subscriber Organization's Logs. Subscriber Organization shall provide Company access to Subscriber Organization's records which identify the priority, as internally assigned by Subscriber Organization, of specific preventive or corrective maintenance activities. These records shall include items for which Subscriber Organization has deferred the inspection or corrective action to a future scheduled plant outage. In addition, Subscriber Organization shall provide copies of applicable correspondence between Subscriber Organization and its insurer(s) for the Facility equipment pertaining to Subscriber Organization's maintenance practices and Subscriber

Organization's procedures and scheduling (including deferral) of maintenance at the Facility.

- (c) Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the operation and maintenance of the Facility shall be maintained by Subscriber Organization for a period of not less than six (6) years.

5.2 Maintenance Records.

- (a) Subscriber Organization's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Subscriber Organization shall submit to Company for inspection at the Site, a summary in a format similar to the example provided in Attachment V (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of all maintenance and inspection work performed in the prior calendar year, and of all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement. The summary shall present the requested data in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format with sufficient software so that Company can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item. Such summary shall also include Subscriber Organization's proposals for correcting or preventing recurrences of identified equipment problems and for performing such other maintenance and inspection work as is required by Good Engineering and Operating Practices.
- (b) Company's Written Recommendations. Within sixty (60) Days of receiving such summary, and after any reasonable inspection desired by Company of the Facility and consultation with Subscriber Organization, in the event there are issues identified that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement, for purposes of addressing such issues, Company may provide

written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Company's making or failing to make such recommendations shall not be construed as endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Company right. If Subscriber Organization agrees with Company, Subscriber Organization shall, within a reasonable time after Company makes such recommendations, not to exceed ninety (90) Days (or such longer period as reasonably agreed to by the Parties), implement Company's recommendations. If Subscriber Organization disagrees with Company, it shall within ten (10) Days inform Company of alternatives it will take to accomplish the same intent, or provide Company with a reasonable explanation as to why no action is required by Good Engineering and Operating Practices. If Company disagrees with Subscriber Organization's position, and if, for each of the three preceding Contract Years, the Modified Pooled OMC Equipment Availability Factor was less than **94%** and/or the Performance Index was less than the Tier 1 Bandwidth for such Contract Years, then the parties shall commission a study by a Qualified Independent Consultant selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement and the Qualified Independent Consultant will make a recommendation to remedy the situation. Subscriber Organization shall abide by the Qualified Independent Consultant's recommendation contained in such study. Both Parties shall equally share in the cost for the Qualified Independent Consultant. However, Subscriber Organization shall pay all costs associated with implementing the recommendation contained in the Independent Consultant's report. Notwithstanding the foregoing, Subscriber Organization shall not be required to comply with any recommendations that, in Subscriber Organization's reasonable judgment, will violate or void any warranties of equipment that is a part of, or used in connection with, the Facility or violate any long-term service agreement, or conflict with any written requirements, specifications or operating parameters of the manufacturer, with respect to such equipment, in which case Subscriber Organization shall promptly notify Company thereof, and Subscriber Organization and Company

shall endeavor to reach a mutually satisfactory resolution of the matter in question.

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

of the matter in question. With respect to such agreed upon revisions, Subscriber Organization shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by Company.

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

ARTICLE 6
FORECASTING

- 6.1 Data for Company Forecasts and Monitoring. Subscriber Organization shall provide to Company the meteorological and production data and the Site description information required by Company in order for Company to (i) provide situational awareness to Company System Operator, (ii) monitor equipment availability and performance, (iii) produce a real-time forecast for operations as well as a Day-ahead forecast and hourly forecasts for all variable generation facilities on the Company System and (iv) monitor Subscriber Organization's compliance with the Performance Standards set forth in Section 3 (Performance Standards) of the Attachment B (Facility Owned by Subscriber Organization).
- 6.2 Monitoring and Communication Equipment. Subscriber Organization shall install and maintain appropriate equipment (the "Monitoring and Communication Equipment") for the purposes of (i) measuring the meteorological and production data required under Section 6.1 (Data for Company Forecasts and Monitoring) with an accuracy of not less than that specified for each such data parameter in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Subscriber Organization) and, if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in Attachment G (Company-Owned Interconnection Facilities), (ii) recording and transferring such data to Company in real time. Subscriber Organization shall maintain at the Site sufficient replacement parts for the Monitoring and Communication Equipment to avoid or otherwise minimize any shutdown of the Facility pursuant to Section 6.4 (Shutdown For Lack of Reliable Real Time Data) of this Agreement while any of the Monitoring and Communication Equipment is being repaired, replaced or re-calibrated. Unless the Parties agree otherwise in writing, the Monitoring and Communication Equipment to be installed and maintained by Subscriber Organization shall include field device components described in Attachment B (Facility Owned By Subscriber Organization):
- (i) measure at each WTG the Actual WTG Generation (gross);
 - (ii) measure wind speed and direction at the top of the nacelle of each WTG;

- (iii) measure other meteorological conditions (i.e., air density, ambient air temperature, ambient air pressure and such other meteorological conditions that Company shall from time to time reasonably require,) by devices placed at approximately "hub height" of the WTG(s) and located at one or more MMTs;
- (iv) record and transfer such data to Company in real-time; and
- (v) record and transfer to Company the turbine state: online, offline, or out of service.

The foregoing is in addition to the data on the Facility's Actual Output as measured by the revenue meter.

6.3 Calibrations, Maintenance and Repairs.

- (a) Documentation Requirement. Subscriber Organization shall provide to Company (i) the manufacturer's recommended schedule for the calibration and maintenance of each component of the Monitoring and Communication Equipment and (ii) subject to the limitation set forth in Section 1(a)(ii) (As-Builts) of Attachment B (Facility Owned by Subscriber Organization) of this Agreement, documentation of the performance of all such calibration and maintenance per manufacturer specifications. Although Company is to receive from Subscriber Organization the aforesaid recommended schedules for calibration and maintenance, as well documentation of the performance of all such calibration and maintenance, Company shall have no responsibility to monitor Subscriber Organization's compliance with such calibration and maintenance schedules. Accordingly, any failure by Company to bring Subscriber Organization's attention any apparent failure by Subscriber Organization to perform such recommended calibration and maintenance shall neither relieve Subscriber Organization of its obligations under this Agreement to perform such calibration and maintenance nor constitute a waiver of Company's rights under this Agreement with respect to such failure in performance by Subscriber Organization.
- (b) Corrective Measures. In the event of a pattern of material inconsistencies in the data stream provided by

the Monitoring and Communication Equipment, Subscriber Organization shall perform, at Subscriber Organization's expense, such corrective measures as Company may reasonably require, such as the recalibration of all field measurement device components of the Monitoring and Communication Equipment.

(c) Repairs. In the event of any failure in the Monitoring and Communication Equipment, Subscriber Organization shall repair or replace such equipment within fifteen (15) Days of such failure, or within such longer period as may be reasonably agreed to by the Parties.

6.4 Shutdown For Lack of Reliable Real Time Data. Because the availability to the Company System Operator of reliable meteorological and production information in real time via SCADA is necessary in order for Company to effectively optimize the benefit of its right of Company Dispatch, Company shall have the right to direct Subscriber Organization to shutdown the Facility due to the unavailability of such reliable real time meteorological and/or production data. In addition, in the event of the performance of corrective measures (including recalibration) and/or repairs to any Monitoring and Communication Equipment pursuant to Section 6.3(b) (Corrective Measures) or Section 6.3(c) (Repairs), Company shall have the right to direct Subscriber Organization to shutdown the Facility and the Facility shall remain shutdown until such corrective action is completed. In the event the cause for any shutdown in this Section 6.4 (Shutdown For Lack of Reliable Real Time Data) falls within the definition of Subscriber Organization-Attributable Non-Generation, such period of time shall be allocated as such for purposes of calculating the Modified Pooled OMC Equipment Availability Factor as set forth in Section 1 (Modified Pooled OMC Equipment Availability Factor ("MPXEEAF")) of Attachment Q (Calculation of Certain Metrics) to this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Subscriber Organization to Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Subscriber Organization requests in writing for confirmation that the Facility's data is available to Company, then Company shall

use reasonable efforts to respond to such request within three (3) Business Days in writing (with email being acceptable) confirming that either (1) the Facility's data is available to Company (at which point no additional time after such request shall count as Subscriber Organization-Attributable Non-Generation), or (2) the Facility's data is not available so that Subscriber Organization can take further appropriate corrective actions.

6.5 Subscriber Organization Day-Ahead Forecasts of Actual Output.

- (a) Forecasts. Each Day during the Term commencing on the Commercial Operations Date, Subscriber Organization shall submit to Company Subscriber Organization's Day-ahead hourly forecasts of the Facility's Actual Output produced by a commercially available forecasting service or by the Subscriber Organization's documented methodology (*i.e.*, climatology, persistence forecasting) for providing a forecast for the Facility's Actual Output for the next 24 hour period. Hourly Day-ahead forecasts shall be submitted to Company by 1200 Hawai'i Standard Time on each Day immediately preceding a Day on which electric energy from the Facility is to be delivered. Subscriber Organization shall provide Company with an hourly forecast of Actual Output for each hour of the next Day. Subscriber Organization shall update such forecast and provide unit availability updates any time information becomes available indicating a change in the forecast of Actual Output from the Facility. The forecasts called for by this Agreement shall be substantially in the form reasonably requested by Company.
- (b) Accuracy of Forecasts. Company acknowledges that the Subscriber Organization's Day-ahead forecasts are based on forecast estimates and not guarantees. Such limitation notwithstanding, Subscriber Organization shall exercise commercially reasonable efforts to ensure the accuracy of the Day-ahead forecasts required hereunder for validation purposes and to support Company's forecasts. This includes a detailed description of the methodology used by Subscriber Organization for forecasting. For example, Subscriber Organization shall prepare such forecasts and updates by utilizing a solar power forecast or other service that is (i) commercially available or proprietary to Subscriber Organization, (ii) comparable in accuracy to

models or services commonly used in the solar energy industry and that reflect equipment availability, and (iii) is satisfactory to Company in the exercise of its reasonable discretion.

- (c) Company's Forecasting System. Company currently subscribes to a forecasting service. Subscriber Organization, may, if it chooses, subscribe to the same forecasting service that Company does, at Subscriber Organization's cost. If Subscriber Organization so chooses to subscribe to such forecasting service and elects to use such service in lieu of creating its own forecast, Subscriber Organization shall not be required to provide Day-ahead forecasts pursuant to this Section 6.5 (Subscriber Organization Day-Ahead Forecasts of Actual Output). If Company changes its forecasting service and Subscriber Organization elects not to subscribe to the same forecasting service, then the provisions of Section 6.5(a) (Forecasts) and Section 6.5(b) (Accuracy of Forecasts) shall apply.
- 6.6 Reports, Studies and Assessment. Prior to the Execution Date, Subscriber Organization has provided Company with Subscriber Organization's explanation of the methodology and underlying information used to derive the NEP RFP Projection, including the preliminary design of the Facility and the typical meteorological year file used to estimate the Renewable Resource Baseline. The independent consultant was selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. Throughout the Term, Subscriber Organization shall, for purposes of facilitating Company's forecasting, deliver to Company, promptly upon Subscriber Organization's receipt of same, any reports, studies or assessments prepared for the benefit of the Subscriber Organization by an independent engineer of (i) the electric energy producing potential of the Site or (ii) the Facility.

ARTICLE 7
SUBSCRIBER ORGANIZATION PAYMENTS

Subscriber Organization shall pay to Company (i) all amounts pursuant to Attachment G (Company-Owned Interconnection Facilities), (ii) all amounts pursuant to Section 10.1 (Meters) and Section 10.2 (Meter Testing), (iii) a monthly metering charge of \$25.00 per month, which is in addition to any charges due Company pursuant to the applicable rate schedule pursuant to Section 2.14 (Sales of Electric Energy By Company to Subscriber Organization) of this Agreement and (iv) such other costs to be incurred by Company and reimbursed by Subscriber Organization as set forth in this Agreement.

ARTICLE 8
COMPANY DISPATCH

- 8.1 General. Company shall have the right to dispatch all available real and reactive power delivered from the Facility to the Company System and to start up and shut down Subscriber Organization's generating units, as it deems appropriate in its reasonable discretion, subject only to and consistent with Good Engineering and Operating Practices, the requirements set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Subscriber Organization) of this Agreement and Subscriber Organization's maintenance schedule determined in accordance with Article 5 (Maintenance Records and Scheduling). Because the Facility must be available to respond to Company Dispatch, neither the Subscriber-Organization nor the Facility may consume any energy generated by the Facility. Company shall not pay for reactive power.
- 8.2 Company Dispatch. Dispatch will either be by Subscriber Organization's manual control under the direction of the Company System Operator or by remote computerized control by the EMS provided in Section 1(g) (Active Power Control Interface) of Attachment B (Facility Owned by Subscriber Organization), in each case at Company's reasonable discretion.
- 8.3 Company Rights of Dispatch. Company may require derating or outage in response to the Facility's failure to comply with Company Dispatch or to any conditions of Subscriber Organization-Attributable Non-Generation. A derating or outage required by Company pursuant to the preceding sentence shall be considered Subscriber Organization-Attributable Non-Generation and, until the conditions that led to the derating or outage are resolved by Subscriber Organization and Subscriber Organization notifies Company of the same, any such derating or outage shall "count against" Subscriber Organization for purposes of calculating the Performance Index and any such derating or outage shall "count against" Subscriber Organization for the purpose of calculating the Modified Pooled OMC Equipment Availability Factor. If, after such notification, Company attempts to dispatch the Facility and determines that such conditions that led to the deration or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the derating or outage until the conditions that led to such outage or derating are

resolved by Subscriber Organization to Company's reasonable satisfaction. If Subscriber Organization requests confirmation from Company that Subscriber Organization's actions to resolve such conditions that led to the derating or outage were successfully completed, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with email being acceptable) to allow Subscriber Organization the opportunity to take further appropriate corrective actions if needed. Nothing in this Section 8.3 (Company Rights of Dispatch) shall relieve Subscriber Organization of its obligation under the terms of this Agreement to make available the full capability of the Facility for Company Dispatch.

- 8.4 Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Subscriber Organization shall prepare and provide to Company a Monthly Report by the tenth (10th) Business Day of the following month in accordance with Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) of this Agreement. Beginning with the Monthly Report for the last calendar month of the initial Contract Year, Subscriber Organization shall include calculations of, as applicable, (a) the Modified Pooled OMC Equipment Availability Factor for the LD Period, (b) the Performance Index for the PI Assessment Period, (c) any of the BESS Capacity Ratio, the BESS Annual Equivalent Availability Factor or the BESS Equivalent Forced Outage Factor for the BESS Measurement Period (if any), as well as (d) any liquidated damages to be assessed, as set forth in the form of Monthly Report set forth in Section 1 (Monthly Report) of said Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). The rights and obligations of the Parties with respect to each Monthly Report and any disagreements arising out of any Monthly Report are set forth in Section 1 (Monthly Report) and Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

ARTICLE 9
PERSONNEL AND SYSTEM SAFETY

Notwithstanding any other provisions of this Agreement, if at any time Company reasonably determines that the Facility may endanger Company's personnel, and/or the continued operation of the Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to disconnect the Facility from the Company System, as determined in the sole discretion of the Company System Operator. The Facility shall immediately comply with the dispatch instruction, which may be initiated through remote control, and shall remain disconnected (and in Subscriber Organization-Attributable Non-Generation status if so determined), until such time as Company is satisfied that the condition(s) referred to above have been corrected. If Company disconnects the Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify Subscriber Organization by telephone, and thereafter make reasonable efforts to confirm, in writing (with email being acceptable), within three (3) Days of the disconnection, the reasons for the disconnection. If the reason for the disconnection constitutes Subscriber Organization-Attributable Non-Generation, Company will notify Subscriber Organization (1) whether the conditions resulting in such disconnection have been resolved (in which case no additional time after such confirmation shall count as Subscriber Organization-Attributable Non-Generation); or (2) that conditions resulting in such disconnection have not been resolved so that Subscriber Organization can take such appropriate corrective actions. Subscriber Organization shall notify Company in writing when such corrective action has been completed; provided, however, that Subscriber Organization shall remain in Subscriber Organization-Attributable Non-Generation until Company is satisfied that the condition resulting in the disconnection has been corrected. Company shall use reasonable efforts to inspect such corrective measures (if necessary) and confirm the resolution of such condition within three (3) Business Days after Subscriber Organization's notification.

ARTICLE 10
METERING

- 10.1 Meters. Company shall purchase, own, install and maintain the Revenue Metering Package suitable for measuring the export of electric energy from the Facility sold to Company in kilowatts and kilowatt-hours on a time-of-day basis and of reactive power flow in kilovars and true root mean square kilovar-hours. The metering point shall be as close as possible to the Point of Interconnection as allowed by Company. Subscriber Organization shall make available a mutually agreeable location for the Revenue Metering Package. Subscriber Organization shall install, own and maintain the infrastructure and other related equipment associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval, as further described in Section 1(e) (Other Equipment) of Attachment B (Facility Owned by Subscriber Organization). The Subscriber Organization shall install this infrastructure such that it meets the requirements set forth in Chapter Six (IPP Metering) of the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test such revenue meter prior to installation and shall test such revenue meter every fifth (5th) year. Subscriber Organization shall reimburse Company for all reasonably incurred costs for the procurement, installation, maintenance (including maintenance replacements) and testing work associated with the Revenue Metering Package.
- 10.2 Meter Testing. Company shall provide at least twenty-four (24) hours' notice to Subscriber Organization prior to any test it may perform on the revenue meters or metering equipment. Subscriber Organization shall have the right to have a representative present during each such test. Subscriber Organization may request, and Company shall perform, if requested, tests in addition to the every fifth-year test and Subscriber Organization shall pay the cost of such tests. Company may, in its sole discretion, perform tests in addition to the fifth year test and Company shall pay the cost of such tests. If any of the revenue meters or

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

- 10.3 Corrections. If any test of revenue meters or metering equipment conducted by Company indicates that the revenue meter readings are in error by one percent (1%) or more, the revenue meters or meter readings shall be corrected as follows: (i) determine the error by testing the revenue meter at approximately ten percent (10%) of the rated current (test amperes) specified for such revenue meter; (ii) determine the error by testing the revenue meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the revenue meter; (iii) the average meter error shall then be computed as the sum of (aa) one-fifth (1/5) of the error determined in the foregoing clause "(i)" and (bb) four-fifths (4/5) of the error determined in the foregoing clause "(ii)". The average meter error shall be used to adjust the invoices in accordance with Section 2.19 (Adjustment to Invoices After Payment) for the amount of electric energy supplied to Company for the previous six (6) months from Facility, unless records of Company conclusively establish that such error existed for a greater or lesser period, in which case the correction shall cover such actual period of error.

ARTICLE 11

GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

- 11.1 Governmental Approvals for Facility. Subscriber Organization shall obtain, at its expense, any and all Governmental Approvals required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System. Under no circumstance shall Subscriber Organization commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, without first obtaining the required, applicable Governmental Approvals.
- 11.2 Land Rights for Facility. Subscriber Organization shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility on the Site and the interconnection of the Facility to the Company System. Subscriber Organization shall provide to Company:
- (a) No later than the Execution Date, copies of the documents, recorded, if required by Company (including but not limited to any agreements with landowners) evidencing Subscriber Organization's Land Rights establishing the right of Subscriber Organization to construct, own, operate and maintain the Facility on the Site, whether by fee simple ownership of the Site, leasehold interest of the Site for a term at least as long as the Term of this Agreement or, in the alternative for actual fee simple or leasehold interest in the Site, a binding, executed letter of intent establishing the right of Subscriber Organization to enter into a lease for the Site subject only to reasonable conditions related to PUC approval of this Agreement and such conditions that shall not affect the ability of the Subscriber Organization to execute such lease.
 - (b) Within six (6) months of the Execution Date, Subscriber Organization shall provide to Company a current survey (dated no earlier than the Execution Date) for the Site and any other property identified by Subscriber Organization as requiring Land Rights. Within four (4) months of the Execution Date, Subscriber Organization shall provide to Company (i) a preliminary title report

(dated no earlier than the Execution Date) for the Site and any other property identified by Subscriber Organization as requiring Land Rights, (ii) copies of all Land Rights already obtained, and (iii) a current list identifying all Land Rights required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System, including Subscriber Organization's status as to whether such Land Rights have been obtained, have been negotiated or not yet pursued and if so, an estimated date when such Land Rights would be pursued;

- (c) Within three (3) months of Subscriber Organization's identification of such additional necessary Land Rights, copies of such completed Land Rights, if any;

provided, however, that under no circumstance shall Subscriber Organization commence any construction, operation or maintenance of the Facility or interconnection of the Facility to the Company System, or require or permit Company to commence any such construction, without Subscriber Organization first obtaining the required, applicable Land Rights, and in the case where Seller has satisfied the requirements of Section 11.2(a) by way of an option agreement or binding letter of intent, Seller shall have: (i) affirmatively exercised such option agreement or fulfilled the requirements of such binding letter of intent, and (ii) provided Company with the completed Land Rights resulting therefrom, no less than ninety (90) Days prior to Seller's commencement of any construction, operation or maintenance activity of the Facility or interconnection activity of the Facility to the Company System, or Seller's requirement or permitting of Company to commence any such construction activity.

Subscriber Organization shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Subscriber Organization's failure to identify and/or timely obtain necessary Land Rights. In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Subscriber Organization or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to

determine whether such documents establish the Land Rights of Subscriber Organization to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

- 11.3 Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Company, Subscriber Organization shall, prior to commencement of construction thereof, provide the necessary Governmental Approvals and Land Rights for the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities. If the Company-Owned Interconnection Facilities are to be constructed by Subscriber Organization, then Subscriber Organization shall provide the necessary Governmental Approvals and Land Rights required for the commencement of construction and, prior to the start of each subsequent phase of construction, Subscriber Organization shall provide the necessary and appropriate Governmental Approvals and Land Rights necessary for such related construction activity. Regardless of whether Company or Subscriber Organization constructs the Company-Owned Interconnection Facilities, Subscriber Organization shall provide Company with an accounting of all necessary Governmental Approvals (in a list or spreadsheet) at the commencement of construction including relevant information regarding status and estimated completion. Subscriber Organization shall update Company on the status of all necessary Governmental Approvals, including the addition of any new Governmental Approvals that may be discovered and required, in Subscriber Organization's Monthly Progress Report submitted to Company. Notwithstanding the above, to the extent not already provided to Company, all required Governmental Approvals for the Company-Owned Interconnection Facilities shall be provided to Company on the Transfer Date in accordance with Section 9 (Governmental Approvals for Company-Owned Interconnection Facilities) of Attachment G (Company-Owned Interconnection Facilities). Land Rights for Company-Owned Interconnection Facilities, whether provided at the commencement of construction if to be constructed by Company, or thereafter, if to be constructed by Subscriber Organization, shall be obtained and its status updated by Subscriber Organization to Company in accordance with Section 10 (Land Rights) of Attachment G (Company-Owned Interconnection Facilities). Notwithstanding the above, under no circumstance shall Subscriber Organization commence

any construction, operation or maintenance of the Company-Owned Interconnection Facilities, or require or permit Company to commence any such construction, without first obtaining the required, applicable Governmental Approvals and Land Rights. Subscriber Organization shall bear complete responsibility for all delays in construction, operation and maintenance of the Company-Owned Interconnection Facilities resulting from Subscriber Organization's failure to identify and/or timely obtain necessary Governmental Approvals and Land Rights for such Company-Owned Interconnection Facilities.

- 11.4 Compliance With Laws. Subscriber Organization shall at all times comply with all applicable Laws and shall be responsible for all costs and expenses associated therewith.

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

- 12.1 Term. Subject to Section 12.2 (Effectiveness of Obligations) of this Agreement, the initial term of this Agreement shall commence upon the Execution Date of this Agreement and, unless terminated sooner as provided in this Agreement, shall remain in effect for [twenty **(20)** Contract Years] following the Commercial Operations Date (the "Initial Term"). This Agreement shall automatically terminate upon expiration of the Initial Term.
- 12.2 Effectiveness of Obligations. Only Article 3 (Facility Owned and/or Operated by Subscriber Organization), Article 12 (Term of Agreement and Company's Option to Purchase at End of Term), Article 14 (Credit Assurance and Security) as it relates to Development Period Security, Article 17 (Indemnification), Article 19 (Transfers, Assignments, and Facility Debt), Article 22 (Warranties and Representations), Article 24 (Financial Compliance), Article 28 (Dispute Resolution), Article 29 (Miscellaneous), Section 3 (Subscriber Organization Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of Attachment G (Company-Owned Interconnection Facilities) and the Defined Terms of this Agreement shall become effective on the Execution Date. Except where obligations of the Parties are explicitly stated as being effective before the Effective Date, all other portions of this Agreement shall become effective on the Effective Date.
- 12.3 PUC Approval.
- (a) This Agreement is subject to approval by the PUC in the form of a satisfactory PUC Approval Order and the Parties' respective obligations hereunder are conditioned upon receipt of such approval, except as specifically provided otherwise herein. Upon the Execution Date of this Agreement, the Parties shall use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of Section 29.20(a) (PUC Approval Order). Company shall submit to the PUC an application for a satisfactory PUC Approval Order but does not extend any assurances that a PUC Approval will ultimately be obtained. Subscriber Organization will provide reasonable cooperation to expedite obtaining a PUC Approval Order including timely

providing information requested by Company to support its application, including information for Company and its consultant to conduct a greenhouse gas emissions analysis for the PUC application, as well as information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Subscriber Organization understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or a failure to receive a PUC Approval Order. For the avoidance of doubt, Company has no obligation to seek reconsideration, appeal, or other administrative or judicial review of any Unfavorable PUC Order. The Parties agree that neither Party has control over whether or not a PUC Approval Order will be issued and each Party hereby assumes any and all risks arising from, or relating in any way to, the inability to obtain a satisfactory PUC Approval Order and hereby releases the other Party from any and all claims relating thereto.

- (b) Subscriber Organization shall seek participation without intervention in the PUC docket for approval of this Agreement pursuant to applicable rules and orders of the PUC. The scope of Subscriber Organization's participation shall be determined by the PUC. However, Subscriber Organization expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of this Agreement. If the Subscriber Organization chooses not to seek participation in the docket, then Subscriber Organization expressly agrees and knowingly waives any right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the arguments offered by Company in support of the application requesting the PUC Approval Order are insufficient to meet Company's burden of justifying that the terms of this Agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of this Agreement. Subscriber Organization shall not seek in the docket and Company shall not disclose any confidential information to Subscriber Organization that would provide Subscriber Organization with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

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

- (a) The Parties shall, no later than the PPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of Attachment B (Facility Owned by Subscriber Organization), Attachment E (Single-Line Drawing and Interface Block Diagram), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) and Attachment L (Reporting Milestones) (the "Interconnection Requirements Amendment") to reflect the results of the IRS. If the Interconnection Requirements Amendment is not executed by the PPA Amendment Deadline, either Party may, by written notice delivered to the other Party, declare the Agreement null and void; or
- (b) If Subscriber Organization is dissatisfied with the results of the IRS, Subscriber Organization shall have the option, by written notice delivered to Company no later than the Termination Deadline, to declare this Agreement null and void. Failure of Subscriber Organization to declare this Agreement null and void pursuant to the preceding sentence shall not obligate Subscriber Organization to execute the Interconnection Requirements Amendment.

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

- (a) Subscriber Organization implements a material change to the Facility without following the requirements of Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility).
- (b) Subscriber Organization is in material breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) and Section 22.2(d) requiring Subscriber Organization to have all Land

Rights and Governmental Approvals as provided therein; and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Subscriber Organization to Company of the amounts specified within the time periods provided therein.

- (c) Subscriber Organization, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), or subsequent to making the payment to Company to pay for the IRS, requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (c) The IRS Letter Agreement and/or the GHG Letter Agreement are terminated pursuant to the terms thereof prior to the completion of the Interconnection Requirements Study or greenhouse gas emissions analysis, respectively.

12.6 Time Periods for PUC Submittal Date and PUC Approval.

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

date the Unfavorable PUC Order becomes non-appealable or (ii) in the case that a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void. If a PUC Approval Order or an Unfavorable PUC Order is issued within the PUC Approval Time Period but that order is appealed, and a Non-appealable PUC Approval Order is not obtained within twenty-four (24) months of the PUC Submittal Date, or within such longer period as Company and Subscriber Organization may agree to by a subsequent written agreement (the "PUC Order Appeal Period"), then Company or Subscriber Organization may, by written notice delivered within ninety (90) Days after the expiration of the PUC Order Appeal Period, declare this Agreement null and void.

12.7 Agreement Null and Void. If the Agreement is declared null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Subscriber Organization's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential), the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this Section 12.7 (Agreement Null and Void) and Section 14.3 (Return of Development Period Security), and shall pursue no further remedies against one another; provided, however, that if in response to Subscriber Organization's request and Subscriber Organization's offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-appealable PUC Approval Order Date or completion of the IRS, Subscriber Organization shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any reasonable costs incurred thereafter and Company shall refund to Subscriber Organization any amounts advanced by Subscriber Organization in excess of such costs. A declaration that this Agreement is null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Subscriber Organization's Null and Void Right) of said Attachment U

(Calculation and Adjustment of Net Energy Potential), shall not affect the following provisions, which shall remain in full force and effect: Section 12.2 (Effectiveness of Obligations), this Section 12.7 (Agreement Null and Void), Section 24.2 (Confidentiality), Article 28 (Dispute Resolution), Section 29.3 (Notices), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.14 (Settlement of Disputes), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), and Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities).

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

ARTICLE 13
GUARANTEED PROJECT MILESTONES
INCLUDING COMMERCIAL OPERATIONS

[COMPANY TO DECIDE, FOLLOWING COMPLETION OF IRS, IF ANY GUARANTEED PROJECT MILESTONES ARE NECESSARY IN ADDITION TO THOSE LISTED IN ATTACHMENT K AND, IF SO, WHAT ARE THE CONSEQUENCES OF MISSING SUCH OTHER GUARANTEED PROJECT MILESTONES.]

- 13.1 Time is of the Essence. Time is of the essence of this Agreement, and Subscriber Organization's ability to achieve the Construction Milestones is critically important.
- 13.2 Failure to Meet Reporting Milestones. If Subscriber Organization does not meet a Reporting Milestone, in each case as set forth in Attachment L (Reporting Milestones), Subscriber Organization shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Subscriber Organization's course of action and plan to achieve (i) the missed Reporting Milestone date within ninety (90) Days of the missed Reporting Milestone and (ii) all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Subscriber Organization of its obligation to meet any subsequent Construction Milestones.
- 13.3 Guaranteed Project and Reporting Milestone Dates. Subscriber Organization shall achieve each Guaranteed Project Milestone Date or Reporting Milestone Date, subject (to the extent applicable) to the following extensions:
- (a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Subscriber Organization and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond [REDACTED] **[Note - outside date to be inserted based on type of proposal.]**; or
 - (b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this Section 13.3(b) excludes

any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 13.3(a) above), and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, such Guaranteed Project Milestone Date or Reporting Milestone Date shall be extended by a period equal to the lesser of three hundred sixty-five (365) Days or the duration of the delay caused by the Force Majeure; or

- (c) if the failure to achieve a Guaranteed Project Milestone by the applicable Guaranteed Project Milestone Date is the result of any failure by Company in the timely performance of its obligations under this Agreement, including achievement of its Company Milestones by the Company Milestone Dates as set forth on Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones), as such dates may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates) and Section 13.8 (Company Milestones), Subscriber Organization shall, provided Subscriber Organization has satisfied the Subscriber Organization's Conditions Precedent set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) by the respective Subscriber Organization's Conditions Precedent Date set forth in said Attachment K-1, be entitled to an extension of such Guaranteed Project Milestone Date equal to the duration of the period of delay directly caused by such failure in Company's timely performance. Such extension on the terms described above shall be Subscriber Organization's sole remedy for any such failure by Company. For purposes of this Section 13.3(c), Company's performance will be deemed to be "timely" if it is accomplished within the time period specified in this Agreement with respect to such performance or, if no time period is specified, within a reasonable period of time. If the performance in question is Company's review of plans, the determination of what is a "reasonable period of time" will take into account Company's past practices in reviewing and commenting on plans for similar facilities.

13.4 Damages and Termination.

- (a) Daily Delay Damages.

- (1) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall collect and Subscriber Organization shall pay liquidated damages in the amount of [REDACTED] for each Day ("Daily Delay Damages") following the applicable Guaranteed Project Milestone Date, as extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates); provided, however, that the number of Days for which Company shall collect and Subscriber Organization shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone by the Guaranteed Project Milestone Date shall not exceed sixty (60) Days for each such missed Guaranteed Project Milestone Date (the "Construction Delay LD Period"). **[Note: Contract Capacity x \$50/kW ÷ 180 Days = Daily Delay Damages.]**
- (2) If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date as extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), in addition to any Daily Delay Damages collected pursuant to Section 13.4(a)(1), Company shall collect and Subscriber Organization shall pay Daily Delay Damages following the Guaranteed Commercial Operations Date, as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates), provided that the number of Days for which Company shall collect and Subscriber Organization shall pay Daily Delay Damages for failing to achieve the Guaranteed Commercial Operations Date shall not exceed one hundred eighty (180) Days (the "COD Delay LD Period").
- (b) Termination and Termination Damages for Failure to Achieve a Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Subscriber Organization has not achieved the applicable Guaranteed Project Milestone, Company shall have the right, notwithstanding any other provision of this Agreement to

the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Subscriber Organization designating the Day such termination is to be effective, provided that Company shall issue such notice no later than thirty (30) Days following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. The effective date of such termination shall be not later than the date that is thirty (30) Days after such notice is deemed to be received by Subscriber Organization, and not earlier than the later to occur of the Day such notice is deemed to be received by Subscriber Organization or the Day following the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable. If the Agreement is terminated by Company pursuant to this Section 13.4 (Damages and Termination), Company shall have the right to collect Termination Damages, which shall be calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

- 13.5 Payment of Daily Delay Damages. Company shall draw upon the Development Period Security on a monthly basis for payment of the total Daily Delay Damages incurred by Subscriber Organization during the preceding calendar month. If the Development Period Security is at any time insufficient to pay the amount of the draw to which Company is then entitled, Subscriber Organization shall pay any such deficiency to Company promptly upon demand.
- 13.6 Liquidated Damages Appropriate. Subscriber Organization's inability to achieve Commercial Operations by the Guaranteed Commercial Operations Date may cause Company to not meet applicable RPS requirements and require Company to devote substantial additional resources for administration and oversight activities. As such, Company may incur financial consequences for failure to meet such requirements. Consequently, each Party agrees and acknowledges that (i) the damages that Company would incur due to delay in achieving Commercial Operations by the Guaranteed Commercial Operations Date (subject to the extensions provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates)) would be difficult or impossible to calculate with certainty, (ii) the Daily Delay Damages set forth in Section 13.4 (Damages and Termination) are an appropriate approximation of such damages and (iii) the Daily Delay Damages are the sole and exclusive remedies for Subscriber

Organization's failure to achieve Commercial Operations by the Guaranteed Commercial Operations Date.

- 13.7 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Subscriber Organization shall submit to Company, on the tenth (10th) Business Day of each calendar month until the Commercial Operations Date is achieved, a progress report for the prior month in a form set forth on Attachment S (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each Construction Milestone. Subscriber Organization shall include in such report a list of all letters, notices, applications, filings and Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents as may be reasonably requested by Company. In addition, Subscriber Organization shall advise Company as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Subscriber Organization shall provide Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure, Subscriber Organization shall also comply with the requirements of Section 21.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 13.7 (Monthly Progress Reports).
- 13.8 Company Milestones. Company's obligation to achieve the Company Milestones is contingent upon Subscriber Organization completing the Subscriber Organization's Conditions Precedent set forth in Attachment K-1 (Company Milestones and Subscriber Organization's Conditions Precedent). Company shall achieve each of the Company Milestones by the date set forth for such Company Milestones in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) of this Agreement (each such date, a "Company Milestone Date"), as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates) and this Section 13.8 (Company Milestones); provided, however in the event Subscriber Organization does not complete a Subscriber Organization's Condition Precedent on or before the applicable date set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones),

subject to the extensions set forth in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall be entitled to an extension as follows: (i) for the commencement of Acceptance Testing, the new Company Milestone Date shall be as set forth in clause "(gg)" of Section 2(f)(i) of Attachment G (Company-Owned Interconnection Facilities); and (ii) for any other Company Milestone Date, the extension shall be for the period of time reasonably necessary to meet any such Company Milestone Date adversely affected by Subscriber Organization's failure but no shorter than a day-for-day extension.

ARTICLE 14
CREDIT ASSURANCE AND SECURITY

- 14.1 General. Subscriber Organization is required to post and maintain Development Period Security and Operating Period Security based on the requirements of this Article 14 (Credit Assurance and Security).
- 14.2 Development Period Security. To guarantee undertaking the performance of Subscriber Organization's obligations under the Agreement for the period prior to the Commercial Operations Date (including but not limited to Subscriber Organization's obligation to meet the Guaranteed Commercial Operations Date), Subscriber Organization shall provide 50% of the Development Period Security to Company within ten (10) Days of Execution Date of the Agreement and the remaining 50% of the Development Period Security within ten (10) Business Days of the execution of the Interconnection Requirements Amendment.
- 14.3 Return of Development Period Security. The Development Period Security shall be returned to Subscriber Organization, subject to Company's right to draw from the Development Period Security as set forth in Section 14.7 (Company's Right to Draw from Security Funds), in the following circumstances: (i) this Agreement is declared null and void pursuant to any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) or Section 1(d) (NEP IE Estimate, Liquidated Damages and Subscriber Organization's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential); (ii) the PUC issues an order denying approval for an application for a PUC Approval Order, which does not become subject to appeal; (iii) the PUC issues an Unfavorable PUC Order, which does not become subject to appeal; (iv) a Non-Appealable PUC Approval Order is not obtained within the time periods specified in Section 12.6(b) (Time Period for PUC Approval); or (v) following Company's receipt of Operating Period Security pursuant to Section 14.4 (Operating Period Security) of this Agreement.
- 14.4 Operating Period Security. To guarantee the performance of Subscriber Organization's obligations under the Agreement for the period starting from the Commercial Operations Date to the expiration or termination of this Agreement, Subscriber Organization shall provide satisfactory operating

period security to Company in the amount of \$75/kW based on the Contract Capacity (the "Operating Period Security"). Subscriber Organization shall provide such Operating Period Security to Company within five (5) Business Days after the Commercial Operations Date, provided that, at all times, some form of Security Funds shall be in place and available to Company, whether Development Period Security or Operating Period Security.

- 14.5 Form of Security. Subscriber Organization shall supply the Development Period and Operating Period Security required in the form of an irrevocable standby letter of credit with no documentation requirement substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poor's) of the bank issuing the standby letter of credit falls below A-, Company may require Subscriber Organization to replace, within thirty (30) Days' notice by Company, the standby letter of credit with a standby letter of credit from another bank chartered in the United States with a credit rating of "A-" or better. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days advance notice to Company and Subscriber Organization of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Subscriber Organization fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Subscriber Organization. In the event Company receives notice from the issuing bank that a letter of credit for the Development Period Security or Operating Period Security will be cancelled or is set to expire and will not be extended, Company shall endeavor, but shall not be obligated, to provide Subscriber Organization with notice of such cancellation or termination. Company shall not be responsible for any lack of notice to Subscriber Organization of such letter of credit's cancellation or termination and the events resulting therefrom, provided, however, that if Company draws upon the then full amount

remaining under the letter of credit, the provisions of Section 14.8 (Failure to Renew or Extend Letter of Credit) and Section 14.9 (L/C Proceeds Escrow) shall apply. In the event the letter of credit for Development Period Security or Operating Period Security ever expires or is terminated without Company drawing on such full amount remaining under the letter of credit prior to its expiration, and Subscriber Organization has not been afforded the opportunity to replace the letter of credit prior to its expiration or termination because of lack of notice, Subscriber Organization shall be provided a grace period of five (5) Business Days from any notice of such expiration or termination of the letter of credit to obtain and provide to Company a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).

14.6 Security Funds. The Development Period Security and Operating Period Security, including L/C Proceeds therefrom (collectively referred to as the "Security Funds") established, funded, and maintained by Subscriber Organization pursuant to the provisions of this Article 14 (Credit Assurance and Security) shall provide security for the performance of Subscriber Organization's obligations under this Agreement and shall be available to be drawn on by Company as provided in Section 14.7 (Company's Right to Draw from Security Funds). Subscriber Organization shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Subscriber Organization shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Subscriber Organization's obligation to replenish the Development Period Security shall not exceed in total three (3) times the original amount of the Development Period Security required under Section 14.2 (Development Period Security) of this Agreement.

14.7 Company's Right to Draw from Security Funds. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement, the IRS Letter Agreement or the GHG Letter Agreement, including, without limitation, any damages due Company, any interconnection

costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. Company may, in its sole discretion, draw all or any part of such amounts due Company from any of the Security Funds to the extent available pursuant to this Article 14 (Credit Assurance and Security), and from all such forms, and in any sequence Company may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

14.8 Failure to Renew or Extend Letter of Credit. If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Subscriber Organization's cost, in an escrow account in accordance with Section 14.9 (L/C Proceeds Escrow), until and unless Subscriber Organization provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).

14.9 L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 14.8 (Failure to Renew or Extend Letter of Credit), and so long as a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security) is not obtained and provided to Company, Company shall, in order to avoid comingling the L/C Proceeds, have the right but not the obligation to place the L/C Proceeds in an escrow account as provided in this Section 14.9 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement, the IRS Letter Agreements or the GHG Letter Agreement, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Subscriber

Organization shall not be a party to such documentation and shall have no rights to the L/C Proceeds. Upon full satisfaction of Subscriber Organization's obligations under this Agreement, including recovery by Company of amounts owed to it under this Agreement, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. If there is more than one escrow account with L/C Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the L/C Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner. If a substitute letter of credit satisfying the requirements of this Article 14 (Credit Assurance and Security) is obtained and provided to Company, the net L/C Proceeds remaining as of the date that such substitute letter of credit is provided, shall be returned to Subscriber Organization, or as Subscriber Organization directs in writing.

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

ARTICLE 15
EVENTS OF DEFAULT

- 15.1 Events of Default by Subscriber Organization. The occurrence of any of the following shall constitute an Event of Default by Subscriber Organization:
- (a) if at any time during the Term, Subscriber Organization delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement electric energy that was not generated by the Facility;
 - (b) if at any time subsequent to the Commercial Operations Date, the Modified Pooled OMC Equipment Availability Factor is less than **84%** for each of three consecutive Contract Years;
 - (c) if at any time subsequent to the Commercial Operations Date, the Performance Index for each of three consecutive Contract Years falls below the Tier 2 Bandwidth for such Contract Year;
 - (d) [RESERVED]
 - (e) if at any time subsequent to the Commercial Operations Date, the Subscriber Organization fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period;
 - (f) if at any time subsequent to the Commercial Operations Date, the Subscriber Organization fails to achieve a BESS Annual Equivalent Availability Factor of not less than **75%** for each of six (6) consecutive BESS Measurement Periods as provided in Section 2.9(b) (BESS Guaranteed Availability Termination Date);
 - (g) if at any time subsequent to the Commercial Operations Date, the Subscriber Organization fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period;
 - (h) if at any time subsequent to the Commercial Operations Date, the Facility is unavailable to provide electric energy in response to Company Dispatch for a period of three hundred sixty-five (365) or more consecutive Days;

- (i) if at any time during the Term, Subscriber Organization fails to satisfy the requirements of Article 14 (Credit Assurance and Security) of this Agreement;
- (j) if at any time during the Term, Subscriber Organization fails to comply with the requirements of Section 19.1 (Sale of Facility) and Attachment P (Sale of Facility by Subscriber Organization);
- (k) if at any time during the Term, Subscriber Organization fails to comply with the requirements of Attachment Z (Facility's CBRE Program); or
- (l) if at any time subsequent to the Commercial Operations Date, Subscriber Organization fails to install, operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure is not cured within thirty (30) Days after written notice of such failure from Company unless such failure cannot be cured within said thirty (30) Day period and Subscriber Organization is making commercially reasonable efforts to cure such failure, in which case Subscriber Organization shall have a cure period of three hundred sixty-five (365) Days after Company's written notice of such failure.

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

- (a) The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment;
- (b) Any representation or warranty made by such Party herein is false and misleading in any material respect when made;
- (c) Such Party becomes insolvent, or makes an assignment for the benefit of creditors (other than an assignment to a Facility Lender pursuant to the Financing Documents) or fails generally to pay its debts as they become due; or such Party shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or shall

commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or shall file any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or liquidation; or within ninety (90) Days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed; or within ninety (90) Days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession shall not have been vacated or terminated;

- (d) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under Section 19.2 (Assignment by Subscriber Organization) or Section 19.7 (Assignment By Company) (as applicable) without having obtained such consent;
- (e) Such Party fails to comply with either (i) decision under Article 28 (Dispute Resolution), (ii) or an Independent Evaluator's decision under Article 23 (Process for Addressing Revisions to Performance Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with Article 28 (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under Article 23 (Process for Addressing Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continue such

commercially reasonable efforts until compliance is attained; or

- (f) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Agreement, other than the provisions specified in Section 15.1 (Events of Default by Subscriber Organization) and Section 15.2(a) through Section 15.2(e), if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from the other Party; provided, however, that if it is objectively impossible to cure the breach or default in question within said thirty (30) Day period (i.e., if the breach or default in question is one that could not be cured within said thirty (30) Day period by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure within said thirty (30) Day period), then, for so long as the Non-performing Party is making the same effort to cure such breach or default as would be expected of an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure, the Non-performing Party shall have a cure period equal to the shorter of (i) the duration of the period within which a cure could reasonably be expected to be achieved by an experienced independent power producer or electric utility, as applicable, willing and able to exert commercially reasonable efforts to achieve such cure or (ii) a period of three hundred sixty five (365) Days beginning on the date of written notice of such breach or default; provided, further, that if the material breach in question involves Subscriber Organization's failure to meet the operational and performance standards set forth in Attachment B (Facility Owned by Subscriber Organization), the provisions of Section 1(j) (Demonstration of Facility) of Attachment B (Facility Owned by Subscriber Organization) for consultant's study and Subscriber Organization implementation of such study's recommendation shall apply in lieu of the extended cure period provided under the preceding proviso.

15.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 15.1 (Events of Default by Subscriber Organization) and Section 15.2 (Events of

Default by a Party) are subject to the following cure/grace periods:

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

15.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the Defaulting Party ("Non-defaulting Party") shall have the right (i) to terminate this Agreement by sending written notice to the Defaulting Party as provided in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract); (ii) to withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement pursuant to this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall designate the Day such termination is to be effective which Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under Section 15.1 (Events of Default by Subscriber Organization) and Section 15.2 (Events of Default by a Party) to cure the default in question. If the Agreement is terminated by Company because of one or more of the Events of Default by Subscriber Organization, Company shall have the right, in addition to the rights set forth above in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract), to collect Termination Damages, in accordance with Article 16

(Damages in the Event of Termination by Company). Without limitation to the generality of the foregoing provisions of this Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. §362(b)(6), this Agreement is a "forward contract" and the Company is a "forward contract merchant" such that upon the occurrence of an Event of Default by Subscriber Organization under Section 15.1 (Events of Default by Subscriber Organization) or Section 15.2 (Events of Default by a Party), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Subscriber Organization.

- 15.5 Force Majeure. To the extent a Non-performing Party is entitled to defer certain liabilities pursuant to Article 21 (Force Majeure) of the Agreement, the permitted period of deferral shall be governed by Section 21.6 (Termination for Force Majeure) in lieu of this Article 15 (Events of Default).
- 15.6 Guaranteed Project Milestones Including Guaranteed Commercial Operations Date. Notwithstanding any other provision of this Article 15 (Events of Default) to the contrary, any failure of Subscriber Organization to achieve any of the Guaranteed Project Milestones by the applicable Guaranteed Project Milestone Date, including Commercial Operations by the Guaranteed Commercial Operations Date, shall be governed by Article 13 (Guaranteed Project Milestones Including Commercial Operations) in lieu of this Article 15 (Events of Default).
- 15.7 Equitable Remedies. Subscriber Organization acknowledges that Company is a public utility and is relying upon Subscriber Organization's performance of its obligations under this Agreement, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Subscriber Organization to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract). Accordingly, the remedies set forth in Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Subscriber Organization's failure to perform any of its obligations under this

Agreement, irrespective of whether such failure constitutes an Event of Default.

ARTICLE 16
DAMAGES IN THE EVENT OF TERMINATION BY COMPANY

- 16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW.
- 16.2 Termination Due to an Event of Default. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Subscriber Organization is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$75/kW.
- 16.3 Liquidated Damages Appropriate. Each Party agrees and acknowledges that (i) the damages that Company would incur due to early termination of the Agreement pursuant to either Section 13.4 (Damages and Termination) or Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) would be difficult or impossible to calculate with certainty, (ii) the Termination Damages are an appropriate approximation of such damages, and (iii) payment of Termination Damages does not relieve Subscriber Organization of liability for costs and balances incurred prior to the effective date of such termination. The Termination Damages are the sole and exclusive remedy for Company's losses arising out of the termination of this Agreement pursuant to Section 16.1 (Termination Due to Failure to Meet a Guaranteed Project Milestone Date) or Section 16.2 (Termination Due to an Event of Default). The Termination Damages are not intended to limit Company's rights or remedies, or Subscriber Organization's liabilities or duties, with respect to losses arising independent of the termination of this Agreement under such sections, including, without limitation, Company's right to recover under Section 17.1 (Indemnification of Company).
- 16.4 Consequential Damages. Neither Party shall be liable for damages incurred by the other Party for any loss of profit or revenues, loss of product, loss of use of products or services or associated equipment, interruption of business, cost of capital, downtime costs, increased operating costs, or for any special, consequential, incidental, indirect or punitive damages; provided, however, that nothing in this Section 16.4 (Consequential Damages) shall limit any of (i)

the indemnification obligations of either Party under Article 17 (Indemnification) of this Agreement, (ii) the liability of either Party for liquidated damages as set forth in this Agreement, (iii) the liability of either Party for direct damages for breach of this Agreement as and to the extent such damages have not been liquidated as set forth in this Agreement or (iv) the liability of either Party for gross negligence or intentional misconduct.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification of Company.

- (a) Indemnification Against Third Party Claims. Subscriber Organization shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) Subscriber Organization's development, permitting, construction, ownership, operation and/or maintenance of the Facility and Company-Owned Interconnection Facilities (excluding, (A) if Subscriber Organization constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, provided however, that such exclusion shall not apply to matters discovered after the Transfer Date attributable to acts or omissions of Subscriber Organization before the Transfer Date, or (B) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Subscriber Organization Party, except as and to the extent that such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Subscriber Organization Party for noncompliance by Subscriber Organization or an Indemnified Subscriber Organization Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Subscriber Organization. Subscriber Organization shall indemnify, defend and hold harmless each Indemnified Company Party

from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Subscriber Organization to comply with any Laws.

- (c) Notice. If Subscriber Organization shall obtain knowledge of any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, Subscriber Organization shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Subscriber Organization.
- (d) Indemnification Procedures.
- (1) In case any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims) or Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Subscriber Organization of the commencement thereof and, provided that Subscriber Organization has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Subscriber Organization shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Subscriber Organization desires, to assume and control the defense thereof; provided, however, that Subscriber Organization shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.
- (2) Subscriber Organization shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Subscriber Organization, in which case Company shall be

entitled, at its own expense, acting through counsel acceptable to Subscriber Organization to participate in any Claim, the defense of which has been assumed by Subscriber Organization. Company shall supply, or shall cause an Indemnified Company Party to supply, Subscriber Organization with such information and documents requested by Subscriber Organization as are necessary or advisable for Subscriber Organization to possess in connection with its participation in any Claim to the extent permitted by this Section 17.1(d)(2). Company shall not enter, and shall restrict any Indemnified Company Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Subscriber Organization, which consent shall not be unreasonably withheld or delayed.

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

17.2 Indemnification of Subscriber Organization.

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

- (i) (a) if Subscriber Organization constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, excluding, however, matters discovered after the Transfer Date attributable to acts or omissions of Subscriber Organization before the Transfer Date, or (b) if Company constructs any portion of the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of such portion(s) of the Company-Owned Interconnection Facilities, and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any such Loss is attributable to the negligence or willful misconduct of an Indemnified Subscriber Organization Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Subscriber Organization but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Subscriber Organization Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Company to comply with any Laws.
- (c) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Subscriber Organization, and if Subscriber Organization shall obtain any such knowledge, Subscriber Organization shall give prompt notice thereof to Company.
- (d) Indemnification Procedures.
- (1) In case any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Subscriber Organization Party, Subscriber Organization shall notify Company

of the commencement thereof and, provided that Company has acknowledged in writing to Subscriber Organization its obligation to an Indemnified Subscriber Organization Party under this Section 17.2 (Indemnification of Subscriber Organization), Company shall be entitled, at its own expense, acting through counsel acceptable to Subscriber Organization, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Subscriber Organization Party without the prior written consent of Subscriber Organization which consent shall not be unreasonably withheld or delayed.

- (2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, if and to the extent that, in the opinion of Subscriber Organization, such Claim involves the potential imposition of criminal liability on an Indemnified Subscriber Organization Party or a conflict of interest between an Indemnified Subscriber Organization Party and Company, in which case Subscriber Organization shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in any Claim the defense of which has been assumed by Company. Subscriber Organization shall supply, or shall cause an Indemnified Subscriber Organization Party to supply, Company with such information and documents requested by Company as are necessary or advisable for Company to possess in connection with its participation in any Claim, to the extent permitted by this Section 17.2(d)(2). Subscriber Organization shall not enter, and shall restrict any Indemnified Subscriber Organization Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Company, which consent shall not be unreasonably withheld or delayed.
- (3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Subscriber

Organization) or other similar indemnity provisions contained herein to or on behalf of Subscriber Organization, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Subscriber Organization Party may have relating thereto.

- (4) Subscriber Organization shall fully cooperate and cause all Subscriber Organization Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Subscriber Organization).

ARTICLE 18
INSURANCE

- 18.1 Required Coverage. Subscriber Organization, and anyone acting under its direction or control or on its behalf, shall, at its own expense, acquire and maintain, or cause to be maintained in full effect, commencing with the start of construction of the Facility, as applicable, and continuing throughout the Term, as applicable, the minimum insurance coverage set forth in Attachment R (Required Insurance), or such higher amounts as the Subscriber Organization and/or the Facility Lender reasonably determines to be necessary during construction and operation of the Facility. Subscriber Organization's indemnity and other obligations shall not be limited by the foregoing insurance requirements.
- 18.2 Waiver of Subrogation. Subscriber Organization, and anyone acting under its direction or control or on its behalf, shall cause its insurers to waive all rights of subrogation which Subscriber Organization or its insurers may have against Company, Company's agents, or Company's employees.
- 18.3 Additional Insureds. The insurance policies specified in Section 2 (General Liability Insurance) and Section 3 (Automobile Liability Insurance) of Attachment R (Required Insurance) shall name Company as an additional insured, as its interests may appear, with respect to any and all third party bodily injury and/or property damage claims, including completed operations, arising from Subscriber Organization's performance of this Agreement, and Subscriber Organization shall submit to Company a copy of such additional insured endorsement with evidence of insurance as required herein. Subscriber Organization shall promptly, and in no event later than five (5) Days after such cancellation, modification or non-renewal, provide written notice to Company should any of the insurance policies required under this Agreement be cancelled, materially modified, or not renewed upon expiration. Company acknowledges that the Facility Lender shall be entitled to receive and distribute any and all loss proceeds as stipulated by any Financing Documents related to any policy described in this Article 18 (Insurance) and Attachment R (Required Insurance).
- 18.4 Evidence of Policies Provided to Company. Evidence of insurance for the coverage specified in this Article 18 (Insurance) shall be provided to Company within thirty (30)

Days after the Effective Date or prior to the start of construction, whichever shall first occur. Within thirty (30) Days of any change of any policy and upon renewal of any policy, Subscriber Organization shall provide certificates of insurance to Company. During the Term, Subscriber Organization, upon Company's reasonable request, shall make available to Company for its inspection at Subscriber Organization's designated location, certified copies of the insurance policies described in this Article 18 (Insurance) and Attachment R (Required Insurance). Receipt of any evidence of insurance showing less coverage than requested is not a waiver of Subscriber Organization's obligations to fulfill the requirements.

- 18.5 Deductibles. Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions, the amounts of which will be reviewed for acceptance by Company. Acceptance will not be unreasonably withheld. Any deductible shall be the responsibility of Subscriber Organization.
- 18.6 Application of Proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance. Subscriber Organization shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Comprehensive Boiler and Machinery Insurance to be applied to repair of the Facility.
- 18.7 Annual Review by Company. The coverage limits shall be reviewed annually by Company and if, in Company's discretion, Company determines that the coverage limits should be increased to ensure commercially reasonable limits are maintained, Company shall so notify Subscriber Organization. Subscriber Organization shall, within thirty (30) Days of notice from Company, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Subscriber Organization. If the increase in coverage limits is not reasonably available and commercially feasible in the commercial insurance market, Subscriber Organization shall provide notice to Company, accompanied by a letter from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating locations of similar type, geographic location, and capacity.

- 18.8 No Representation of Coverage Adequacy. By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Subscriber Organization, and such coverage and limits shall not be deemed as a limitation on Subscriber Organization's liability under the indemnities granted to Company in this Agreement.
- 18.9 Subcontractors. Subscriber Organization shall ensure that each of its EPC contractor and other major subcontractors are either (a) named as an additional insured under the insurance policies procured by Subscriber Organization; or (b) separately covered by insurance policies equivalent in type and monetary limits as those required of Subscriber Organization. All such insurance shall be provided at the sole cost of Subscriber Organization or subcontractor.
- 18.10 General Insurance Requirements.
- (a) Each policy shall be specifically endorsed by blanket or otherwise to provide that Subscriber Organization's insurance is primary. Any other insurance carried by Company will be excess only and not contribute with this insurance.
 - (b) Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" or better.
 - (c) If any policy required herein is written on a claims-made basis, the Subscriber Organization warrants that any retroactive date applicable to coverage under the policy precedes the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of Term.
 - (d) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Subscriber Organization shall promptly, and in no event later than thirty (30) Days after such substantial reduction, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 19
TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT

- 19.1 Sale of the Facility. Subscriber Organization shall comply with the requirements of Attachment P (Sale of Facility by Subscriber Organization) before Subscriber Organization's right, title or interest in the Facility, in whole or in part, including a Change in Control, may be disposed of (other than the disposition of equipment in the ordinary course of operating and maintaining the Facility). Any attempt by Subscriber Organization to make any such disposition or Change in Control without fulfilling the requirements of Attachment P (Sale of Facility by Subscriber Organization) shall be deemed null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default). The sale, lease or other disposition of subscriptions by Subscriber Organization to Subscribers as part of the CBRE Program, and in accordance with the CBRE Tariff, shall not be considered a disposition of Subscriber Organization's right, title or interest in the Facility under this Section 19.1 (Sale of the Facility).
- 19.2 Assignment by Subscriber Organization. This Agreement may not be assigned by Subscriber Organization without the prior written consent of Company (such consent not to be unreasonably withheld, conditioned or delayed), provided that Subscriber Organization shall have the right, without the consent of Company, to assign its interest in this Agreement (i) to a wholly-owned subsidiary or to an affiliated company under common control with _____
[Note - insert appropriate parent entity], provided that such assignment does not impair the ability of Subscriber Organization to perform its obligations under this Agreement; and (ii) as collateral security for purposes of arranging or rearranging debt and/or equity financing for the Facility, or for sale-leaseback financing, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for the Facility. Subscriber Organization shall promptly provide written notice to Company of any assignment of all or part of this Agreement and Subscriber Organization shall provide to Company information about the assignee and the assignee's operational experience reasonably requested by Company. Company shall not be required to incur any duty or obligation as a result of, or in connection with, such assignment made without its consent beyond those duties and

obligations set forth in this Agreement, unless otherwise agreed to by Company in writing.

- 19.3 Company's Acknowledgment. In connection with any assignment relating to the Facility Debt pursuant to Section 19.2 (Assignment by Subscriber Organization), Company shall, if requested by Subscriber Organization and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Subscriber Organization: (i) execute and/or provide such Hawaii-law governed documents as may be reasonably requested by the Facility Lender and reasonably acceptable to Company, including, (aa) to acknowledge (1) such assignment and/or pledge/mortgage, (2) the right of the Facility Lender to receive copies of notices of Events of Default where the Subscriber Organization is the Defaulting Party and (3) the Facility Lender's reasonable opportunity to cure such Events of Default and to exercise remedies to assume Subscriber Organization's obligations under this Agreement, and (bb) estoppel certificates as to Subscriber Organization's and Company's compliance with the terms and conditions of this Agreement; and (ii) provide a legal opinion as to the due authorization of such Company acknowledgment and estoppels.
- 19.4 Financing Document Requirements. Subscriber Organization shall include in the terms of the Financing Documents as provisions for Company's benefit that provide that as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender ("Subsequent Owner"), succeeding to ownership or possession of the Facility as a result of the exercise of remedies under the Financing Documents, and thereafter operating the Facility to generate electric energy, such Facility Lender or Subsequent Owner shall, prior to operating the Facility for such purpose, have provided to Company, evidence reasonably acceptable to Company that such Subsequent Owner has (a) the qualifications, or has contracted with an entity having the qualifications, to operate the Facility in a manner consistent with the terms and conditions of this Agreement; and (b) assumed all of Subscriber Organization's rights and obligations under this Agreement.
- 19.5 [Reserved]
- 19.6 Reimbursement of Company Costs. Subscriber Organization shall reimburse Company for costs and expenses incurred by Company (including reasonable attorneys' fees of outside

counsel) in responding to Facility Lender's requests or as a result of any event of default by Subscriber Organization under the Financing Documents, including but not limited to any assumption of Subscriber Organization's obligations under Section 19.4 (Financing Document Requirements).

- 19.7 Assignment By Company. This Agreement shall not be assigned by Company without the prior written consent of Subscriber Organization (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company shall have the right, without the consent of Subscriber Organization, to assign its interest in this Agreement to any affiliated company owned in whole or in part by Hawaiian Electric Industries, Inc. ("HEI") so long as such assignee (a) shall have assumed all obligations of Company under this Agreement; and (b) is a utility regulated by the PUC.
- 19.8 Consequences for Failure to Comply. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 19.2 (Assignment by Subscriber Organization) or Section 19.7 (Assignment By Company) (as applicable), without fulfilling the requirements of this Article 19 (Transfers, Assignments, and Facility Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

ARTICLE 20
SALE OF ENERGY TO THIRD PARTIES

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

ARTICLE 21
FORCE MAJEURE

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

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

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

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

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

- (a) any acts or omissions of any Third Party, including, without limitation, any vendor, materialman, customer, or supplier of Subscriber Organization, unless such acts or omissions are themselves excused by reason of Force Majeure;

- (b) any full or partial reduction in the electric output of Facility that is caused by or arises from (i) a mechanical or equipment breakdown or (ii) other mishap or events or conditions attributable to normal wear and tear or defects, unless such mishap is caused by Force Majeure;
- (c) changes in market conditions that affect the cost of Subscriber Organization's supplies, or that affect demand or price for any of Subscriber Organization's products, or that otherwise render this Agreement uneconomic or unprofitable for Subscriber Organization;
- (d) Subscriber Organization's inability to obtain Governmental Approvals or Land Rights for the construction, ownership, operation and maintenance of Facility and the Company-Owned Interconnection Facilities, or Subscriber Organization's loss of any such Governmental Approvals or Land Rights once obtained;
- (e) the lack of wind, sun or any other resource of an inherently intermittent nature;
- (f) Subscriber Organization's inability to obtain sufficient fuel, power or materials to operate its Facility, except if Subscriber Organization's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure;
- (g) Subscriber Organization's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Company pursuant to this Agreement;
- (h) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (i) litigation or administrative or judicial action pertaining to the Agreement, the Site, the Facility, the Land Rights, the acquisition, maintenance or renewal of financing or any Governmental Approvals, or the design, construction, ownership, operation or maintenance of the Facility, the Company-Owned Interconnection Facilities or the Company System;
- (j) a strike, work stoppage or labor dispute limited only to any one or more of the Indemnified Subscriber

Organization Parties or any other third party employed by Subscriber Organization to work on the Project; or

- (k) any full or partial reduction in the availability of the Facility to produce and deliver to the Point of Interconnection electric energy in response to Company Dispatch which is caused by any Third Party including, without limitation, any vendor or supplier of Subscriber Organization or Company, except to the extent due to Force Majeure.

21.4 Satisfaction of Certain Conditions. Section 21.5 (Guaranteed Project Milestones Including Commercial Operations), Section 21.6 (Termination for Force Majeure) and Section 21.7 (Effect of Force Majeure) defer or limit certain liabilities of a Party for delay and/or failure in performance to the extent such delay or failure is the result of conditions or events of Force Majeure; provided, however, that a Non-performing Party is only entitled to such limitations or deferrals of liabilities as and to the extent the following conditions are satisfied:

- (a) the Non-performing Party gives the other Party, within five (5) Days after the Non-performing Party becomes aware or should have become aware of the Force Majeure condition or event, but in any event no later than thirty (30) Days after the Force Majeure condition or event begins, written notice (the "Force Majeure Notice") stating that the Non-performing Party considers such condition or event to constitute Force Majeure and describing the particulars of such Force Majeure condition or event, including the date the Force Majeure commenced;
- (b) the Non-performing Party gives the other Party, within fourteen (14) Days after the Force Majeure Notice was or should have been provided, a written explanation of the Force Majeure condition or event and its effect on the Non-performing Party's performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the condition or event of Force Majeure;

- (d) the Non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
 - (e) when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.
- 21.5 Guaranteed Project Milestones Including Commercial Operations. The Parties shall have the rights and obligations set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) in the event a condition or event of Force Majeure affects the achievement of a Guaranteed Project Milestone Date, including the Guaranteed Commercial Operations Date.
- 21.6 Termination for Force Majeure. If Force Majeure delays or prevents a Party's performance for more than three hundred sixty-five (365) Days from the occurrence or inception of the Force Majeure, as stated in the Force Majeure Notice, and such delay or failure of performance would have otherwise constituted an Event of Default under Article 15 (Event of Default), the other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by the Party whose performance has been delayed or prevented. In the event of termination pursuant to this Section 21.6 (Termination for Force Majeure), neither Party shall be liable for any damages or have any obligations to the other, except as provided in Section 29.25 (Survival of Obligations) other than as provided in Section 29.25(b).
- 21.7 Effect of Force Majeure. Other than as provided in Section 21.5 (Guaranteed Project Milestones Including Commercial Operations) and Section 21.6 (Termination for Force Majeure), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent (i) such delays or failures are substantially caused by conditions or events of Force Majeure, and (ii) the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied.

- 21.8 No Relief of Other Obligations. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.
- 21.9 No Extension of the Term. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.

ARTICLE 22
WARRANTIES AND REPRESENTATIONS

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

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

22.2 By Subscriber Organization. Subscriber Organization represents, warrants, and covenants that:

- (a) As of the Execution Date and for the extent of the Term, it is an entity in good standing with the Hawai'i Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date.
- (b) As of the Execution Date, Subscriber Organization is a subsidiary of [_____], a company with extensive experience developing, constructing, owning and operating utility-scale renewable energy generation facilities.
- (c) Subscriber Organization has obtained or will obtain Land Rights within the time periods set forth in Section 11.2 (Land Rights for Facility) and Section 11.3 (Company-Owned Interconnection Facilities).
- (d) At the time legally required, Subscriber Organization shall have obtained (i) all Governmental Approvals for the construction, ownership, operation and maintenance

of the Company-Owned Interconnection Facilities and
(ii) all Governmental Approvals necessary for the
construction, ownership, operation and maintenance of
the Facility.

- (e) As of the Commercial Operations Date, the Facility will be a qualified renewable resource under RPS in effect as of the Effective Date.

22.3 Facility's CBRE Program. The Subscriber Organization's representations, warranties and covenants set forth in the various provisions of Attachment Z (Facility's CBRE Program) are incorporated into this Article 22 (Warranties and Representations) as if fully set forth in this Section 22.3 (Facility's CBRE Program).

ARTICLE 23
PROCESS FOR ADDRESSING
REVISIONS TO PERFORMANCE STANDARDS

- 23.1 Revisions to Performance Standards. The Parties acknowledge that, during the Term, certain Performance Standards and Telemetry and Control interfaces may be revised or added to facilitate necessary improvements in integrating intermittent variable energy resources and/or energy storage resources into the Company System and operations. Such revisions or additions may be attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company System, changes in the Company System, changes in communications and control platforms, changes in system protection requirements, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in Laws (e.g., new environmental constraints, which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law). Changes in Facility characteristics achieved through control system configuration, settings, or other tunable parameters shall not be considered a revision to performance standards. These types of changes should be implemented by the Subscriber Organization in response to Company request unless it can be shown that the changes negatively impact the Subscriber Organization's ability to meet its obligations under this Agreement.
- 23.2 Performance Standards Information Request. If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by Subscriber Organization, Company shall have the right to issue to Subscriber Organization a Performance Standards Information Request with respect to such Performance Standards Revision. Subscriber Organization shall, within a reasonable period of time following Subscriber Organization's receipt of such Performance Standards Information Request, but in no event more than 90 Days after Subscriber Organization's receipt of such Request (or such other period of time as Company and Subscriber Organization may agree in writing), submit to Company a Performance Standards Proposal responsive to the

Performance Standards Revision proposed in such Performance Standards Information Request.

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

- 23.5 Failure to Reach Agreement. If Company and Subscriber Organization are unable to agree upon and execute a Performance Standards Revision Document within 180 Days of Company's written notice to Subscriber Organization pursuant to Section 23.4 (Performance Standards Revision Document), Company shall have the option of declaring the failure to reach agreement on and execute such Performance Standards Revision Document to be a dispute and submit such dispute to an Independent Evaluator for the conduct of a determination pursuant to Section 23.10 (Dispute) of this Agreement. Any decision of the Independent Evaluator, rendered as a result of such dispute shall include a form of a Performance Standards Revision Document as described in Section 23.4 (Performance Standards Revision Document).
- 23.6 PUC Performance Standards Revision Order. No Performance Standards Revision Document shall constitute an amendment to the Agreement unless and until a PUC Performance Standards Revision Order issued with respect to such Document has become non-appealable. Once the condition of the preceding sentence has been satisfied, such Performance Standards Revision Document shall constitute an amendment to this Agreement. To be "non-appealable" under this Section 23.6 (PUC Performance Standards Revision Order), such PUC Performance Standards Revision Order shall be either (i) not subject to appeal to any Circuit Court of the State of Hawai'i or the Supreme Court of the State of Hawai'i, because the thirty (30) Day period (accounting for weekends and holidays as appropriate) permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) affirmed on appeal to any Circuit Court of the State of Hawai'i or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawai'i, or affirmed upon further appeal or appellate process, and is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).
- 23.7 Company's Rights. The rights granted to Company under Section 23.4 (Performance Standards Revision Document) and Section 23.5 (Failure to Reach Agreement) above are exclusive to Company. Subscriber Organization shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under

Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.

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

another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.

- (a) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:
 - (1) The Performance Standard Revision(s);
 - (2) The technical feasibility of complying with the Performance Standard Revision(s) and likelihood of compliance;
 - (3) How Subscriber Organization would comply with the Performance Standard Revision(s);
 - (4) Reasonably expected net costs and/or lost revenues associated with the Performance Standards Revision(s);
 - (5) The appropriate level, if any, of Performance Standards Pricing Impact in light of the foregoing; and
 - (6) Contractual consequences for non-performance that are commercially reasonable under the circumstances.
- (b) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (c) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

- (d) The following standards shall be applied by the Independent Evaluator in rendering his or her decision: (i) if it is not technically or operationally feasible for Subscriber Organization to comply with a Performance Standard Revision, the Independent Evaluator shall determine that the Agreement shall not be amended to incorporate such Performance Standard Revision (unless the Parties agree otherwise); (ii) if it is technically or operationally feasible for Subscriber Organization to comply with a Performance Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision into a Performance Standards Revision Document including (aa) Subscriber Organization's Performance Standards Modifications, (bb) pricing terms that incorporate the Performance Standards Pricing Impact, and (cc) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Subscriber Organization as to Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the Parties and Independent Evaluator's rationale for his or her decisions on disputed issues.
- (e) The fees and costs of the Independent Evaluator shall be paid by Company up to the first \$30,000 of such fees and costs; above those amounts, the Party that is not the prevailing Party shall be responsible for any such fees and costs; provided, if neither Party is the prevailing Party, then the fees and costs of the Independent Evaluator above \$30,000, shall be borne equally by the Parties. The Independent Evaluator in rendering his or her decision shall also state which Party prevailed over the other Party, or that neither Party prevailed over the other.

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

ARTICLE 24
FINANCIAL COMPLIANCE

- 24.1 Financial Compliance. Subscriber Organization shall provide or cause to be provided to Company on a timely basis, as reasonably determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the "Financial Compliance Information"), reasonably requested by Company for purposes of permitting Company and its parent company, HEI, to comply with the requirements (initial and on-going) of (i) the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation ("FASB ASC 810"), (ii) FASB ASC 842, Leases, (iii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 842 issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Subscriber Organization shall allow Company or its independent auditor to audit, to the extent reasonably required, Subscriber Organization's financial records, including its system of internal controls over financial reporting; provided, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Subscriber Organization's reasonable internal costs. Company shall limit access to such Financial Compliance Information to persons involved with such compliance matters and restrict persons involved in Company's monitoring, dispatch or scheduling of Subscriber Organization and/or Facility, or the administration of this Agreement, from having access to such Financial Compliance Information (unless approved in writing in advance by Subscriber Organization).
- 24.2 Confidentiality. Company shall, and shall cause HEI to, maintain the confidentiality of the Financial Compliance Information as provided in this Article 24 (Financial Compliance). Company may share the Information on a confidential basis with HEI and the independent auditors and attorneys for HEI. (Company, HEI, and their respective independent auditors and attorneys are collectively referred to in this Article 24 (Financial Compliance) as "Recipient.") If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that

consolidation or financial reporting with respect to Subscriber Organization and/or this Agreement is necessary, Company and HEI each shall have the right to disclose such of the Financial Compliance Information as Company or HEI, as applicable, reasonably determines is necessary to satisfy applicable disclosure and reporting or other requirements and give Subscriber Organization prompt written notice thereof (in advance to the extent practicable under the circumstances). If Company or HEI disclose Financial Compliance Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Financial Compliance Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawai'i ("Consumer Advocate") in connection with the PUC's rate making activities for Company and other HEI affiliated entities, provided that, if the scope or content of the Financial Compliance Information to be disclosed to the PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Financial Compliance Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Financial Compliance Information. Neither Company nor HEI shall use the Financial Compliance Information for any purpose other than as permitted under this Article 24 (Financial Compliance).

- 24.3 Required Disclosure. In circumstances other than those addressed in Section 24.2 (Confidentiality), if any Recipient becomes legally compelled under applicable Laws or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Financial Compliance Information, such Recipient shall undertake reasonable efforts to provide Subscriber Organization with prompt notice of such legal requirement prior to disclosure so that Subscriber Organization may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Article 24 (Financial Compliance). If such protective order or other remedy is not obtained, or if Subscriber Organization waives compliance with the provisions at this Article 24 (Financial Compliance), Recipient shall furnish only that portion of the Financial Compliance Information which it is legally required to so furnish and to use reasonable efforts to

obtain assurance that confidential treatment will be accorded to any disclosed material.

- 24.4 Exclusions from Confidentiality. The obligation of nondisclosure and restricted use imposed on each Recipient under this Article 24 (Financial Compliance) shall not extend to any portion(s) of the Financial Compliance Information which (i) was known to such Recipient prior to receipt, or (ii) without the fault of such Recipient is available or becomes available to the general public, or (iii) is received by such Recipient from a Third Party not bound by an obligation or duty of confidentiality.
- 24.5 Consolidation. Company does not want to be subject to consolidation as set forth in FASB ASC 810, as issued and amended from time to time by FASB. Company represents that, as of the Execution Date, it is not required to consolidate Subscriber Organization into its financial statements in accordance with relevant accounting guidance under U.S. generally accepted accounting principles ("GAAP"). If, due to a change in applicable law or accounting guidance under U.S. GAAP, or as a result of a material amendment to the Agreement, in each case, after the Execution Date, Company determines, in its sole but good faith discretion, that it is required to consolidate Subscriber Organization into its financial statements in accordance with relevant accounting guidance in accordance with U.S. GAAP, then Subscriber Organization, upon Company's written request, shall, as soon as reasonably practicable (but in no event longer than fifteen (15) Days) provide audited financial statements (including footnotes) in accordance with U.S. GAAP (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial statements within the reporting deadlines of the Securities and Exchange Commission. If Subscriber Organization does not normally prepare audited financial statements for the periods requested, Company shall reimburse Subscriber Organization fifty percent (50%) of the reasonable and verifiable costs of having necessary audits performed and preparation of the audited financial statement; provided that the foregoing reimbursement shall not include the costs, whether actual or estimated, of preparing audited financial statements. Notwithstanding the foregoing requirement that Subscriber Organization provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the

consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties. If the Parties are unable to eliminate the consolidation treatment by other means, the Parties shall effectuate a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility of Subscriber Organization) or the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Subscriber Organization), or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Subscriber Organization), but not less than the Financial Termination Costs determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Subscriber Organization), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Subscriber Organization).

ARTICLE 25
GOOD ENGINEERING AND OPERATING PRACTICES

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

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

- 26.1 Equal Employment Opportunity. (Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-1.4 and 41 CFR 60-741.5.) Subscriber Organization is aware of and is fully informed of Subscriber Organization's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the applicable provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.
- 26.2 Equal Opportunity For Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans. Applicable to (i) contracts of \$25,000 or more entered into before December 31, 2003 (41 CFR 60-250.4) or (ii) each federal government contract of \$100,000 or more, entered into or modified on or after December 31, 2003 (41 CFR 60-300.4) for the purchase, sale or use of personal property or nonpersonal services (including construction.) If applicable to Subscriber Organization under this Agreement, Subscriber Organization agrees that it is, and shall remain, in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, including the requirements of 41 CFC 60-250.5(a) (for orders/contracts entered into before December 31, 2003) and 41 CFR 60-300.5(a) (for orders/contracts entered into or modified on or after December 31, 2003) which are incorporated into this Agreement by reference.

ARTICLE 27
SET OFF

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

ARTICLE 28
DISPUTE RESOLUTION

- 28.1 Good Faith Negotiations. Except as otherwise expressly set forth in this Agreement, before submitting any claims, controversies or disputes ("Dispute(s)") under this Agreement to the Dispute Resolution Procedures set forth in Section 28.2 (Dispute Resolution Procedures, Mediation), the presidents, vice presidents, or authorized delegates from both Subscriber Organization and Company having full authority to settle the Dispute(s), shall personally meet in Hawai'i and attempt in good faith to resolve the Dispute(s) (the "Management Meeting").
- 28.2 Dispute Resolutions Procedures, Mediation. Except as otherwise expressly set forth in this Agreement and subject to Section 28.1 (Good Faith Negotiations), any and all Dispute(s) arising out of or relating to this Agreement, (i) which remain unresolved for a period of 20 Days after the Management Meeting takes place or (ii) for which the Parties fail to hold a Management Meeting within 60 Days of the date that a Management Meeting was requested by a Party, may upon the agreement of the Parties, first be submitted to confidential mediation in Honolulu, Hawai'i pursuant to the administration by, and in accordance with the Mediation Rules, Procedures and Protocols of, Dispute Prevention & Resolution, Inc. (or its successor) or, in their absence, the American Arbitration Association ("DPR") then in effect. If the Parties agree to submit the dispute to confidential mediation, the parties shall each pay 50% of the cost of the mediation (i.e., the fees and expenses charged by the mediator and DPR) and shall otherwise each bear their own mediation costs and attorneys' fees. If the Parties do not submit the Dispute(s) to mediation, or if they do submit the Dispute(s) to mediation but settlement of the Dispute(s) is not reached within 60 Days after commencement of the mediation, either Party may initiate legal proceedings in a court of competent jurisdiction in the State of Hawai'i.
- 28.3 Exclusions. The provisions of this Article 28 (Dispute Resolution) shall not apply to any disputes within the authority of any of (i) an Independent Evaluator under Article 23 (Process for Addressing Revisions to Performance Standards), (ii) an Independent AF Evaluator under Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) or (iii) an OEPR Evaluator under

Attachment U (Calculation and Adjustment of Net Energy Potential).

- 28.4 Document Retention. If either party initiates dispute resolution under this Article 28 (Dispute Resolution), then each Party must retain and preserve all records, including documents, which may be relevant to such Dispute, in accordance with applicable Laws until such Dispute is resolved.

ARTICLE 29
MISCELLANEOUS

- 29.1 Amendments. Any amendment or modification of this Agreement or any part hereof shall not be valid unless in writing and signed by the Parties. Any waiver hereunder shall not be valid unless in writing and signed via manual signature by the Party against whom waiver is asserted. Notwithstanding the foregoing, administrative changes mutually agreed by Company and Subscriber Organization in writing, such as changes to settings shown in Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) and changes to numerical values of Performance Standards in Section 3 (Performance Standards) of Attachment B (Facility Owned by Subscriber Organization) shall not be considered amendments to this Agreement requiring PUC approval.
- 29.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.
- 29.3 Notices.
- (a) All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a Party may designate by notice to the other Party):

Company:

By Mail:

Hawaiian Electric Company, Inc.
P.O. Box 2750, Honolulu, Hawaii 96840
Attn: Manager, Energy Contract Management

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.
Central Pacific Plaza
Honolulu, Hawaii 96813
Attn: Manager, Energy Contract Management

By E-mail:

Hawaiian Electric Company, Inc.
Attn: Manager, Energy Contract Management
Email: ppanotice@hawaiianelectric.com

With a copy to:

By Mail:

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

By E-mail:

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

Subscriber Organization: The contact information listed in Attachment A (Description of Generation, Conversion and Storage Facility) hereto.

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

Agreement in order to adapt to changing technology and commercial practices.

- 29.4 Effect of Section and Attachment Headings. The Table of Contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.
- 29.5 Non-Waiver. Except as otherwise provided in this Agreement, no delay or forbearance of Company or Subscriber Organization in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.
- 29.6 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Subscriber Organization does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.
- 29.7 Entire Agreement. This Agreement, the IRS Letter Agreement and the GHG Letter Agreement (together with any confidentiality or non-disclosure agreements entered into by the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.
- 29.8 Governing Law, Jurisdiction and Venue. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Hawai'i, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Subscriber Organization submits itself to the personal jurisdiction of the courts of

the State of Hawai'i and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawai'i.

- 29.9 Limitations. Nothing in this Agreement shall limit Company's ability to exercise its rights as specified in Company's Tariff as filed with the PUC, or as specified in General Order No. 7 of the PUC's Standards for Electric Utility Service in the State of Hawai'i, as either may be amended from time to time.
- 29.10 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.
- 29.11 Electronic Signatures and Counterparts. The parties agree that this Agreement and any subsequent writings, including amendments, may be executed and delivered by exchange of executed copies via E-mail or other acceptable electronic means, and in electronic formats such as Adobe PDF or other formats mutually agreeable between the parties which preserve the final terms of this Agreement or such writing. A party's signature transmitted by facsimile, E-mail, or other acceptable electronic means shall be considered an "original" signature which is binding and effective for all purposes of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument binding all Parties notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
- 29.12 Definitions. Capitalized terms used in this Agreement and not otherwise defined in the context in which they first appear are defined in the Definitions Section.
- 29.13 Severability. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other

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

- 29.14 Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in Article 28 (Dispute Resolution) of this Agreement.
- 29.15 Environmental Credits and RPS. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the electric energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line". Subscriber Organization shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.
- 29.16 Schedule of Defined Terms and Attachments. The Schedule of Defined Terms and each Attachment to this Agreement constitute essential and necessary parts of this Agreement.
- 29.17 Proprietary Rights. Subscriber Organization agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("Proprietary Rights"). Subscriber Organization agrees to indemnify, defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of Third

Party Proprietary Rights arising out of Subscriber Organization's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.

29.18 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

29.19 Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the Day of the act, event or default from which the designated period of time begins to run shall not be included. If the last Day of the period so computed is not a Business Day, then the period shall run until the end of the next Day which is a Business Day.

29.20 PUC Approval.

(a) PUC Approval Order. The term "PUC Approval Order" means an order from the PUC that does not contain terms and conditions deemed to be unacceptable by Company, and is in a form deemed to be reasonable by Company, in its sole, but nonarbitrary, discretion, ordering that:

- (1) this Agreement is approved;
- (2) Company is authorized to include the purchased energy costs (and related revenue taxes) that Company incurs under this Agreement in Company's Energy Cost Recovery Clause, or equivalent, to the extent such costs are not included in Base Rates for the Term;
- (3) Company is authorized to include the Lump Sum Payment that Company incurs under this Agreement in Company's Purchase Power Adjustment Clause, to the extent such costs are not included in Base Rates for the Term;
- (4) the purchased energy costs and the Lump Sum Payment to be incurred by Company as a result of this Agreement are reasonable; and

- (5) Company's purchased power arrangements under this Agreement, pursuant to which Company will purchase [energy and **(Only if PPA has energy payment)**] renewable dispatchable generation from Subscriber Organization, are prudent and in the public interest.
- (b) Non-appealable PUC Approval Order. The term "Non-appealable PUC Approval Order" means a PUC Approval Order (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal (the "Appeal Period") has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process.
- (c) Company's Written Statement. Not later than thirty-five (35) Days after the issuance of a PUC order approving this Agreement, Company shall provide Subscriber Organization with a copy of such order together with a written statement as to whether the conditions set forth in Section 29.20(a) (PUC Approval Order) have been met and the order constitutes a PUC Approval Order. If Company's written statement declares that the conditions set forth in Section 29.20(a) (PUC Approval Order) have been satisfied, the date of the issuance of the PUC Approval Order shall be the "PUC Approval Order Date".
- (d) Non-appealable PUC Approval Order Date. If Company provides the written statement referred to in Section 29.20(c) (Company's Written Statement) to the effect that the conditions referred to in Section 29.20(a) (PUC Approval Order) have been satisfied, the term "Non-appealable PUC Approval Order Date" shall be defined as follows:

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

29.1 Community Outreach.

- (a) The Parties acknowledge that, prior to the Execution Date, Subscriber Organization provided to Company a comprehensive community outreach and communications plan to work with and inform neighboring communities and stakeholders to gain their support for the Project ("Community Outreach and Engagement Plan"). Subscriber Organization agrees to work with neighboring communities and stakeholders and provide them timely information during all phases of the Project, including but not limited to the following information: Project description, Project stakeholders, community concerns and Subscriber Organization's efforts to address such concerns, Project benefits, government approvals, Project schedule, and a Community Outreach and Engagement Plan. Subscriber Organization's Community Outreach and Engagement Plan is a public document and shall remain available to members of the community on the Subscriber Organization's website for the Term of this Agreement and upon request. Subscriber Organization shall also provide Company with links to its Project website and Community Outreach and Engagement Plan.
- (b) The Parties also acknowledge that, prior to the Execution Date, Subscriber Organization provided reasonable advance notice and hosted a public meeting for community and neighborhood groups in and around the vicinity of the Project site that provided neighboring community, stakeholders, and the general public with: (i) a reasonable opportunity to learn about the proposed Project; (ii) an opportunity to engage in a dialogue about concerns, mitigation measures, and potential community benefits of the proposed Project; and (iii) information concerning the process and/or intent for the public's input and engagement, including advising attendees that they will have thirty (30) Days from the date of said public meeting to submit written comments to Company and/or Subscriber Organization for inclusion in the Company's submission to the PUC of its application for a satisfactory PUC Approval Order. Subscriber Organization shall collect all public comments, and then provide Company copies of all comments received in their original, unedited form, along with copies of all comments with personal information redacted and ready for filing. Subscriber Organization agrees that Company may submit any and all

public comments (presented in its original, unedited form) as part of its PUC application for this Project.

- (c) Subscriber Organization acknowledges and agrees that subsequent to the PUC Submittal Date and prior to the date when the Parties' statements of position are to be filed in the docketed PUC proceeding for this Project, Subscriber Organization will solicit public comments concerning the Project a second time. Subscriber Organization will submit to the PUC as part of the docketed PUC proceeding for this Project any and all public comments (presented in its original, unedited form) received by Company and/or Subscriber Organization regarding the Project that are not received in time to include as part of the Company's application for a satisfactory PUC Approval Order.
- (d) The Parties acknowledge and agree that Subscriber Organization is responsible for community outreach and engagement for the Project, and that the public meeting and comment solicitation process described in this Section 29.21_ (Community Outreach) do not represent the only community outreach and engagement activities that can or should be performed by Subscriber Organization. Without limitation to the generality of the preceding sentence, Subscriber Organization agrees to take into account the Project's potential impacts on historical and cultural resources and, at a minimum, Subscriber Organization shall describe: (i) any 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; (ii) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the Project; and (iii) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. Subscriber Organization shall determine and implement such additional means as may be reasonably necessary to share information with and involve the community and neighborhood groups in and around the vicinity of the Facility during the Project planning and development process through the Term of this Agreement, and shall timely inform Company of its plans and activities in this regard.

- (e) Upon the Execution Date and at all times during the Term of this Agreement, Subscriber Organization shall designate an individual as the "Subscriber Organization's Community Representative." The Subscriber Organization's Community Representative shall be the primary contact between the community and the Subscriber Organization and shall be available during the Term of this Agreement to receive and answer questions from the community. As of the Execution Date the Subscriber Organization's Community Representative shall be:

Name: [name of Subscriber Organization's Community Representative]

Contact Information: [email address]

Subscriber Organization shall notify Company in writing upon designation of any new Subscriber Organization's Community Representative.

29.2 Change in Standard System or Organization.

- (a) Consistent With Original Intent. If, during the Term, any standard, system or organization referenced in this Agreement should be modified or replaced in the normal course of events, such modification or replacement shall from that point in time be used in this Agreement in place of the original standard, system or organization, but only to the extent such modification or replacement is generally consistent with the original spirit and intent of this Agreement.
- (b) Eliminated or Inconsistent With Original Intent. If, during the Term, any standard system or organization referenced in this Agreement should be eliminated or cease to exist, or is modified or replaced and such modification or replacement is inconsistent with the original spirit and intent of this Agreement, then in such event the Parties will negotiate in good faith to amend this Agreement to a standard, system or organization that would be consistent with the original spirit and intent of this Agreement.

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

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

- 29.4 Hawai'i General Excise Tax. Subscriber Organization shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawai'i general excise tax on gross income and all other similar taxes imposed on Company by any Governmental Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this Section 29.24 (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the Hawai'i general excise tax plus surcharge on O'ahu (totaling 4.5% as of the Execution Date) would include an additional 4.712% so that the underlying payment will be net of such tax liability.
- 29.5 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Subscriber Organization's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:
- (a) The obligation to pay Daily Delay Damages under Section 13.4 (Damages and Termination);
 - (b) The obligation to pay Termination Damages under Article 16 (Damages in the Event of Termination by Company);
 - (c) The indemnity obligations under Article 17 (Indemnification) and Section 29.17 (Proprietary Rights);
 - (d) The dispute resolution provisions of Article 28 (Dispute Resolution);
 - (e) Section 29.3 (Notices), Section 29.5 (Non-Waiver), Section 29.8 (Governing Law, Jurisdiction and Venue),

Section 29.9 (Limitations), Section 29.13 (Severability), Section 29.14 (Settlement of Disputes), Section 29.15 (Environmental Credits and RPS), Section 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), Section 29.25 (Survival of Obligations), Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities) and Section 1(d) (Subscriber Organization's Right to Transfer) and Section 2(d) (Right of First Refusal) of Attachment P (Sale of Facility by Subscriber Organization); and

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

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

- (a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.
- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.
- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are

inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

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

29.7 Agreement is Not a Design or Construction Contract. This Agreement is not a design or construction contract. The Parties acknowledge and agree that Subscriber Organization will finance and develop the Facility for Subscriber Organization to own and operate. Subscriber Organization is not a design professional or a contractor. Subscriber Organization is not hereby undertaking to perform and is not holding itself out or offering to perform any work for which a professional or contractor's license may be required under the laws of the State of Hawai'i. Notwithstanding anything to the contrary, all work related to the design, engineering, and construction of the Facility shall be performed by design professionals and contractors who hold the appropriate licenses issued by the State of Hawai'i and intend to develop the Facility in full compliance with all applicable state laws. For the avoidance of doubt, in all instances where this Agreement refers to Subscriber Organization performing the acts of constructing, building or installing, said language shall be interpreted to mean that such work will be performed by duly licensed contractors properly retained by Subscriber Organization in accordance with laws of the State of Hawai'i.

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

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

HAWAIIAN ELECTRIC COMPANY, INC.

By _____
Name:
Its:

By _____
Name:
Its:

("Company")

By _____
Name:
Its:

By _____
Name:
Its:

("Subscriber Organization")

SCHEDULE OF DEFINED TERMS

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

"Acceptance Notice": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

"Account Holder": The primary account holder for each physical residence or business address on the island serviced by the Company, as identified in Company's records. An Account Holder is not a Subscriber until such Account Holder has been successfully enrolled in Facility's CBRE Program.

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

"Active Turbine Hours (ACTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) of this Agreement.

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

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

"Allowed Capacity": Shall have the meaning set forth in Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

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

"Applicable Period Lump Sum Payment": For each applicable period, the total amount of Lump Sum Payment payable during such period, as such amount may be calculated and adjusted from time to time as set forth in Section 2.3 (Lump Sum Payment) of this Agreement and/or Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, including but not limited to any downward adjustment made pursuant to Section 3.iv of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), but excluding any set-off of liquidated damages under Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages). For purposes of calculating liquidated damages under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payment payable for the last calendar month of the LD Period in question. For purposes of calculating liquidated damages under Section 2.6(b) (GPI Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payments payable for the last calendar month of the PI Assessment Period in question. For purposes of calculating liquidated damages under Section 2.8(a) (BESS Capacity Test and Liquidated Damages), Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) and Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), the "Applicable Period Lump Sum Payment" is the total of the monthly Lump Sum Payments payable for the three months of the BESS Measurement Period in question.

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

"Appraised Fair Market Value of the Facility": Shall have the meaning set forth in Section 3(d) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"Baseline SO Payment": For each calendar month, the balance of the **[monthly Energy Payment and]** monthly Lump Sum Payment remaining after subtracting the Bill Credits payable for such month. **[Drafting note: If PPA has energy payment, include language in bold text.]**

"Battery Energy Storage System" or "BESS": The battery energy storage system as described in Section 5 (Equipment) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement, together with all other equipment, devices, and associated appurtenances owned, controlled, operated and managed by Subscriber Organization in connections, with or to facilitate, the storage, transmission, delivery or furnishing by Subscriber Organization to Company of the electric energy stored in the BESS.

"BESS Allocated Portion of the Lump Sum Payment": For each BESS Measurement Period and for any other applicable period, an amount equal to fifty percent (50%) of the total of the three monthly Lump Sum Payments for such period without taking into account any set-offs against such monthly Lump Sum Payments.

"BESS Annual Equivalent Availability Factor": Shall be as described in Attachment X (BESS Annual Equivalent Availability Factor) to this Agreement.

"BESS Annual Equivalent Forced Outage Factor": Shall have the meaning set forth in Attachment Y (BESS Annual Equivalent Forced Outage Factor) to this Agreement.

"BESS Capacity Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Capacity Cure Period": Shall have the meaning set forth in Section 2.8(b) (BESS Capacity Test Termination Rights).

"BESS Capacity Ratio": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Capacity Test": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"BESS Contract Capacity": The storage capacity, in MWh, of the BESS, or MWh.

"BESS EAF Performance Metric": Shall have the meaning set forth in Section 2.9(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages).

"BESS EFOF Performance Metric": Shall have the meaning set forth in Section 2.10 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages).

"BESS Measurement Period": Shall mean, in any Contract Year, the following periods of three calendar months each: (i) the period beginning on the first day of the first calendar month of such Contract Year and extending through the last day of the third calendar month of such Contract Year; (ii) the period beginning on the first day of the fourth calendar month of such Contract Year and extending through the last day of the sixth calendar month of such Contract Year; (iii) the period beginning on the first day of the seventh calendar month of such Contract Year and extending through the last day of the ninth calendar month of such Contract Year; and (iv) the period beginning on the first day of the tenth calendar month of such Contract Year and extending through the last day of the twelfth calendar month of such Contract Year.

"BESS Measurement Period Report": For each BESS Measurement Period, the report of the data necessary for calculation of the Performance Metrics for such BESS Measurement Period to be provided by Subscriber Organization to Company in the form set forth in Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement or such other form as the Company may approve in writing.

"Bill Credit": The dollar amount payable by means of a credit by the Company to each Subscriber on the Subscriber's retail electric service bill, which represents the Subscriber's beneficial share of the Contract Capacity by which renewable energy is produced by the Facility and exported to the Company, and offsetting Subscriber's current renewable energy usage on such service bill. For each calendar month for which a Subscriber earns a Bill Credit, such dollar amount shall equal such Subscriber's Subscriber Allocation of **[the monthly Energy Payment for the month in question and]** the monthly Lump Sum Payment for the month in question. **[Drafting note: For PPA with Energy Payment, include language in bold text.]**

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

"BOP": The "balance of the plant", i.e., the infrastructural components of the Facility (excluding the WTG(s) and the BESS) which support transfer of energy between the WTG(s) and the Point of Interconnection. The infrastructure normally consists of the site electrical facilities, SCADA and the civil plant (such as foundations and roads), which support the operation and maintenance of the WTG(s).

"BOP Benchmark Metric": The standard against which the BOP Efficiency Ratio is to be evaluated to determine if the BOP is achieving satisfactory standard of efficiency.

"BOP Efficiency Ratio": For each Contract Year, the estimated efficiency of the Facility during such Contract Year in delivering to the Point of Interconnection the electric energy produced by the WTG(s).

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

"CBRE Framework": The CBRE Framework (Phase 1), as amended and supplemented by the CBRE Framework (Phase 2).

"CBRE Framework (Phase 1)": That certain "Community Based Renewable Energy - A Program Framework" issued by the PUC and attached as Attachment A to that certain Decision and Order No. 35137, filed December 22, 2017, in Docket No. 20150389, portions of which are applicable to Phase 2 of the CBRE Program as specified in the CBRE Tariff.

"CBRE Framework Phase 2": That certain Order No. 37070, filed April 9, 2020, in Docket No. 2015-0389. The CBRE Framework (Phase 2) provides the basis and framework for Phase 2 of the CBRE Program and is implemented by the CBRE Tariff.

"CBRE IO": The Independent Observer appointed by the PUC to carry out the responsibilities assigned to the Independent Observer under the CBRE Framework.

"CBRE Online Portal" is the interactive, internet website-based interface maintained by or on behalf of the Company through which

the Subscriber Organization may establish qualifications, provide information and complete documents necessary for acceptance in the CBRE Program, and may enter or change the Monthly Subscription Information reflecting updated information for each Subscriber, including any changes to any Subscriber's name, account number, address, and Subscriber Allocation.

"CBRE Program": The program established under the CBRE Tariff to allow developers of renewable energy projects to provide Account Holders with an opportunity to avail themselves of the benefits of the CBRE Tariff.

"CBRE Project": A community-based renewable energy project subject to the CBRE Tariff.

"CBRE Tariff": The Hawaii Community-Based Renewable Energy approved by the PUC as Tariff Rule 29, on _____ based on the CBRE Framework.

"Change in Control": Shall have the meaning set forth in Section 1(b) (Change in Ownership Interests and Control of Subscriber Organization) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

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

"COD Delay LD Period": Shall have the meaning set forth in Section 13.4(a)(2).

"Commercial Operations": Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operations on the Day specified in Subscriber Organization's written notice described below: (i) the Acceptance Test has been passed, (ii) all generating units have passed Control System Acceptance Tests, (iii) the Transfer Date has occurred, (iv) Subscriber Organization has (1) provided to Company the Required Models (as defined in Section 6(a) (Subscriber Organization's Obligation to Provide Models) of Attachment B (Facility Owned by Subscriber Organization)) in the form of Source Code, (2) placed the current version of the Source Code for the Required Models with the Source Code Escrow Agent as required in

Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Subscriber Organization), or (3) if Subscriber Organization is unable to arrange for the placement of the appropriate Source Code into the Source Code Escrow account, placed the required funds with the Monetary Escrow Agent as required in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Subscriber Organization), and (v) Subscriber Organization provides Company with written notice that (aa) Subscriber Organization is ready to declare the Commercial Operations Date and (bb) the Commercial Operations Date will occur within 24 hours (i.e., the next Day).

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

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

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

"Company Dispatch": Company's right, through supervisory equipment or otherwise, to direct or control both the capacity and the energy output of the Facility from its minimum output rating to its maximum output rating consistent with this Agreement (including, without limitation, Good Engineering and Operating Practices and the requirements set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement), which dispatch shall include real power, reactive power, voltage, frequency, the determination to cycle a unit off-line or to restart a unit, the droop control setting, the ramp rate setting, and other characteristics of such electric energy output whose parameters are normally controlled or accounted for in a utility dispatching system.

"Company Milestones": Each of the milestones identified as such in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones).

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

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

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

"Company's Recommendations": Shall have the meaning set forth in Section 4(c) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

"Construction Delay LD Period": Shall have the meaning set forth in Section 13.4(a)(1).

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

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

"Consultants List": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

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

"Contract Pricing": The total of the Energy Payment (if any) and the Lump Sum Payment.

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

"Contractors": Shall have the meaning set forth in Section 2(a)(i) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

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

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

Examples of the Control System Telemetry and Control List include:

- Subscriber Organization's substation/equipment status - breaker open/closed status, equipment normal/alarm operating status, etc.
- Subscriber Organization's generation data (analog values) - number of generators available/online, voltage, current, MW, MVAR, etc.
- Subscriber Organization's generation performance (status and/or analog values) - ramp rate, generator frequency, etc.

- Active Power control interface - dispatch MW setpoint, etc.
- Voltage control interface - voltage kV setpoint, etc.
- Power factor control interface - power factor setpoint, etc.

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

"Day": A calendar day.

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

"Density-Adjusted Wind Speed": For each 10-minute increment for each WTG, the 10-minute averaged wind speed measurement from a calibrated anemometer on top of the nacelle for such turbine as adjusted for temperature and pressure as provided in Section 3 (Calculation of Density-Adjusted Wind Speed) of Attachment Q (Calculation of Certain Metrics) to this Agreement.

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

"Disconnection Event": Shall have the meaning set forth in Section 4(a) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

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

"E-mail": Shall have the meaning set forth in Section 29.3 (Notices).

"Effective Date": Shall mean the last to occur of (i) the Non-appealable PUC Approval Order Date and (ii) the date that the Interconnection Requirements Amendment (if required pursuant to Section 12.4(a) of this Agreement) is executed and delivered as such date is set forth in the Interconnection Requirements Amendment.

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

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

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

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

"Enhanced Residential Threshold": A specific percentage of Contract Capacity in excess of 40% committed to by Subscriber Organization in its proposal as the percentage to be represented by Subscriber Allocations for Residential Subscribers. The Enhanced Residential Threshold for this Agreement is %.

[Drafting note: If there is no Enhanced Residential Threshold enter "N/A" in the blank.]

"Environment": Shall have the meaning set forth in Section 1(b)(iii)(G)(iii) (Malware) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Subscriber Organization based in whole or in part on the fact that the Facility is a non-fossil fuel

facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

"EPC Contractor": Shall mean Subscriber Organization's engineering, procurement and construction contractor for the Facility.

"Equivalent Forced Derated Turbine Hours (EFDTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Equivalent Maintenance Turbine Hours (EMDTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

"Equivalent Planned Turbine Hours (EDPTH)": Shall have the meaning set forth in Attachment Q (Calculation of Certain Metrics) to this Agreement.

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

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

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

"Exclusive Negotiation Period": Shall have the meaning set forth in Section 2(b) (Negotiations) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

"Exempt Sales": Shall have the meaning set forth in Section 1(c) (Exempt Sales) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

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

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

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

"Facility's CBRE Program": The program offered by Subscriber Organization whereby Account Holders are afforded the opportunity to qualify for the benefits of the CBRE Tariff by acquiring a beneficial share in the Contract Capacity by which renewable energy is produced by the Facility and exported to Company. The Facility's CBRE Program includes the entire process of marketing and sales of the Subscriber Allocations, enrolling Account Holders, providing Company with the information necessary to afford each Subscriber the Bill Credit to which such Subscriber is

entitled, responding to Subscriber inquiries, facilitating the transfer of Subscriber interests and buying back Subscriber interests. The Facility's CBRE Program shall have a duration of 20 years commencing on the Commercial Operations Date.

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

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

"FASB ASC 842": Shall have the meaning set forth in Section 24.1 (Financial Compliance).

"Federal Non-Refundable Tax Credit": Shall mean any U.S. federal tax credit for which the federal government is not required to refund any tax credit which exceeds the tax payments due to the federal government by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Federal Refundable Tax Credit": Shall mean any U.S. federal tax credit for which the federal government is required to refund any tax credit which exceeds the tax payments due to the federal government by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Final Non-appealable Order from the PUC": Shall have the meaning set forth in Section 5(d) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

"Financial Termination Costs": Shall have the meaning set forth in Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

time by and at the discretion of Subscriber Organization and/or its affiliates in connection with financing for the development, construction, ownership, leasing, operation or maintenance of the Facility.

"Financing Purposes": Shall have the meaning set forth in Section 1(c) (Exempt Sales) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

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

"First OEPR": Shall have the meaning set forth in Section 4(f) (Timeline and Fees) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Force Majeure": An event that satisfies the requirements of Section 21.1 (Definition of Force Majeure), Section 21.2 (Events That Could Qualify as Force Majeure) and Section 21.3 (Exclusions From Force Majeure).

"Forced Outage": A start failure or unplanned outage reported consistently with the principles in the NERC GADS REPORTING INSTRUCTIONS for SF, U1, U2 and U2 events. This may be a startup

failure, a condition resulting in immediate shutdown or trip, or an outage which requires removal from the in-service state before the end of the next weekend (Sunday at 2400 or before Sunday turns into Monday). This type of outage can only occur while the resource is in service.

"Forced Turbine Hours (FTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Full Dispatch": A time period during which all WTGs are available and there are no technical restrictions or limitations affecting generation imposed to meet Company Dispatch.

"GAAP": Shall have the meaning set forth in Section 24.5(a) (Consolidation).

"GHG Letter Agreement": Shall mean the letter agreement and any written, signed amendments thereto, between Company and Seller that collectively describe the scope, schedule, and payment arrangements for the greenhouse gas emissions analysis to be completed in connection with the application with the PUC for regulatory approval of this Agreement.

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

- (a) Adequate materials, resources and supplies, are available to meet the Facility's needs under normal conditions and reasonably foreseeable abnormal conditions.
- (a) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.

- (b) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment, tools, and procedures.
- (c) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
- (d) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as temperature, current, frequency, polarity, synchronization, control system limits, etc.

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

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

"GPI": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS).

"GPI Metric": Shall have the value set forth in Section 2.6(b) (Determination of GPI Metric) of this Agreement.

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

"Guaranteed Procurement Payment Date": The date specified in Attachment K (Guaranteed Project Milestones) that Subscriber Organization shall make payment to Company of the amount required under Section 3(b)(iii) (Balance of Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities).

"Guaranteed Project Milestone": Each of the milestone events identified in Attachment K (Guaranteed Project Milestones) of this Agreement.

"Guaranteed Project Milestone Date": Each of the milestone dates identified in Attachment K (Guaranteed Project Milestones) of this Agreement.

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

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

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

"Hawai'i Refundable Tax Credit": Shall mean any Hawai'i Investment Tax Credit for which the State of Hawai'i is required to refund any tax credit which exceeds the tax payments due to the State of Hawai'i by the Claiming Entity or to provide a cash rebate in lieu of such credit to the Claiming Entity.

"Hawai'i Renewable Energy Tax Credit": The Hawai'i Investment Tax Credit and the Hawai'i Production Tax Credit.

"HEI": Shall have the meaning set forth in Section 19.7 (Assignment By Company).

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

"HERA Law": Act 166 (Haw. Leg. 2012), which was passed by the 27th Hawai'i Legislature in the form of S.B. No. 2787, S.D. 2, H.D.2, C.D.1 on May 2, 2012 and signed by the Governor on June 27, 2012. The effective date for the law is July 1, 2012. The HERA Law authorizes (i) the PUC to develop, adopt, and enforce reliability standards and interconnection requirements, (ii) the PUC to contract for the performance of related duties with a party that will serve as the HERA, and (iii) the collection of a Hawai'i electricity reliability surcharge to be collected by Hawai'i's electric utilities and used by the HERA. Reliability standards and interconnection requirements adopted by the PUC pursuant to the HERA Law will apply to any electric utility and any user, owner, or operator of the Hawai'i electric system. The PUC also is provided with the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner or operator of the Hawai'i electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawai'i electric system, or for administering the process for interconnection to the Hawai'i electric system.

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

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

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

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

"Independent AF Evaluator": A person empowered, pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to resolve disagreements due to failure of the Parties to resolve a Monthly Report Disagreement.

"Independent Tax Expert": Shall mean a person (i) with experience and knowledge in the field of tax equity project finance for utility-scale electric generating facilities and in the field of the Hawai'i Renewable Energy Tax Credit and (ii) who is neutral, impartial and not predisposed to favor either Party.

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

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

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

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

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

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

"Interconnection Requirements Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreements to determine, among other things, (a) the system requirements and equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards for the Facility,

and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"IRS Letter Agreements": The system impact study and Facility study letter agreements and any written, signed amendments thereto, between Company and Subscriber Organization that collectively describe the scope, schedule, and payment arrangements for the Interconnection Requirements Study.

"Interface Block Diagram": The visual representation of the signals between Subscriber Organization and Company, including but not limited to, Telemetry and Control points, digital fault recorder settings, telecommunications and protection signals.

"kV": Kilovolt.

"kW": Kilowatt. Unless expressly provided otherwise, all kW values stated in this Agreement are alternating current values and not direct current values.

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

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

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

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

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

"LDT": Shall have the meaning set forth in Section 2.10(a) (RTE Test and Liquidated Damages).

"LMI Minimum Threshold": A specific percentage of Contract Capacity committed to by Subscriber Organization in its proposal as the percentage to be represented by Subscriber Allocations for LMI Subscribers. The Minimum LMI Threshold for this Agreement is %. **[Drafting note: The percentage shall be taken from Subscriber Organization's proposal if that proposal included a LMI Minimum Threshold. If there is no LMI Minimum Threshold enter "N/A" in the blank. For dedicated LMI projects, the LMI Minimum Threshold is 100%.]**

"LMI Subscriber": A Subscriber who satisfies the LMI requirements set forth in the CBRE Tariff.

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

"Lowest BESS Capacity Bandwidth": Shall have the meaning set forth in Section 2.8(a) (BESS Capacity Test and Liquidated Damages).

"Lump Sum Payment": The payment to be made by Company in exchange for (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company's Dispatch of the Facility, (ii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement and (iii) the availability of the BESS. When necessary to account for the availability of some but not all of the PV System's inverters, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each inverter and shall be calculated and adjusted as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. **[Drafting note: If PPA has an energy payment, replace first sentence above with the following: The payment to be made by Company in exchange for (i) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement and (ii) the availability of the BESS.]**

"Maintenance Turbine Hours (MTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Make Whole Amount": Shall have the meaning set forth in Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Subscriber Organization).

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

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

"Maximum Rated Output": Net maximum output of the BESS in MW, which shall not exceed the Allowed Capacity.

"Measured Performance Ratio" or "PI": Shall have the meaning set forth in Attachment Q (Calculation of Measured Performance Ratio) of this Agreement.

"Measured Power Curve": For each WTG, the measured power curve for such turbine for the initial Contract Year as (i) calculated as set forth in Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) to this Agreement, (ii) agreed by the Parties as set forth in Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator) of said Attachment T or (iii) decided by the Independent AF Evaluator as set forth in Section 4(d) (Written Decision of Independent AF Evaluator) of said Attachment T.

"Measured Wind Speed": For each WTG, the arithmetic mean, over any given period of time, of the wind speed readings from such turbine's nacelle anemometer, taken or sampled every two (2) seconds by the Facility's Monitoring and Communication Equipment,

in miles per hour (mph). For calculations under this Agreement based on Measured Wind Speed in m/s, the conversion factor shall be 1 mph = 0.447 m/s.

"MMT": Meteorological monitoring tower.

"Modified Pooled OMC Equipment Availability Factor Performance Metric": Shall have the meaning set forth in Attachment Q (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages).

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

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

"Monthly Report": The report of the data (for the calendar month and the LD Period, the PI Assessment Period and the BESS Measurement Period ending with such calendar month) necessary for the calculation of the Performance Metrics to be provided by Subscriber Organization to Company as set forth in Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement. Without limitation to the generality of the preceding sentence, references to the Monthly Report for a month that constitutes the last month of a BESS Measurement Period shall be deemed to include the BESS Measurement Period Report for such BESS Measurement Period.

"Monthly Report Disagreement": Any disagreement arising out of the same Monthly Report, including any Performance Metrics Disagreement.

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

"MPC Disagreement": Shall have the meaning set forth in Section 3(a) (Notice of Disagreement With Determination of Measured Power Curve) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

"MW": Megawatt. Unless expressly provided otherwise, all MW values stated in this Agreement are alternating current values and not direct current values.

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

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

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

"NERC GADS": Shall have the meaning set forth in Section 2.4(a) (Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS).

"Net Amount": Shall mean, with respect to any Hawai'i Renewable Tax Credit, the amount remaining after deducting any documented and reasonable financial, legal, administrative and other costs and expenses of applying for, pursuing, monetizing and receiving the applicable Hawai'i Renewable Tax Credit, and all payments to or reserves required by Subscriber Organization's lenders or other financing parties in connection with the application for or receipt of such Hawai'i Renewable Tax Credit.

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

"Net Energy Potential": The estimated single number with a P-Value of 95 for the annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a ten-year period. The Net Energy Potential is subject to adjustment as provided in Attachment U (Calculation and Adjustment of Net Energy Potential) to this

Agreement, but in no circumstances shall the Net Energy Potential exceed the NEP RFP Projection.

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

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

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

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

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

"Notice of MPC Disagreement": The written notice of MPC Disagreement submitted by Subscriber Organization within the 30-Day period set forth in Section 3(a) (Notice of Disagreement With Measured Power Curve Determination) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

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

"OEPR Conference": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

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

for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

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

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

"Offer Date": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"Offer Materials": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"Offer Notice": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"Offer Price": Shall have the meaning set forth in Section 1(a)(i) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"OMC Equivalent Forced Derated Turbine Hours (oEFDTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Equivalent Maintenance Derated Turbine Hours (EMDTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Equivalent Planned Derated Turbine Hours (oEPDTH) (Optional)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Forced Turbine Hours (oFTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Maintenance Turbine Hours (oMTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"OMC Planned Turbine Hours (oPTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

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

"Outside Management Control" or "OMC": Shall have the meaning set forth in Attachment Q to this Agreement.

"P-Value": The probability of exceedance.

"Parties": Subscriber Organization and Company, collectively.

"Party": Each of Subscriber Organization or Company.

"Performance Index" ("PI"): Shall have the meaning set forth in Attachment Q (Calculation of Performance Index).

"Performance Metrics": Each of the Modified Pooled OMC Equipment Availability Factor Performance Metric, the GPI Metric, the BESS Capacity Performance Metric, the BESS EAF Performance Metric, and the BESS EFOF Performance Metric, and the RTE Performance Metric.

"Performance Metrics Disagreement": A disagreement as to whether any of the Performance Metrics have been satisfied.

"Performance Metrics LDs": Shall have the meaning set forth in Section 2.12(a) (Payment of Liquidated Damages).

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

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

"Performance Standards Modifications": For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Subscriber

Organization's operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

"Performance Standards Pricing Impact": Any reimbursement, adjustment in Contract Pricing and/or the calculation of Performance Metrics LDs, as may be necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the Performance Standards Revision is made effective following a PUC Performance Standards Revision Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the Performance Standards Modification; and (iv) an adjustment in Contract Pricing or Performance Metrics, as applicable, necessary to compensate Subscriber Organization for reasonably expected reductions, if any, in the Lump Sum Payment, or reasonably expected increases in Performance Metrics LDs directly related to the Performance Standards Modification or Performance Standard Revision.

"Performance Standards Proposal": A written communication from Subscriber Organization to Company detailing the following with respect to a proposed Performance Standards Revision: (i) a statement as to whether Subscriber Organization believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (ii) the Performance Standards Modifications proposed by Subscriber Organization to comply with the Performance Standards Revision; (iii) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in electric energy delivered to Company; (iv) the Performance Standards Pricing Impact of such costs and/or lost revenues; (v) information regarding the effectiveness of such technical improvements or operational modifications; (vi) proposed contractual consequences for failure to comply with the

Performance Standard Revision that would be commercially reasonable under the circumstances; and (vii) such other information as may be reasonably required by Company to evaluate Subscriber Organization's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Subscriber Organization's own initiative.

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

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

"Permitted Lien": Shall have the meaning set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

"PI": Shall have the meaning set forth in Attachment Q to this Agreement.

"PI Assessment Period": Shall mean, for purposes of demonstrating a Performance Index, a rolling period of twelve (12) calendar months each. At the end of each calendar month, the PI Assessment Period rolls forward to include the next calendar month. The initial "PI Assessment Period" shall consist of the 12 full calendar months of the initial Contract Year.

"PI Assessment Period Lump Sum Payment": For each PI Assessment Period, the monthly Lump Sum Payment for the twelfth month of such PI Assessment Period after deducting the amounts (if any) payable as liquidated damages under Section 2.5(b) (Modified Pooled OMC Equipment Availability Factor Performance Metric and Liquidated Damages) for the same calendar month in question.

"PI Test": Shall have the meaning set forth in Section 2.6(a)(iii) (PI Test) of this Agreement.

"Planned Turbine Hours (PTH)": Shall have the meaning set forth in Attachment Q to this Agreement.

"Point of Interconnection" or "POI": The point of delivery of electric energy and/or capacity supplied by Subscriber Organization to Company, where the Facility owned by the Subscriber Organization interconnects with the Company System. The Subscriber Organization shall own and maintain the facilities from the Facility to the Point of Interconnection, excluding any Company-Owned Interconnection Facilities located on the Site. The Company shall own and maintain the facilities from the Point of Interconnection to the Company's system. The Point of Interconnection will be identified in the IRS and set forth on the Single-Line Drawing and Interface Block Diagram in Attachment E (Single-Line Drawing and Interface Block Diagram).

"Power Curve": A table of wind speeds and MW at a reference density.

"Power Possible": The calculated potential maximum power production of the Facility reported in megawatts (MW) at the Point of Interconnection taking into account (i) equipment equivalent availability during the period, (ii) the available energy resource and (iii) the BESS State of Charge. The Power Possible is a telemetered value provided to Company as an analog value (i.e., instantaneous).

"PPA Amendment Deadline": The 75th Day following the date the completed IRS is provided to Subscriber Organization, or such later date as Company and Subscriber Organization may agree to by written agreement.

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

decreases in interest rates charged by lenders or market rates in general.

"Proceeds": Shall have the meaning set forth in Section 6(b)(ii)(C) (Extend Letter of Credit) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

"Proceeds Authorized Use": Shall have the meaning set forth in Section 6(b)(ii)(H) (Authorized Use) of Attachment B (Facility Owned by Subscriber Organization) of this Agreement.

"Proceeds Escrow Agent": Shall mean such escrow agent approved by Company.

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

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

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

"Proposed Actions": Shall have the meaning set forth in Section 4(c) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

"PSA": Shall have the meaning set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

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

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

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

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

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

"PUC RPS Order": Shall have the meaning set forth in Section 3.4(e) (PUC RPS Order).

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

"PUC's Standards": Standards for Small Power Production and Cogeneration in the State of Hawai'i, issued by the Public Utilities Commission of the State of Hawai'i, Chapter 74 of Title 6, Hawai'i Administrative Rules, currently in effect and as may be amended from time to time.

"Qualified Consultant": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

"Renewable Portfolio Standards" or "RPS": The Hawai'i law that mandates that Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawai'i

are currently codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95.

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

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

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

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

"Residential Subscriber": A subscriber served by Company under any of the following Company rate schedules: Schedule R, TOU-R, TOU-RI, TOU-EV or any other residential option.

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

"RFP": Company's Request for Proposals for [_____], Island of O'ahu, issued on _____, 2020.

"RFP Proposal": The documents and submissions comprising Subscriber Organization's proposal selected in the Final Award Group in response to the RFP.

"Right of First Negotiation Period": Shall have the meaning set forth in Section 1(a)(ii) of Attachment P (Sale of Facility by Subscriber Organization) to this Agreement.

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

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

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

"RPS Pricing Impact": Any reimbursement, adjustment in Contract Pricing and/or the calculation of Performance Metrics LDs, as may be necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any RPS Modification, which shall consist of the following: (i) recovery of, and return on, any capital investment (aa) made over a cost recovery period starting after the RPS Modification is made effective following a PUC RPS Order through the end of the Initial Term and (bb) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; (iii) recovery of reasonably expected applicable federal or state tax credits lost or not obtainable which are directly attributable to the RPS Modification; and (iv) an adjustment in Contract Pricing or Performance Metrics, as applicable, necessary to compensate Subscriber Organization for reasonably expected reductions, if any, in the Lump Sum Payment, or reasonably expected increases in Performance Metrics LDs directly related to the RPS Modification.

"RTE Performance Metric": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

"RTE Ratio": Shall have the meaning set forth in Attachment W (BESS Tests) to this Agreement.

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

"Scheduled Maintenance": Time periods during which scheduled maintenance actions affecting the WTG in question are performed at the Facility.

"Second Benchmark Period": The period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues the Initial OEPR and ending with the expiration of the fifth (5th) Contract Year. For avoidance of doubt, the effect of the foregoing definition is that the Second Benchmark Period will follow immediately upon the expiration of the First Benchmark Period.

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

"Second NUG Contract": Shall have the meaning set forth in Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Second OEPR": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Second OEPR Evaluator": Shall have the meaning set forth in Section 4(g) (Review of the First OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Section 5": Shall have the meaning set forth in Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement.

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

"Shortfall Performance Metrics LDs": Shall have the meaning set forth in Section 2.12(c) (Payment of Shortfall Performance Metric LDs by Reduction in Bill Credits) of this Agreement.

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

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

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

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

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

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

"Source Code Owner": Shall mean the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the

Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

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

"Standards": Shall have the meaning set forth in Section 2(c) (Plans) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"Standby Letter of Credit": Shall have the meaning set forth in Section 6(a) (Standby Letter of Credit) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

"State of Charge": Energy in the BESS stated as a percentage of BESS Contract Capacity.

"Study": Shall have the meaning set forth in Section 4(e) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

"Submission Notice": Shall have the meaning set forth in Section 4(a) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

"Subscriber": Shall mean a retail customer of the Company who owns one or more subscriptions of a Facility interconnected with the Company System.

"Subscriber Agency Agreement and Consent Form": The consent agreement between Subscriber Organization and Subscriber that authorizes disclosure of certain account information and energy usage data, the form of which is included in the CBRE Tariff.

"Subscriber Agreement": The written agreement between Subscriber Organization and its Subscribers which contains standard information and provisions to ensure transparency and proper consumer protection in accordance with the CBRE Tariff and applicable law.

"Subscriber Allocation": For each Subscriber during each calendar month, such Subscriber's percentage interest in the Contract Capacity [**and the renewable energy produced by the Facility**], reflecting such Subscriber's percentage interest for such month in [**the monthly Energy Payment and**] the monthly Lump Sum Payment.

[Drafting note: If PPA has an energy payment, add language in bold text.]

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

"Subscriber Organization-Attributable Non-Generation": Time periods during which the WTG in question (or the Facility as a whole) is not dispatched or is derated or shutdown (or the Facility is disconnected) because of any of the following:

- (i) The Facility's failure to comply with any of the Performance Standards, Good Engineering and Operating Practices, Governmental Approvals, applicable Laws or Subscriber Organization's other obligations under this Agreement;
- (ii) Subscriber Organization-Attributable System Conditions;
- (iii) Conditions at or on either side of the Point of Interconnection arising from the acts or omissions of Subscriber Organization or any of its affiliates, employees, agents, contractors, vendors, materialmen, independent contractors or suppliers of Subscriber Organization, acting in such capacity for the benefit of Subscriber Organization ("Subscriber Organization Representatives"), unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement;
- (iv) A disconnection initiated by the Company pursuant to Article 9 (Personnel and System Safety) of this Agreement) that is caused by Subscriber Organization or
;
- (v) The Company has reasonably decided that it is inadvisable for such WTG (or the Facility as a whole) to continue normal operations without a further Control System Acceptance Test as provided in Section 7(a) (Testing Requirements) of Attachment B (Facility Owned by Subscriber Organization);
- (vi) The Facility is deemed to be in Subscriber Organization-Attributable Non-Generation status under any of the following Sections of Attachment B (Facility Owned by Subscriber Organization): Section 1(b)(iii)(H)(i);

Section 1(g) (vi), Section 1(j) (Demonstration of Facility) or Section 4(e); and

- (vii) The Facility is shutdown at the direction of Company as provided in Section 6.4 (Shutdown For Lack of Reliable Real Time Data), and such shutdown is caused by Subscriber Organization or any Subscriber Organization Representatives.
- (viii) The Facility fails to comply with Company Dispatch or other outage or deratings as provided in Section 8.3 (Company Rights of Dispatch).

Each time period of Subscriber Organization-Attributable Non-Generation shall constitute an Outage or Deration, as applicable.

"Subscriber Organization-Attributable System Conditions":
Conditions on the Company System:

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

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

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

"Subscriber Organization Affiliate": Shall have the meaning set forth in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

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

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

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

"Subsequent Owner": Shall have the meaning set forth in Section 19.4 (Financing Document Requirements).

"Telemetry and Control": The interface between Company's EMS and the physical equipment at the Facility.

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

"Termination Damages": Liquidated damages calculated in accordance with Article 16 (Damages in the Event of Termination by Company) of this Agreement.

"Termination Deadline": The 30th Day following the date the completed IRS is provided to Subscriber Organization, or such later date as Company and Subscriber Organization may agree to by a written agreement.

"Third OEPR": Shall have the meaning set forth in Section 4(h) (Review of the Second OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

"Third OEPR Evaluator": Shall have the meaning set forth in Section 4(h) (Review of the Second OEPR Evaluator Report) of this Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

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

"Tier 1 Bandwidth": The Tier 1 bandwidth set forth in Section 2.6(b) (GPI Metric and Liquidated Damages) of this Agreement.

"Tier 2 Bandwidth": The Tier 2 bandwidth set forth in Section 2.6(b) (GPI Metric and Liquidated Damages) of this Agreement.

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

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

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

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

"Total Interconnection Cost": Shall have the meaning set forth in Section 3(a)(i) of Attachment G (Company-Owned Interconnection Facilities) to this Agreement.

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

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

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

"Unsubscribed Energy": That portion of the Actual Output during a particular calendar month that is not associated with any

Subscriber and is therefore not included in any Subscriber Allocation for such month. The Unsubscribed Energy for a particular calendar month is the balance of the Actual Output remaining after subtracting the Actual Output represented by the total of the Subscriber Allocations for such month. For purposes of allocating to Subscriber Organization a portion of the monthly Energy Payment for a particular month: (i) the Unsubscribed Energy for such month is associated with the Subscriber Organization; and (ii) the portion of the monthly Energy Payment for such month that is payable to Subscriber Organization for such Unsubscribed Energy is the balance of such monthly Energy Payment remaining after subtracting that portion of the monthly Energy Payment that is payable in the form of Bill Credits. **[Drafting note: Delete if PPA does not include an energy payment.]**

"Unsubscribed RDG": That portion of the Contract Capacity during a particular calendar month that is not associated with any Subscriber and is therefore not included in any Subscriber Allocation for such month. The Unsubscribed RDG for a particular calendar month is the balance of the Contract Capacity remaining after subtracting the Contract Capacity represented by the total of the Subscriber Allocations for such month. For purposes of allocating to Subscriber Organization a portion of the monthly Lump Sum Payment for a particular month: (i) the Unsubscribed RDG for such month is associated with the Subscriber Organization; and (ii) the portion of the monthly Lump Sum Payment for such month that is payable to Subscriber Organization for such Unsubscribed RDG is the balance of such monthly Lump Sum Payment remaining after subtracting that portion of the monthly Lump Sum Payment that is payable in the form of Bill Credits.

"WTG": Each wind turbine generating system and its internal components and subsystems, as installed at the Facility.

ATTACHMENT A
DESCRIPTION OF GENERATION, CONVERSION AND STORAGE FACILITY

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

E-Mail Address: _____

2. Owner (If different from Subscriber Organization):

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

3. Operator: _____

4. Name of person to whom payments are to be made:
 - (a) Mailing address: _____
 - (b) Hawai'i Gross Excise Tax License number: _____

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

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

(b) Design and capacity

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

Total Number of Generators:

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

Description of Equipment:

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

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

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

Generator:

Type _____

Rated Power _____ kW

Voltage _____ V, _____ phase

Frequency _____ HZ

Class of Protection _____

Number of Poles _____

Rated Speed _____ rpm

Rated Current _____ A

Rated Power Factor See Exhibit B-2

Batteries _____

Total Number of Energy Storage Units:

- (c) Single or 3 phase: _ phase
- (d) Name of manufacturer:
- (e) Description of Facility SCADA and control system(s)
- (f) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the Commercial Operations Date.
- (g) Subscriber Organization may propose revisions to this Section 5 (Equipment) of Attachment A (Description of Generation, Conversion and Storage Facility) ("Section 5") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 5 shall change the type of Facility or conversion equipment deployed at the Facility from a wind energy conversion facility; (ii) Subscriber Organization shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 5 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Subscriber Organization's proposed revision(s) to this Section 5 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Subscriber Organization's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the IRS and Subscriber Organization's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and for modifying and paying for all costs and expenses of modification to the

Facility, the Company-Owned Interconnection Facilities based on the results of the re-studies or revisions to the IRS. Any changes made to this Attachment A (Description of Generation, Conversion and Storage Facility) or the Agreement as a result of this Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility) shall be reflected in a written amendment to the Agreement.

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

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

6. Insurance carrier(s): **[SUBSCRIBER ORGANIZATION TO PROVIDE INFORMATION]**
7. If Subscriber Organization is not the operator, Subscriber Organization shall provide a copy of the agreement between Subscriber Organization and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Subscriber Organization and the operator with respect to the sale of electric energy from Facility no later than the Commercial Operations Date. In addition, Subscriber Organization shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawai'i

Department of Commerce and Consumer Affairs no later than the Commercial Operations Date.

8. Subscriber Organization shall provide a certified copy of a certificate warranting that Subscriber Organization is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).
9. Subscriber Organization, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit A-2 (Ownership Structure).
10. In the event of a change in ownership or identity of Subscriber Organization, owner or operator, such entity shall provide within 30 Days thereof, a certified copy of a new certificate and a revised ownership structure.

EXHIBIT A-1
GOOD STANDING CERTIFICATES

EXHIBIT A-2
OWNERSHIP STRUCTURE

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

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

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

- (i) Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme. A preliminary single-line drawing (including notes), Interface Block Diagram, relay list, relay settings, and trip scheme of the Facility shall, after Seller has obtained prior written consent from Company, be attached to this Agreement on the Execution Date as Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme). A final single-line drawing (including notes), Interface Block Diagram, relay list and trip scheme of the Facility shall, after having obtained prior written consent from Company, be labeled the "Final" Single-Line Drawing, the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme and shall supersede Attachment E (Single-Line Drawing and Interface Block Diagram) and Attachment F (Relay List and Trip Scheme) to this Agreement and shall be made a part hereof on the Commercial Operations Date. After the Commercial Operations Date, no changes shall be made to the "Final" Single-Line Drawing, the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme without the prior written consent of Seller and Company. The single-line drawing shall expressly identify the Point of Interconnection of Facility to Company System.
- (ii) As-Built. Seller shall provide final as-built drawings of the Seller-Owned Interconnection Facilities within 30 Days of the successful completion of the Acceptance Test.

- (iii) Modeling. Seller shall provide the models as set forth in Exhibit B-1.
- (iv) No Material Changes. Seller agrees that no material changes or additions to the Facility as reflected in the "Final" Single-Line Drawing (including notes), the "Final" Interface Block Diagram and the "Final" Relay List and Trip Scheme, shall be made without Seller first having obtained prior written consent from Company. The foregoing are subject to changes and additions as part of any Performance Standards Modifications. If Company directs any changes in or additions to the Facility, records and operating procedures that are not part of any Performance Standards Modifications, Company shall specify such changes or additions to Seller in writing, and, except in the case of an emergency, Seller shall have the opportunity to review and comment upon any such changes or additions in advance.

(b) Certain Specifications for the Facility.

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

[LIST OF THE FACILITY

Examples may include, but are not limited to:

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

Interconnection Facilities located on the Site

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

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

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

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

Control failure, or other event resulting in loss of the remote control by Company, Seller shall undertake its best efforts to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as directed by the Company System Operator;

(iv) Interface with Company's Telemetry and Control, or designated communications and control interface, to provide active power control to limit or set level of (when storage is not depleted) net real power import or export from the Facility and to remove the limit or change level (when storage is not depleted) of net real power import or export of the Facility; and

(v) For Variable Energy Facilities:
Interface with Company's Telemetry and Control, or designated communications and control interface, to provide telemetry of WTG availability and meteorological and production data required under Section 8 (Data and Forecasting) of this Attachment B (Facility Owned by Seller) and the Facility's Power Possible.

F. If Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the characteristics of the equipment and specifications used in the IRS, Seller shall be required to obtain Company's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. If an analysis to revise parts of the IRS is required, Seller shall be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to the Facility and/or the Company-Owned Interconnection Facilities based on the revisions to the IRS.

G. Cybersecurity and Critical Infrastructure Protection.

(i) Security Policies and Documentation.

Seller shall implement and document security policies and standards in accordance with industry best practices (e.g., aligned with the intent of NERC CIP-003-8 R2) and consistent with Company's security policies and standards. Seller shall submit documentation describing the approach, methodology, and design to provide physical and cyber security (i.e., aligned with the intent of NERC CIP-003-8 R2) with its submittal of the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Materials, Relay Settings and Fuse Selection) of Attachment B (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the Acceptance Test.

- The design shall meet industry standards and best practices, consistent with the National Institute of Standards and Technology ("NIST") guidelines as indicated in Special Publication 800-53 Rev. 4 "Security and Privacy Controls for Federal Information Systems and Organizations" and Special Publication 800-82 Rev. 2 "Guide to Industrial Control Systems (ICS) Security". The system shall be designed with the criteria to meet applicable compliance requirements and identify areas that are not consistent with NIST guidelines and recommendations.
- The cybersecurity documentation shall include a block diagram of the control system with all external connections clearly described.

- Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.
- Company shall be notified as soon as practicable when there is any known or suspected condition that would compromise physical or cyber security.
- Seller shall, at the request of Company or, in the absence of any request from Company, at least once every fifteen (15) months during the term of this Agreement, provide Company with updated documentation and diagrams including a record of changes.

(ii) Network and Application Security. Seller shall implement appropriate network and application security processes and practices commensurate with the level of risk as determined by periodic risk assessments (i.e., aligned with the intent of NERC CIP-005-5):

- Segment and segregate networks and functions, including physical and logical separation between business networks and control system networks (i.e., aligned with the intent of NERC CIP-005-5 R1).
- Limit unnecessary lateral communications (i.e., aligned with the intent of NERC CIP-005-5 R1).
- Harden network devices (i.e., aligned with the intent of NERC CIP-007-6 R1).
- Secure access to infrastructure devices (i.e., aligned with the intent of NERC CIP-004-6 R4).

- Perform out-of-band (OoB) network management (i.e., aligned with the intent of NERC CIP-005-5 R2).
- Validate integrity of hardware and software (i.e., aligned with the intent of NERC CIP-010-3 R1 and NERC CIP-006 R1 Part 10).

(iii) Endpoint and Server Security. Seller shall implement appropriate endpoint and server security processes and practices commensurate with the level of risk as determined by periodic risk assessments:

- Mechanisms to identify vulnerabilities and apply security patches in a timely manner (i.e., aligned with the intent of NERC CIP-007-6 R2).
- Malware defense and anti-phishing capabilities (i.e., aligned with the intent of NERC CIP-007-6 R3).
- Access Controls to enforce the least privilege principle and provide access to resource only for authorized users (i.e., aligned with the intent of NERC CIP-004-6 R4).
- Secure authentication mechanisms including multi-factor authentication for systems with higher risk exposure (i.e., aligned with the intent of NERC CIP-007-6 R5) and NERC CIP-005-5 R2).
- Data confidentiality, protection, and encryption technologies for endpoints, servers, and mobile devices (i.e., aligned with the intent of NERC CIP-011-2 R1 and NERC CIP-005-5 R2).

Seller shall (consistent with the following sentence) undertake best

efforts to ensure that no malicious software ("Malware") or unauthorized code is introduced into any aspect of the Facility, Interconnection Facilities, the Company Systems interfacing with the Facility and Interconnection Facilities, and any of Seller's critical control systems or processes used by Seller to provide energy, including the information, data and other materials delivered by or on behalf of Seller to Company, (collectively, the "Environment"). Seller shall periodically review, analyze and implement improvements to and upgrades of its Malware prevention and detection programs and processes that are commercially reasonable and consistent with the then current technology industry's standards and, in any case, not less robust than the programs and processes implemented by Seller with respect to its own information systems.

- (iv) Cybersecurity Program. Seller shall establish and maintain a continuous cybersecurity program (i.e., aligned with the intent of NERC CIP-003-8) that enables the Seller (or its designated third party) to:
- (aa) Define the scope and boundaries, policies, and organizational structure of the cybersecurity program.
 - (bb) Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Seller's Organization consistent with guidance provided in NIST Special Publication 800-30 Rev. 1 "Guide for Conducting Risk Assessments".

- (cc) Implement appropriate mitigating controls and training programs and manage resources.
- (dd) Monitor and periodically test the cybersecurity program to ensure its effectiveness. Seller shall review and adjust their cybersecurity program as appropriate for any assessed risks.
- (ee) Applicability is extended to Cloud Service providers and other third-party services the Seller may use.
- (v) Security Monitoring and Incident Response. Company and Seller shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training (i.e., aligned with the intent of NERC CIP-008-5). Seller shall, at the request of Company or, in the absence of any request from Company, at least quarterly, provide Company with a report of the incidents that it has identified and describe measures taken to resolve or mitigate.

In the event that Seller discovers or is notified of a breach, potential breach of security, or security incident at Seller's Facility or of Seller's systems, Seller shall immediately (aa) notify Company as soon as practicable of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information; (bb) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller; (cc) cooperate with Company with respect to any such breach or unauthorized access or use; (dd) comply with all applicable privacy and data protection laws governing Company's or any other individual's or

entity's data; and (ee) to the extent such breach was caused by Seller, provide Company with reasonable assurances satisfactory to Company that such breach, potential breach, or security incident shall not recur. Seller shall provide documentation to Company evidencing the length and impact of the breach. Any remediation of any such breach will be at Seller's sole expense.

If malicious software or unauthorized code is found to have been introduced into the Environment, Seller will promptly notify Company. Seller shall take immediate action to eliminate and remediate the effects of the Malware, at Seller's expense. Seller shall not modify or otherwise take corrective action with respect to the Company Systems except at Company's request. Seller shall promptly report to Company the nature and status of all efforts to isolate and eliminate malicious software or unauthorized code.

(vi) Monitoring and Audit. Upon reasonable request, Seller shall provide information on available audit logs and reports relating to cyber and physical security (i.e., aligned with the intent of NERC CIP 007-6 R4). Company may audit Seller's records to ensure Seller's compliance with the terms of this Section 1(b)(iii)G (Cybersecurity and Critical Infrastructure Protection) of this Attachment B (Facility Owned by Seller), provided that Company has provided reasonable notice to Seller and any such records of Seller's will be treated by Company as confidential.

H. Because a reliable Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller) is necessary throughout the Term in order for Company to effectively optimize the benefits of its right of Company Dispatch, Seller's available power production considering equipment and resource

availability ("Power Possible") will be determined at any given time using the best-available data and methods for an accurate representation of the amount of active power at the Point of Interconnection. To the extent available, the Parties shall use Seller's real time Power Possible communicated to Company through the SCADA system except to the extent that the potential energy does not accurately reflect the actual available active power at the Point of Interconnection (plus or minus 0.1 MW). During those periods of time when the SCADA derived Power Possible is unavailable, or does not accurately represent the available power production considering equipment and resource availability, the Parties shall use the best available data obtained through commercially reasonable methods to determine the Power Possible.

- (i) If, at any time during the Term, there is a material discrepancy or pattern of discrepancies in the accuracy of Power Possible, the Parties shall review the method for determining Power Possible and develop modifications with the objective of avoiding future discrepancies. If the Parties are unable to resolve the issue, then (aa) the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Qualified Independent Third-Party Consultants List attached to the Agreement as Attachment D (Consultants List) to evaluate the cause of the Power Possible discrepancy and to make recommendations with the objective of avoiding future Power Possible discrepancies ("Study"); and (bb) if the Company decides that its ability to effectively optimize the benefits of its right of Company Dispatch to dispatch the Facility's Net Energy Potential is materially impaired by the lack of an accurate method to determine Power Possible, the Company shall have the right to derate the Facility and the

Facility shall be deemed to be in Seller-Attributable Non-Generation status until the Study has been completed and the Study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Seller shall pay for the cost of the Study. The Study shall be completed within ninety (90) days from the date the Study is commissioned, unless otherwise reasonably agreed to in writing by Seller and Company. The Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the Study shall recommend (e.g., modifications to the model, modifications and/or additions to the data inputs used in the model, modifications to the procedures for maintaining and/or recalibrating the Monitoring and Communication Equipment used to provide data inputs, replacement of such Monitoring and Communication Equipment, modifications of procedures for Facility operations) with the objective of avoiding future Power Possible discrepancies. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed Study is issued by the consultant, or such other longer commercially reasonable timeframe otherwise agreed to in writing by Company.

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

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

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

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

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

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

Transmission line: _____

___ kV Facility switching station:

Relay protection equipment: _____

Other equipment as identified: _____

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

- (g) Active Power Control Interface.

(i) Seller shall provide and maintain in good working order all equipment, computers and software associated with the control system (the "Active Power Control Interface") necessary to interface the Facility active power controls with the Company System Operations Control Center for real power control of the Facility by the Company System Operator. The Active Power Control Interface will be used to control the net real power import or export from the Facility as required under this Attachment B (Facility Owned by Seller). The implementation of the Active Power Control Interface will allow Company System Operator to control the net real power import to or export from the entire Facility remotely from the Company System Operations Control Center through control signals from the Company System Operations Control Center.

(ii) Company shall review and provide prior written approval of the design for the Active Power

Control Interface to ensure compatibility with Company's SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval.

- (iii) The Active Power Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's Telemetry and Control, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls.
- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from the Company.
- (v) Seller shall provide an analog input to the Telemetry and Control for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the net real power input or output of the Facility by the Company at all times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide such remote control

features (whether temporarily or throughout the Term) and fails to discontinue importing or exporting electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.

- If all local and remote active power controls become unavailable or fail, the Facility shall immediately disconnect from the Company's System.
 - If the direct transfer trip is unavailable due to loss of communication link, Telemetry and Control failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to shutdown Facility and open and lockout the main circuit breaker.
- (vii) The rate at which the Facility changes net real power import or export shall not exceed the ramp rate specified in Section 3(c) (Ramp Rate) of Attachment B (Facility Owned by Seller). The Facility's Active Power Control Interface will control the rate at which electric energy is changed to achieve the active power limit. The Facility will respond to the active power control request immediately. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY FOLLOWING COMPLETION OF THE IRS]**
- (viii) The Active Power Control Interface shall accept the following active power control(s) from the Company SCADA and EMS systems:
- A. Maximum Power Import and Export Limits:
The Facility is not allowed to exceed these settings under any circumstances. The primary frequency response control specified in Section 3(m) (Primary Frequency Response) of Attachment B

(Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.

B. Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the solar resource and energy storage and is not allowed to exceed this setting when system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller). When system frequency exceeds the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller), the Facility's net real power import or export is allowed to exceed this setting or be further reduced below this setting when commanded by the primary frequency response control specified in Section 3(m) of Attachment B (Facility Owned by Seller).

C. WTG Enable/Disable Control: The Facility shall include WTG Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its WTGs. When Enable is selected, the Facility WTGs can start up, ramp up, and remain in normal operations.

(ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.

(x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.

(h) Control System Acceptance Test Procedures.

(i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting the Control System Acceptance Test:

- Successful Completion of the Acceptance Test.

- Facility has been successfully energized.
 - All of the Facility's generators have been fully synchronized.
 - The control system computer has been programmed for normal operations.
 - All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, energy storage device, statcom, etc.) shall have been commissioned and be operating within normal parameters.
- (ii) Facility Generators. Unless all of the Facility's generators are available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's generators are consistent with the results that would have been attained if all of the Facility's generators had been available for the duration of the test.
- (iii) Procedures. The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule. No Control System Acceptance Test will be scheduled during the final 21 Days of a calendar year. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control System Acceptance Test. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test(s) has been passed and, if so, the date upon which such Control System Acceptance Test(s) was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of

Attachment A (Description of Generation, Conversion and Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.

- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
- (j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth in such written notice, to meet the operational and performance requirements specified in and Section 1(g) (Active Power Control Interface) and Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and to require documentation or testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice or such longer time period agreed to in writing by Company, a written report of both the results of such investigation and the corrective action taken by Seller. If the Seller's corrective action or corrective action plan as provided in the report does not resolve the issues to Company's reasonable satisfaction the Parties shall promptly review the report and the corrective action plan and attempt to make revisions thereto so that the report and the corrective action plan may become reasonably acceptable to both Parties. In the

event that the Parties are unable to agree on a report (including the corrective action plan), the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Qualified Independent Third-Party Consultants List attached to the Agreement as Attachment D (Consultants List) to evaluate the cause of the non-compliance and to make recommendations to remedy such non-compliance. Seller shall pay for the cost of the study. The study shall be completed within ninety (90) Days, unless the selected consultant determines that such study cannot reasonably be completed within ninety (90) Days, in which case, such longer commercially reasonable period of time as it takes the consultant to complete the study. The consultant shall send the study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the study shall recommend with the objective of resolving the non-compliance. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed study is issued by the consultant unless the consultant determines that such recommendation cannot reasonably be implemented within forty-five (45) Days, in which case, such longer commercially reasonable period of time agreed to by the Parties in writing to implement such recommendation as determined by the consultant. Failure to implement such recommendations within this period shall constitute a material breach of this Agreement. Company shall have the right to derate the Facility and the Facility shall be deemed to be in Seller-Attributable Non-Generation status until Seller's aforementioned written report has been completed, any subsequent study commissioned by the Parties has been completed and any recommendations to resolve the non-compliance have been implemented to Company's reasonable satisfaction.

2. Operating Procedures. **[NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION 2 MAY VARY DEPENDING ON THE SPECIFIC PROJECT AND THE RESULTS OF THE PROJECT SPECIFIC INTERCONNECTION REQUIREMENT STUDY.]**

- (a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement

changes Company deems necessary for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.

- (b) Separation. Seller must separate from Company System whenever requested to do so by the Company System Operator pursuant to Article 8 (Company Dispatch) and Article 9 (Personnel and System Safety) of the Agreement.
- (c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than six (6) years.
- (d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator.
- (e) Reserved.
- (f) Reserved.
- (g) Critical Infrastructure Protection. Seller shall comply with the critical infrastructure protection requirements set forth in Section 1(b)(iii)G of this Attachment B (Facility Owned by Seller).
- (h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System only when the [_____] circuit is in normal operating configuration served by breaker [_____] at [_____] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Performance Standards

- (a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point,

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

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

(i) Seller shall install sufficient equipment so that each _____ kVA generator inverter and each kVA energy storage unit online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the **[generator capability and energy storage unit]** curve[s] attached to this Agreement as Exhibit B-2 (Generator and Energy Storage Capability Curve(s)). **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**

(ii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will be achieved within 1 second following a step change.

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

(c) Ramp Rates.

(i) Seller shall ensure that the ramp rate of the Facility is less than the following limits for all conditions including start up, normal operations, Seller adjusting the Facility Actual Output, changes in the solar resource, and shut down for

the following periods as calculated in accordance with Attachment C (Methods and Formulas For Measuring Performance Standards).

- Maximum Ramp Rate Upward of [__] MW/minute for all periods. **[TO BE DETERMINED FOLLOWING IRS.]**
 - Maximum Ramp Rate Downward of 2 MW/minute for all periods other than periods for which such maximum is not operationally possible because of rapid loss of solar resource and the depletion of energy storage.
- (ii) Upon receiving a command from the Company active power control(s) described in Section 1(g)(viii) of this Attachment B (Facility Owned by Seller), Seller shall adjust the Facility's net real power import or export at a ramp rate, as calculated in accordance with Attachment C (Methods and Formulas for Measuring Performance Standards), to be specified by the Company to the extent allowed by the solar resource and energy storage without exceeding such ramp rate and without intentional delay. Such ramp rate shall be in the range of __ MW/min to __ MW/min.
- (iii) The Facility is allowed to exceed the maximum ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller) when Facility net real power import or export is changed by the primary frequency response control described in Section 3(m) (Primary Frequency Response) of this Attachment B (Facility Owned by Seller).
- (d) Ride Through Requirements.

In meeting the voltage and frequency ride-through requirements in this Attachment B, Sections 3(e), 3(f), 3(i), and 3(j), the Facility shall not enter momentary cessation of operations within the voltage and frequency zones and time periods where the Facility must remain connected to the Company System. **[THIS PROVISION MAY BE ADJUSTED BY COMPANY UPON COMPLETION OF THE IRS IF MOMENTARY CESSATION IS NEEDED TO PREVENT EQUIPMENT DAMAGE DUE TO A POWER EQUIPMENT LIMITATION. DOCUMENTATION FROM THE EQUIPMENT MANUFACTURER OF SUCH**

LIMITATION SHALL BE PROVIDED TO COMPANY IN WRITING FOR THE OWNER'S RFP SUBMITTAL AND THE CONDUCT OF THE IRS.]

(e) Undervoltage Ride-Through.

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

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

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

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will

recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.

- Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 23 cycles between the initial clearing time and the reclosing time.

(f) Over Voltage Ride-Through.

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

$1.00 \text{ pu} < V \leq 1.10 \text{ pu}$ The Facility remains connected to the Company System.

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

$V > 1.2 \text{ pu}$ The Facility may initiate disconnection from the Company System immediately.

(g) [RESERVED].

(h) [RESERVED].

(i) Underfrequency Ride-Through.

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

$57.0 \text{ Hz} \leq f \leq 60.0 \text{ Hz}$	The Facility remains connected to the Company System.
$56.0 \text{ Hz} \leq f \leq 57.0 \text{ Hz}$	The Facility may initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.
$f < 56.0 \text{ Hz}$	The Facility may initiate disconnection from the Company System immediately.

(j) Overfrequency Ride-Through.

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

$60.0 \text{ Hz} \leq f \leq 63.0 \text{ Hz}$	The Facility remains connected to the Company System.
$63.0 \text{ Hz} \leq f \leq 64.0 \text{ Hz}$	The Facility shall initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.
$f > 64.0 \text{ Hz}$	The Facility shall initiate disconnection from the Company System immediately.

(k) Voltage Flicker.

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

(l) Harmonics.

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

(m) Primary Frequency Response.

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

(i) The Facility primary frequency response control shall adjust, without intentional delay and without regard to the ramp rate limits in Section 3(c) (Ramp Rates) of this Attachment B (Facility Owned by Seller), the Facility's net real power import or export when system frequency is not 60 Hz based on frequency deadband and frequency droop settings specified by the Company.

(ii) The Facility primary frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point set under Section 1(g)(viii) of this Attachment B (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations.

(iii) The frequency deadband shall be settable in the range from +/-0.01 Hz to +/- 0.10 Hz and the frequency droop shall be settable in the range of 0.1% to 10%.

(iv) The Facility primary frequency response control shall be in continuous operation when the

Facility is online and connected to the Company unless directed otherwise by the Company.

- (v) The Facility primary frequency response shall perform to the Appendix A, Section 3, Active Power-Frequency Control specifications of the NERC "Reliability Guideline, BPS-Connected Inverter-Based Resource Performance" (September 2018) except when otherwise specified in Section 3(m) (Primary Frequency Response) of this Attachment B (Facility Owned by Seller).

- (n) Grid Forming. **[DRAFTING NOTE: TO BE REMOVED IF SUBSCRIBER ORGANIZATION'S PROPOSAL DID NOT OFFER GRID FORMING.]**

Facility inverters shall be capable of operating in grid forming mode supporting system operation under normal and emergency conditions without relying on the characteristics of synchronous machines. This includes operation as a current independent ac voltage source during normal and transient conditions (as long as no limits are reached within the inverter), and the ability to synchronize to other voltage sources or operate autonomously if a grid reference is unavailable.

- (ii) Seller shall operate the Facility in grid forming mode only as directed by the System Operator, in its sole discretion.
- (iii) The Facility shall include safeguards to prevent the unintentional switching of the Facility into and out of grid forming mode. The safeguards shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT.

- (o) Normal Operation Limits.

Seller shall automatically limit the Facility net real power import or export to the following limits:

- ___ MW export and ___ MW import from ___ AM/PM to ___ AM/PM.
- ___ MW export and ___ MW import from ___ AM/PM to ___ AM/PM.

[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS.]

- (i) The Company in its sole discretion shall have the ability to adjust the Normal Operation Limits to the extent allowed by the Allowed Capacity.
 - (ii) Seller shall account for the Normal Operation Limits in determination of the Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller).
 - (iii) The Normal Operation Limits shall not apply to net real power changes commanded by the Primary Frequency Response under Section 3(m) of this Attachment B (Facility Owned by Seller).
 - (iv) Ramping of Facility's net real power due to the transition from one Normal Operation Limit to another shall follow the Ramp Rates under Section 3(c) of this Attachment B (Facility Owned by Seller).
 - (v) The Facility will telemetered to Company through SCADA the current Normal Operation Limits. The Company shall have the ability to adjust the Normal Operation Limits through the SCADA controls.
- (p) Blackstart. The Facility shall be able to blackstart (i.e., start and energize itself without support from the Company System). **[DRAFTING NOTE: TO BE REMOVED IF SUBSCRIBER ORGANIZATION'S PROPOSAL DID NOT OFFER GRID FORMING.]**
- (i) At the Company System Operator's sole discretion and to the extent of the operating limits of the Facility, the Facility shall blackstart and energize a part of the Company System as directed by the Company System Operator.
 - (ii) Upon blackstart and energization of a part of the Company System, the Facility shall:
 - a. Voltage Regulation **[To be determined upon completion of the IRS.]**.
 - b. Frequency Control **[To be determined upon completion of the IRS.]**.

- c. Supply power to the part of the Company System that the Facility has energized, which shall include supplying power to start synchronous and other inverter-based generating resources.
- (iii) The Facility shall seamlessly and bumplessly transition from blackstart mode to normal operating mode as directed by and at the sole discretion of the Company System Operator. The blackstart control mode status shall be telemetered to Company through SCADA.
- (iv) The Facility shall maintain a minimum level of energy in the Facility storage system for blackstart use to be specified by the Company in its sole discretion.
- (v) The Facility blackstart design and configuration, including the isochronous governor, shall be subject to the prior written approval of Company in its sole discretion and implemented by Seller prior to conducting the CSAT. The blackstart design and configuration may be modified by mutual agreement of Seller and Company.
- (vi) Unintentional Islanding.
A Facility's inverters shall be certified to meet the unintentional islanding requirement stated in IEEE 1547-2018 (or latest version), "IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power System Interfaces." Ride through requirements specified herein shall not inhibit the islanding detection performance where a valid unintentional islanding condition exists.
- (vii) BOP Efficiency Ratio. Wind Facilities must achieve a satisfactory BOP Efficiency Ratio. Both the BOP Benchmark Metric and the process for determining the BOP Efficiency Ratio will be determined upon completion of the IRS. The BOP Benchmark Metric will be re-evaluated as part of the OEPR process under Attachment U (Calculation and Adjustment of Not Energy Potential).

4. Maintenance of Seller-Owned Interconnection Facilities.

- (a) Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller). For this

purpose, a "Disconnection Event" is a disconnection from Company System of at least ___ MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** from the Facility over a "rolling 120-second period", (i) that is not the result of Company dispatch, frequency droop response, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller). A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period. Company's election to exercise its rights under Section 1(j) (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) for any future Disconnection Event during the pendency of such election or thereafter.

- (b) For every Disconnection Event, Seller shall investigate the cause. Within three (3) Business Days of the Disconnection Event, Seller shall provide, in writing to Company, an incident report that summarizes the sequence of events and probable cause.
- (c) Within forty-five (45) Days of a Disconnection Event, Seller shall provide, in writing to Company, Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection Event ("Proposed Actions"). Company may assist Seller in determining the causes of and recommendations to remedy or prevent a Disconnection Event ("Company's Recommendations"). Seller shall implement such Proposed Actions (as modified to incorporate the Company's Recommendations, if any) and Company's Recommendations (if any) in accordance with the time period agreed to by the Parties.
- (d) In the event Seller and Company disagree as to
 - (i) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the

Disconnection Event, (iii) the Proposed Actions, (iv) Company's Recommendations, and/or (v) the time period to implement the Proposed Actions and/or Company's Recommendations, then the Parties shall follow the procedure set forth in Section 5 (Expedited Dispute Resolution) of this Attachment B (Facility Owned by Seller).

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

have the effect of violating or voiding any equipment warranties or that would conflict with manufacturer's written requirements, specifications, or operating parameters, in which case, Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless such design changes, operating and maintenance procedure changes, modifications, and/or maintenance cannot reasonably be completed within forty-five (45) Days, in which case, Seller shall complete the foregoing within such longer commercially reasonable period of time agreed to by the Parties in writing. Company shall have the right to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for the period that such requirement has not been achieved. Nothing in this provision shall affect Company's right to dispatch the Facility as provided for in this Agreement.

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

5. Expedited Dispute Resolution.

If there is a disagreement between Company and Seller regarding (i) Seller's compliance with the standards set forth in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and/or (ii) Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of this Attachment B (Facility Owned by Seller) such as (aa) whether a Disconnection Event occurred, (ii) the sequence of events and/or probable cause of the Disconnection Event, (iii) the Proposed Actions, (iv) the Company's Recommendations, and (v) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawai'i (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then such disagreement shall constitute a Dispute for which either Party may pursue the dispute resolution procedure set forth in Section 28.2 (Dispute Resolution Procedures, Mediation) of this Agreement.

6. Modeling.

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

written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner, or such longer period of time as reasonably agreed upon by the Parties.

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

(i) Source Code Escrow.

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

(B) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one

copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

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

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

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

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

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

(Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(f) under the Agreement.

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

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

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

(F) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of the Required Models on behalf of Company to carry out their duties for the Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and

contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(ii) Source Code Security.

(A) Establishment of Source Code Security.

If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) then, no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit (the "Source Code LC") with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating (as measured by Standard & Poor's) of "A-" or better (the "LC Bank"); provided, however, that if such LC Bank is not chartered in the United States, the LC Bank must have a branch or subsidiary located in the United States, be federally or state licensed and subject to United States supervision. In addition to complying with the Attachment M letter of credit form, the letter of credit shall: (1) not be subject to any foreign currency exchange risk; (2) be governed by Hawai'i or New York law for matters not covered by International Standby Practices ISP98; (3) not be subject to prior approval or review by the LC Bank home or main office; and (4) permit Company to present and draw on such letter of credit at the LC Bank's location in the United States. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days' advance notice to Company of any expiration

or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller. Notwithstanding anything herein to the contrary, in the event an Affiliate of Seller (a "Seller Affiliate") enters into one or more power purchase agreements for a project with Company or an Affiliate of Company (an "Affiliate Project") that contain provisions to provide to Company, or Company's Affiliate, Required Models or Source Code, Company agrees that Seller shall be deemed to have fulfilled its obligations pursuant to Section 6(a) (Seller's Obligation to Provide Models), Section 6(b)(i) (Source Code Escrow), and Section 6(b)(ii) (Source Code Security) of Attachment B (Facility Owned by Seller) for a specific Required Model to the extent such Seller Affiliate has (i) provided to Company or the Company's Affiliate the same or substantially similar Required Model, (2) deposited the same or substantially similar Source Code into the Source Code Escrow, provided that Company is also a party to the Source Code Escrow Agreement, or (3) posted a Source Code LC for a Required Model (as such term is defined in such Seller Affiliate's power purchase agreement) that is the same or substantially similar to such Required Model, provided that Company is included as a beneficiary of such Source Code LC. In the event such Seller Affiliate sells such Affiliate Project, or alternatively, interest in the Seller Affiliate is sold to another entity such that the Sellers under the power purchase agreements are no longer Affiliates, Seller shall individually fulfill its obligations pursuant to Section 6(a) (Seller's Obligation to Provide Models), Section 6(b)(i) (Source Code Escrow) or Section 6(b)(ii) (Source Code Security), as applicable, within thirty (30) Days of Company's written request. In the event the Seller changes one or more of its Required Models such that Seller's Facility is no longer using a Required Model used by Seller Affiliate, Seller shall be required to individually fulfill its obligations with respect to such Required Model pursuant to Section 6(a) (Seller's Obligation to Provide Models), Section 6(b)(i) (Source Code Escrow) or Section 6(b)(ii) (Source Code Security), as applicable, within thirty (30) Days of Company's written request.

(B) Release Conditions. Company shall have the right to draw on the letter of credit the funds necessary

to develop and recreate the Required Model or Required Models upon Company's request if Seller fails to provide the Company the Required Models or updated Required Models within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) or Section 6(b)(i)(C) (Remedies) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller, and Seller fails to remedy such breach within five (5) Days following receipt of such notice (for a breach under Section 6(a) (Seller's Obligation to Provide Models), or within thirty (30) Days following receipt of such notice (for a breach under Section 6(b)(i)(C) (Remedies)).

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

(D) Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 6(b)(ii)(C) (Extend Letter of Credit) of this Attachment B (Facility Owned by Seller), Company shall, in order to avoid comingling the Proceeds, have the right but not the obligation to place the Proceeds in an escrow account as provided in this Section 6(b)(ii)(D) (Proceeds Escrow) of this Attachment B (Facility Owned by Seller) with a reputable escrow agent acceptable to Company ("Proceeds Escrow Agent") subject to an escrow agreement acceptable to Company (the "Proceeds Escrow Agreement"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the Proceeds as necessary to recover amounts Company is owed pursuant to this Section 6 (Modeling) of this Attachment B (Facility Owned by Seller). To that end, the Proceeds Escrow Agreement governing such escrow account shall give Company the sole authority to draw from the account. Seller shall not be a party to such Proceeds Escrow Agreement and shall have no rights to the Proceeds. Upon full satisfaction of Seller's obligations under Section 6 (Modeling) of this Attachment B (Facility Owned by Seller), Company shall

instruct the Proceeds Escrow Agent to remit to the bank that issued the letter of credit that was the source of the Proceeds the remaining balance (if any) of the Proceeds. If there is more than one escrow account with Proceeds, Company may, in its sole discretion, draw on such accounts in any sequence Company may select. Any failure to draw upon the Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

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

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

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

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

(H) Authorized Use. If Company becomes entitled to a draw of funds from the Source Code Security or

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

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

7. Testing Requirements.

(a) Testing Requirements. Once the Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility Control, WTG control settings and/or ancillary device controls, without prior written notice to Company. In the event of any such replacement and/or change, the relevant test(s) of the Control System Acceptance Test shall be redone and must be successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. In the event that Company reasonably determines that such replacement and/or change of controls makes it inadvisable for the Facility to continue in normal operations without a further Control Systems Acceptance Test, the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the new relevant tests of the Control System Acceptance Test have been successfully passed.

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

8. Data and Forecasting.

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

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

- A. Location Facility Map showing the layout of the Facility (coverage area or footprint) and the coordinates (latitude and longitude), elevation (above ground) of each WTG hub.
- B. Location (latitude and longitude) and elevation (above ground) of each MMS and each field measurement device located on such MMS.
- C. BESS technology and related auxiliary equipment, location and type.

(i) Meteorological and Production Data:

- A. Seller shall install and maintain a minimum of one MMS for facilities with a Contract Capacity of less than 5 MW and a coverage area of not more than one square kilometer.
- B. Seller shall install and maintain a minimum of two MMS for facilities that have either (i) a DC rating of the Facility of 5 MW or greater or (ii) a coverage area greater than one square kilometer.
- C. Placement of each MMS should account for the microclimate of the area and Facility coverage area and shall be oriented with respect to the primary wind direction.

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

(ii) Units and Accuracy:

- A. The Table below shows minimum required solar irradiance measurements for various types of solar generation technology. This value may not be derived.

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

(fixed angle, roof mounted, tracking)			
Concentrated PV (flat, trough, tracking)	X	X	X

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

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

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

DC Power production of Facility at BESS Interface	Measured at Facility's DC input to the BESS charging system	MW (delivered to BESS is positive)	Up to Maximum Rated Input/Output	The lesser of the tolerances of the /telemetry equipment or 2% of measurement
Facility power production ratio	Ratio of Facility's power production (MW)/Allowed Capacity (MW)	%	0 to 100%	+/-0.1 %
Inverters Available	NA	NA	Up to the number installed inverters	
Facility Inverter Availability	Ratio of inverters online/number of inverters	%	0 to 100%	
Power Possible	Seller's Model	MW	0 to Allowed Capacity	+/-4%

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

Parameter	Data Source	Unit	Range	Accuracy
Wind speed at MMT (hub height)	Cup or sonic anemometer	Mph	0 to 134 mph	+/-1 mph
Wind direction at MMT (hub height)	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Ambient air temperature at MMT (hub height)	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air pressure at MMT (hub height)	Piezoresistive transducer, barometer or equivalent	Mbar	150 to 1150 mbar	+/-60 mbar (0 to +50°C)
Power	Measured at POI	MW		+/- 0.1 mw

production of Facility				
Power Possible	Subscriber Organization's Model	MW	0 to 120% of Allowed Capacity	+/-0.1 MW

(iii) Status of WTGs for Purposes of Calculating Facility Availability:

For each WTG, Seller shall, unless agreed otherwise by Company and Seller in writing, provide to Company, via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 2 seconds, a signal as to whether such WTG is available or unavailable.

9. Technology Specific Requirements.

(a) [Reserved].

(b) [Reserved].

(c) Inverter Systems.

(i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of IEEE Std 1547-2003 (or latest version), except as described in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller).

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

(d) Battery Energy Storage System.

The Battery Energy Storage System ("BESS") operational conditions ("Operational Conditions") shall be as follows:

- (i) No more than 0% of the BESS energy capacity can be charged from the grid prior to the fifth anniversary of the Commercial Operations Date. Thereafter, 100% of the BESS energy capacity can be charged from the grid. All charging from the grid will be at the direction of Company.
- (ii) For Contract Years that are non-leap years, the BESS shall be discharged no more than BESS Rating x 365 MWh in each Contract Year. For Contract Years that are leap years, the BESS shall be discharged no more than BESS Rating x 366 MWh in each Contract Year.
- (iii) The BESS will not be required to discharge more energy than available relative to the available state of charge.
- (iv) The BESS may be called on to provide frequency droop response, frequency regulation response, and frequency regulation (AGC dispatch) under the following conditions:
 - A. Dispatch to the grid is limited to the interconnection limit minus the generation from the PV system.

EXHIBIT B-1
REQUIRED MODELS

PSS/E

ASPEN

PSCAD

EXHIBIT B-2
GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S)

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

ATTACHMENT C
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to limit the Actual Output of the Facility for purposes of maintaining power quality on Company System. Specific standards are defined for:

- Ramp Rate (RR)

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

3. Ramp Rate Calculation:

$$RR = MW_s - MW_{s-30}$$

Where:

RR = Ramp Rate, may be calculated once every scan

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

MW_s = The instantaneous MW analog value for the present scan

4. All changes in output shall be implemented as a ramp rate, and not with one or two step changes within the period. It is not acceptable, for example, for a two MW/minute ramp rate compliance, that all values be zero except for a 2 MW change in the last scan value.

ATTACHMENT D
CONSULTANTS LIST

ATTACHMENT E
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

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

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

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

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

ATTACHMENT G
COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.

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

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

that Subscriber Organization should pay for all or part of the cost of such upgrade and/or replacement.

- (f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, as such date may be extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at the Subscriber Organization's expense.
- (g) Responsibility of Subscriber Organization and Company. The general responsibilities of Subscriber Organization and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company-Owned Interconnection Facilities is specified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE**

2. Construction and Support Services By Subscriber Organization.

- (a) Construction and Support Services By Subscriber Organization.
- (i) Subscriber Organization (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Subscriber Organization's expense:
- A. The items identified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities) as being the responsibility of Subscriber Organization to construct; and
- B. **[ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SUBSCRIBER ORGANIZATION]. [NOTE: SUBPARTS "A" AND "B"**

**BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET
OF THE LIST IN SECTION 1(d) ABOVE]**

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

(ii) Subscriber Organization shall provide the necessary support for the Company's [REDACTED] kV overhead line extension work, which may include, but not limited to:

- A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
- B. Staking of Company proposed poles and anchors by surveyor.
- C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
- D. Graded level pads to provide vehicle working areas around all Company poles and anchors.
- E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
- F. Grubbing and clearing of vegetation within Company's easement area or as required.

(b) Coordination of Construction. Prior to Subscriber Organization engaging the Contractors, Subscriber Organization shall obtain Company's written approval, which approval shall not be unreasonably withheld. Prior to Subscriber Organization and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Subscriber Organization (and/or its Contractors), such

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

- (c) Plans. Subscriber Organization shall provide Company its complete Plans at 30%, 60% and 90% completion. No later than sixty (60) Days before Subscriber Organization and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Subscriber Organization and/or its Contractors, Subscriber Organization shall provide Company with the final Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Subscriber Organization (and/or its Contractors) shall comply with (i) all applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "Standards"). Subscriber Organization shall submit design drawings in MicroStation format per Company standards.
- (d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the complete Plans at each stage (30%, 60%, 90% and final) for it to review and comment on the Plans, and verify in writing to Subscriber Organization that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Subscriber Organization to its comments and Subscriber Organization shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans

conform to the Standards or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards.

- (e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection Facilities to be constructed by Subscriber Organization and/or its Contractors shall meet the Standards.
- (f) Acceptance Test Procedures.
 - (i) Subscriber Organization acknowledges that: (aa) Company has multiple on-going projects with other developers as well as its own capital improvement projects and on-going system work; (bb) Company has limited resources to provide engineering oversight (such as review of plans) to such projects and to participate in the testing of such projects; (cc) in order for Company to accommodate such oversight and testing, it is necessary for Company to sequentially allocate its resources for each project a year or more in advance; (dd) the result is a queue of such projects that reflects the scheduling commitments of Company's resources to conduct such oversight and to participate in such testing; (ee) if a project is behind the schedule on which Company's resources have been scheduled for the oversight of such project, or if a project is not ready for testing at the time Company's resources have been scheduled for the testing of such project, or if a project does not complete testing within the period for which Company's resources have been scheduled for such testing, the progress of projects later in the queue may be adversely affected; (ff) the Test Ready Deadline that is set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) reflects the scheduling commitment of Company's resources to (i) conduct the oversight necessary to facilitate Subscriber Organization's

achievement of that Test Ready Deadline, (ii) commence the Acceptance Test on the Acceptance Testing Milestone Date that is set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) and (iii) thereafter participate in the Control System Acceptance Test; and (gg) in the Company's sole discretion based on its assessment of Company's resources and overall schedule of projects at the time, the Project may lose its place in the queue and may be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that may be behind the other projects then in the queue if (i) the Subscriber Organization fails to satisfy any of the conditions precedent set forth in Section f(ii) of this Attachment G (Company-Owned Interconnection Facilities) within the time period specified therein for the task in question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Subscriber Organization fails to satisfy any of the Subscriber Organization's Conditions Precedent set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test is not satisfactorily completed within the time allotted to complete such testing.

(ii) The Conduct of the Acceptance Test is subject to the satisfaction of the following conditions precedent within the time period specified below for the task in question or, if no time period is specified, by the Test Ready Deadline that is set forth in Attachment K-1 (Subscriber Organization's Conditions Precedent and Company Milestones):

- Final Single-Line Drawing, and notes, has received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.
- Final Relay List and Trip Scheme have received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip

Scheme) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.

- Final Interface Block Diagram has received Company consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Subscriber Organization) to this Agreement.
- Final Control System Telemetry and Control List has received Company consent.
- Final phasor measurement unit (PMU) devices, if applicable, have received Company consent.
- Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with Attachment B (Facility Owned by Subscriber Organization) Performance Standards.
- Agreement on Active Power Control Interface.
- No later than 14 Days prior to commencement of the Acceptance Test:
 - Subscriber Organization shall have certified to Company that Subscriber Organization-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(iii) of this Attachment G (Company-Owned Interconnection Facilities).
 - Subscriber Organization shall have certified to Company that any Company-Owned Interconnection Facilities built by Subscriber Organization (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-

through to be conducted pursuant to Section 2(f)(iii) of this Attachment G (Company-Owned Interconnection Facilities).

- Any Company-Owned Interconnection Facilities not built by or on behalf of Subscriber Organization have been installed and commissioned.
 - No later than seven (7) Days prior to the commencement of the Acceptance Test, Subscriber Organization and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
 - Redlined as-built drawings of the Subscriber Organization-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities built by Subscriber Organization (and/or its Contractors) shall have been provided to Company.
 - Continuous power is being supplied to Company's protection and SCADA equipment.
 - Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high speed communication lines required under this Agreement have been commissioned and are ready for use.
 - Not less than two (2) weeks prior to the commencement of the Acceptance Test, Subscriber Organization and Company have participated in an on-Site Acceptance Test coordination meeting.
- (iii) Subscriber Organization shall provide Company with at least fourteen (14) Days advance written notice of the commencement of the Acceptance Test. The Acceptance Test will be conducted on Business Days during normal business hours and may take a minimum of thirty (30) Days to complete. No electric energy will be delivered from Subscriber Organization to Company during the Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Subscriber Organization shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for

the Acceptance Test. At the time that Subscriber Organization provides its 14-Day notice of the Acceptance Test to Company, Subscriber Organization shall concurrently schedule a site walk-through of the Facility with Company to occur no later than seven (7) Days prior to the Acceptance Test. Subscriber Organization's 14-Day notice to Company of the Acceptance Test shall constitute its certification that (i) the completion of the installation and commissioning of the Subscriber Organization-Owned Interconnection Facilities and the Company-Owned Interconnection Facilities built by Subscriber Organization (and/or its Contractors) and (ii) a walk-through by Company shall demonstrate, to Company's reasonable satisfaction, Subscriber Organization's readiness to commence with the Acceptance Test. If, after the site walk-through, Company representatives reasonably determine that Subscriber Organization is not ready to commence with the Acceptance Test, in the Company's sole discretion based on its assessment of the nature of Subscriber Organization's lack of readiness and Company's resources and overall schedule of projects at the time, Company may assign Subscriber Organization a new Test Ready Deadline and a new Acceptance Testing Milestone Date, which may be behind the other projects then in the queue, coinciding with the estimated time it would take Subscriber Organization to become test-ready and Company's ability to commence the Acceptance Test. If prior to the new Test Ready Deadline established by Company, Subscriber Organization becomes ready for the performance of the Acceptance Test, i.e., Subscriber Organization provides Company with its fourteen (14) Day advance written notice of the commencement of the Acceptance Test (the "Subscriber Organization Accelerated Test Ready Deadline"), and Company confirms, in its site walk-through of the Facility (which site walk-through the Company may waive in its sole discretion), that Subscriber Organization is ready for the Acceptance Test, but Company is unable to perform the Acceptance Test within [REDACTED] Days¹ (the "Subscriber Organization Accelerated

¹ This would be the number of Days between the Test Ready Deadline and the Acceptance

Acceptance Testing Milestone Date") and Company's inability to commence the Acceptance Test is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G, then, for up to the period of time from the Subscriber Organization Accelerated Acceptance Testing Milestone Date to the date that Company commences performance of the Acceptance Test, Subscriber Organization shall be entitled to a waiver of Daily Delay Damages that would otherwise be accruing if Subscriber Organization ultimately fails to meet the Guaranteed Commercial Operations Date due to its failure to meet the original Test Ready Deadline specified in Attachment K-1. For clarity, and to explain the limited waiver of Daily Delay Damages provided for in the preceding sentence, if Subscriber Organization misses its Test Ready Deadline by 45 Days and subsequently misses its Guaranteed Commercial Operations Date for that reason by 60 Days and the period of time between the Subscriber Organization Accelerated Acceptance Testing Milestone Date and the commencement date of the Acceptance Test is 15 Days (and such delay is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G), then Subscriber Organization shall be entitled to a waiver of 15 Days of Daily Delay Damages otherwise accruing for Subscriber Organization's failure to meet the Guaranteed Commercial Operations Date. If the above time periods remain the same but Subscriber Organization only misses the Guaranteed Commercial Operations Date by 30 Days, Subscriber Organization shall not be entitled to any Daily Delay Damages waiver as the 30 Day failure to meet the Guaranteed Commercial Operations Date would be attributable to the initial 45 Days that Subscriber Organization missed the Test Ready Deadline. Finally, if the above time periods remain the same but Subscriber Organization misses its Guaranteed Commercial Operations Date by 50 Days, Subscriber Organization shall be entitled to only a 5 Day waiver of Daily Delay Damages. In the meantime, Subscriber Organization shall remediate the deficiencies identified by Company, and the process

Testing Milestone Date stated in the Company Milestones of Attachment K-1.

described in this Section 1(f) (Acceptance Test Procedures) of Attachment G (Company-Owned Interconnection Facilities), shall commence again until Subscriber Organization's readiness for the Acceptance Test is demonstrated to Company's reasonable satisfaction. Successful completion of the Acceptance Test requires successful completion of each of the individual tests that comprise the Acceptance Test. Retesting of any individual test constitutes a restart of the Acceptance Test if such retesting is required because of a prior failure of such individual test or because of a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Subscriber Organization in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

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

(g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Subscriber Organization shall provide for Company review a set of the proposed as-built drawings for the Company-Owned Interconnection Facilities constructed by Subscriber

Organization (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Subscriber Organization with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Subscriber Organization shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Subscriber Organization's receipt of Company's comments.

3. Subscriber Organization Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility. **[TO BE REVISED THROUGH INTERCONNECTION REQUIREMENTS AMENDMENT TO REFLECT COMPANY-BUILD OR DEVELOPER-BUILD SCENARIO, AS APPLICABLE]**

(a) Subscriber Organization Payment to Company.

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

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

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

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

The Total Estimated Interconnection Cost is \$.

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

(i) Initial Payment: Prior to the execution of the Interconnection Requirements Amendment, Subscriber Organization has paid \$____,000.00 to Company;

(ii) Company-Owned Interconnection Facilities Prepayment: Within thirty (30) Days after the execution of the Interconnection Requirements Amendment, the total estimated costs related to the Engineering and Design Work are due and payable by Subscriber Organization to Company;

Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Subscriber Organization pays the amounts in Section 3(b)(i) (Initial Payment) and Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Subscriber Organization's irrevocable authorization to Company to perform such engineering and design work.

(iii) Balance of Company-Owned Interconnection Facilities Prepayment: On the Guaranteed Procurement Payment Date, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Subscriber Organization to Company.

- A. Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Subscriber Organization pays the amount in this Section 3(b)(iii) (Balance of Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Subscriber Organization's irrevocable authorization to Company to perform such procurement and construction work.
- (c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, or (iii) the date this Agreement is terminated, whichever occurs first. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Subscriber Organization's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Subscriber Organization an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Subscriber Organization within thirty (30) Days of the final accounting.
- (d) Audit Rights. Subscriber Organization shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis for the amount

(if any) by which the Total Actual Interconnection Cost invoiced to Subscriber Organization exceeds the Total Estimated Interconnection Cost, and (ii) to dispute the amount of any such excess. Subscriber Organization shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawai'i. Subscriber Organization shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overhead.

- (e) Ownership. All Company-Owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by Subscriber Organization shall be the property of Company.

4. Ongoing Operation and Maintenance Charges.

- (a) Prior to the Transfer Date. Subscriber Organization shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.
- (b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.
- (c) Monthly Bill. Company shall bill Subscriber Organization monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Subscriber Organization shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Subscriber Organization to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

- (a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any

other reason not caused by Company, Subscriber Organization shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Subscriber Organization for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Subscriber Organization shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.

- (b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty (30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Subscriber Organization shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Subscriber Organization within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

- (a) Standby Letter of Credit. To ensure payment by Subscriber Organization of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in Section 3 (Subscriber Organization Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of this Attachment G (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities), Subscriber Organization shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("Standby Letter of Credit") in accordance with the

requirements of Section 6(b) (Requirements of the Standby Letter of Credit) of this Attachment G (Company-Owned Interconnection Facilities), wherein Company shall receive payment from the bank upon request by Company.

- (b) Requirements of the Standby Letter of Credit. The Standby Letter of Credit shall be (i) in an amount not less than twenty-five percent (25%) of the Total Estimated Interconnection Cost or Total Estimated Relocation Cost, as applicable, and (ii) in substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard & Poors) of the bank issuing the Standby Letter of Credit falls below A-, Company may require Subscriber Organization to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank chartered in the United States with a credit rating of "A-" or better. In connection with the construction of the Company-Owned Interconnection Facilities, the Standby Letter of Credit shall be effective from the earlier of (aa) thirty (30) Days following the Effective Date, or (bb) the date that Subscriber Organization requests Company to order equipment or commence construction on Company-Owned Interconnection Facilities. In connection with the relocation of the Company-Owned Interconnection Facilities, if applicable, the Standby Letter of Credit shall be effective within thirty (30) Days after Subscriber Organization receives the invoice from Company for the Total Estimated Relocation Cost as set forth in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities). The Standby Letter of Credit shall be in effect through the earlier of forty-five (45) Days after the final accounting or seventy-five (75) Days after the Agreement is terminated. Subscriber Organization shall provide to Company within fourteen (14) Days of the date the Standby Letter of Credit is to be effective as aforesaid, a document from the bank which indicates that such a Standby Letter of Credit has been established.
- (c) Other Form of Security. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Company may, at its sole discretion, agree in writing to accept such other form of security as Company deems to provide

Company with protection equivalent to a Standby Letter of Credit.

7. Land Restoration.

- (a) Definition of "Land". For the purposes of this Attachment G (Company-Owned Interconnection Facilities), "Land" means any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.
- (b) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is declared null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, if requested by Company, Subscriber Organization shall, at its sole cost and expense, remove (i) the Company-Owned Interconnection Facilities from the Land and (ii) the Subscriber Organization-Owned Interconnection Facilities from the Land, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Subscriber Organization-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Subscriber Organization shall reimburse Company for its costs to remove such Company-Owned Interconnection Facilities and/or Subscriber Organization-Owned Interconnection Facilities. To the extent Subscriber Organization is obligated to remove Company-Owned Interconnection Facilities and/or Subscriber Organization-Owned Interconnection Facilities, Subscriber Organization shall complete such removal within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date) or Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval) of this Agreement, or as otherwise agreed to by both Parties in writing.
- (c) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under either Section 12.5 (Prior to Effective Date)

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

8. Transfer of Ownership/Title.

- (a) Transfer of Ownership and Title. On the Transfer Date, Subscriber Organization shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Subscriber Organization and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable and (ii) all Land Rights necessary to own, operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Subscriber Organization shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.
- (b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Subscriber Organization and/or its Contractors shall be free and clear of liens and encumbrances.
- (c) Form of Documents. The transfers to be made to Company pursuant to this Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities

that were designed and constructed by or on behalf of Subscriber Organization shall be substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities.

Subscriber Organization shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Subscriber Organization shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Subscriber Organization, Subscriber Organization shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Subscriber Organization shall provide these prior to the Transfer Date. On or before the Transfer Date, Subscriber Organization shall provide Company with (i) copies of all such Governmental Approvals obtained by Subscriber Organization regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Subscriber Organization and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in accordance with such Governmental Approval) or that such Governmental Approvals have otherwise been closed with the issuing Governmental Authority.

10. Land Rights.

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

11. Contracts for Company-Owned Interconnection Facilities.

For all contracts entered into by or on behalf of Subscriber Organization for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Subscriber Organization, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Subscriber Organization or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to determine and exercise Company's rights under such contracts as a third-party beneficiary.

[MATRIX TO BE INSERTED]

ATTACHMENT H
FORM OF BILL OF SALE AND ASSIGNMENT

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

W I T N E S S E T H:

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

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

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

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

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

a _____

By _____
Its _____

"Transferor"

a Hawai'i corporation

By _____
Its _____

By _____
Its _____

"Transferee"

SCHEDULE H-1
DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES

SCHEDULE H-2
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Tax Map Key Nos.:

Total pages: _____

ATTACHMENT I
FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION

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

W I T N E S S E T H:

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

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

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

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

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

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

The terms "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or

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

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

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

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

By _____
Name:
Title:

By _____
Name:
Title:

"Assignor"

By _____
Name:
Title:

By _____
Name:
Title:

"Assignee"

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

On this ____ day of _____, 20__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

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

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____

Doc. Date _____ No. of Pages: ____

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

(Official Stamp or Seal)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

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

On this ____ day of _____, 20__, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

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

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or

Description: _____

Doc. Date _____ No. of Pages: ____

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

(Official Stamp or Seal)

Signature of Notary _____ Date of Notarization and
Certification Statement

Printed Name of Notary _____

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
COMPANY PAYMENTS FOR ENERGY, DISPATCHABILITY AND AVAILABILITY OF
BESS

1. Price for Purchase of Electric Energy. Commencing on the Commercial Operations Date, Company shall pay Subscriber Organization for electric energy produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement at the rate of \$0.00/MWh. Company shall also not pay for electric energy delivered to the Point of Interconnection from the BESS. **[Drafting note: If PPA has Energy Payment, replace with the following:** Commencing on the Commercial Operations Date, Company shall pay Subscriber Organization for electric energy produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement at the rate of \$[_____] /MWh. Company shall not pay for electric energy delivered to the Point of Interconnection from the BESS to the extent such energy was originally taken from the grid to charge the BESS. If the BESS is delivering electric energy to the Point of Interconnection in response to Company Dispatch during a period in which a portion of the energy stored in the BESS is attributable to electric energy that was originally taken from the grid, the electric energy delivered to the Point of Interconnection from the BESS during such period shall be deemed to be produced by the Facility for purposes of the first sentence of this Section 1 (Price for Purchase of Electric Energy) until no portion of the energy stored in the BESS is attributable to the production of the Facility. **[DRAFTING NOTE: COMPANY WILL SEEK INPUT DURING THE NEGOTIATION PROCESS ON HOW TO ISOLATE THE ENERGY THAT IS NOT BE PAID FOR AND ANTICIPATES THAT WHATEVER SOLUTION IS ARRIVED AT WILL BE UNIFORM ACROSS ALL PAIRED RESOURCES PPAs.]]**
2. Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall pay for the availability of the Facility's Net Energy Potential, subject to the Renewable Resource Variability, to respond to Company Dispatch in accordance with this Agreement, as well as for the BESS Services **[DRAFTING NOTE: "BESS SERVICES" IS NOT A DEFINED TERM. DO WE SIMPLY MEAN "AVAILABILITY OF THE BESS"? THE "AVAILABILITY OF THE BESS" IS THE LANGUAGE USED IN THE DEFINITION OF LUMP SUM PAYMENT.]**, a monthly Lump Sum Payment as calculated and adjusted as set forth in Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and

Availability of BESS). The monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as follows:
 - i. Lump Sum Payment During First Benchmark Period. During the First Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the First NEP Benchmark.
 - ii. Lump Sum Payment During Second Benchmark Period.
 - a. One purpose of the Second Benchmark Period is to provide the Subscriber Organization, in the event that the Initial NEP OEPR Estimate is less than NEP RFP Projection, with a limited period during which Subscriber Organization will have an opportunity, by having a Subsequent OEPR prepared pursuant to Section 3(b) (Voluntary Subsequent OEPR) of Attachment U (Calculation Adjustment of Net Energy Potential) to this Agreement, to obtain an adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment, subject to (i) the cap on any upward adjustment imposed by the limitation that the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment shall not exceed the NEP RFP Projection and (ii) the risk that any Subsequent OEPR might result in a downward adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment. Accordingly, for each calendar month during the Second Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of the (w) the NEP RFP Projection or (x) the NEP OEPR Estimate of the OEPR that is most recent as of the first Day of such calendar month. For avoidance of doubt:

1. On the first Day of the Second Benchmark Period, the most recent OEPR will be the Initial OEPR;
2. If no Subsequent OEPR is issued under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement for an OEPR Period of Record ending prior to the end of the fifth (5th) Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;
3. If any Subsequent OEPR is prepared for an OEPR Period of Record ending prior to the commencement of the sixth (6th) Contract Year, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the NEP RFP Projection. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next Subsequent OEPR (if any) that is required or permitted under Section 4 (Preparation of OEPR) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

iii. Lump Sum Payment Following Second Benchmark Period.

- a. As of the first Day of the sixth (6th) Contract Year, the estimate of Net Energy Potential that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment until the end of the calendar month during which an OEPR Evaluator issues the first Subsequent OEPR for an OEPR Period of Record ending on or after the commencement of the sixth (6th) Contract

Year and, effective at the end of such calendar month, the Second NEP Benchmark that was in effect immediately prior to the issuance of such Subsequent OEPR shall constitute the "Most Recent Prior NEP Benchmark" under clause (i) of the definition of that term set forth in this Agreement. For avoidance of doubt, if no Subsequent OEPR is issued for an OEPR Period of Record ending on or after the commencement of the sixth (6th) Contract Year, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect for the balance of the Term as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment.

- b. In order to facilitate planning for the Company System, no increase in Net Energy Potential (and hence in the monthly Lump Sum Payment) shall be permitted under this Agreement as a consequence of any Subsequent OEPR that is prepared for an OEPR Period of Record ending on or after the expiration of the Second Benchmark Period. Accordingly, if any such Subsequent OEPR is prepared, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the Most Recent Prior NEP Benchmark. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next following Subsequent OEPR (if any) that is required or permitted under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. If any such next following Subsequent OEPR is issued, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the calendar month during which an OEPR Evaluator issues such Subsequent OEPR, be re-calculated and adjusted as provided in this Section

3.iii.b of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) and shall continue in effect for the period provided in the preceding sentence.

- iv. Under the Company's previous forms of as-available power purchase agreements for renewable energy, the independent power producer was compensated for the production and delivery of electrical energy and assumed the risk of non-payment for events such as Force Majeure that prevented such production and delivery. Although under this Agreement most of Subscriber Organization's compensation will be in the form of a Lump Sum Payment rather than for the production and delivery of electrical energy, it is not the intent of the Parties that Subscriber Organization should be entitled to unrestricted compensation in circumstances in which an independent power producer would not have been able to earn compensation under the Company's prior form of power purchase agreements (i.e., if the Facility or any portion thereof is unable to produce and deliver electric energy). Although the liquidated damages that are payable if the Modified Pooled OMC Equipment Availability Factor fails to satisfy the Modified Pooled OMC Equipment Availability Factor Performance Metric address this issue in certain of the circumstances when some or all of the WTGs are unable to generate electric energy, the Modified Pooled OMC Equipment Availability Factor does not account for events of Force Majeure because months containing such events are OMC under Section 1 (Modified Pooled OMC) of Attachment Q (Calculation of Certain Metrics) this Agreement. Similarly, in the case of the BESS, although the liquidated damages that are payable if the BESS Annual Equivalent Availability Factor fails to satisfy the BESS EAF Performance Metric addresses this issue in certain of the circumstances when the BESS or a portion thereof is unable to respond to Company Dispatch, the BESS Annual Equivalent Availability Factor does not account for events of Force Majeure because months containing such events are excluded from the calculation under Attachment X (BESS Annual Equivalent Availability) of this Agreement. Accordingly, and without limitation to the generality of the foregoing provisions of this Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly

Lump Sum Payment shall be adjusted downward pro rata for each hour or portion thereof during the calendar month in question that the Facility or a portion thereof was not available to respond to Company Dispatch because of a Force Majeure condition (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Subscriber Organization from making the Facility or any portion thereof generate energy or be available for Company Dispatch. In the case of a BESS Force Majeure, such downward adjustment in the Lump Sum Payment shall be limited to the BESS Allocated Portion of the Lump Sum Payment. Further, during any periods in which there is a Force Majeure affecting both the WTG(s) and the BESS, the Lump Sum Payment shall only be adjusted for the effect of the Force Majeure on the WTG(s). The hours the Facility is affected by a Force Majeure are converted to equivalent full outage hours by multiplying the actual duration of the event (hours) by (i) the size of the reduction in MWs or number of devices, divided by (ii) the Contract Capacity if the size of the reduction is in MWs or the total number of WTG(s) in the affected system if the size of the reduction is a WTG(s) count. These equivalent hour(s) are then summed. The summation of equivalent full outage hours is then divided by the months total period hours (number of days in the month x 24hrs/day) to determine the pro-rated factor the Lump Sum Payment will be adjusted by.

- v. Example 1: if a Facility has ten WTG(s) and, during the month of May (which has 31 calendar days), one WTG is not available to respond to Company Dispatch for a period of 360 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = (\text{MLSP} \times 1/10) \times 360/744$$

where:

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

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by

multiplying a monetary value by a fraction shall be rounded to the nearest cent.

Example 2: if a Facility BESS System has forty inverters and, during the month of June (which has 720 period hours), one BESS module is not available to respond to Company Dispatch for a period of 240 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of June would be calculated as follows:

$$\begin{array}{l} \text{Monetary Amount} \\ \text{of Downward} \\ \text{Adjustment} \end{array} = \begin{array}{l} (\text{BLSP} \times 1/40) \\ \times 240/720 \end{array}$$

where:

BLSP = The BESS Allocated Portion of the Lump Sum Payment that would be payable for such month but for the downward adjustment.

4. Updating Monthly Subscriber Information Used to Calculate Bill Credits and Other Matters.

- (a) No later than the last Day of each calendar month, the Subscriber Organization shall provide to the Company any and all changes to the Monthly Subscription Information to be used for such calendar month by entering new or updating previously-entered data through the CBRE Online Portal. Such data to be entered or changed by the Subscriber Organization shall include additions, deletions or changes to the listing of Subscribers, including any changes occurring by said last Day of such calendar month to the Subscriber's account number and service address attributable to each subscription and the Subscriber Allocation for each subscription.
- (b) For each calendar month, the purchase or transfer of all or any portion of a Subscriber's Allocation occurring on or before the 20th Day of such calendar month of which the Company is notified, as provided for in the preceding paragraph, shall have retroactive effect as of the first Day of such calendar month; the purchase or transfer of all or any portion of a Subscriber's Allocation occurring on or after the 21st Day of such calendar month, but prior to the first Day of the following calendar month, shall have effect as of the

first Day of such following calendar month. The following shall be recalculated as of the last Day of each calendar month to account for the effectiveness of such purchases and transfers as aforesaid: (i) Unsubscribed RDG; (ii) the percentage of the Contract Capacity represented by the Subscriber Allocations for all Residential Subscribers; (iii) the number of individual Subscribers; and (iv) the percentage of Contract Capacity represented by all LMI Subscribers.

5. Adjusting Payment to Subscriber Organization; Liquidated Damages.

(a) The dollar amount to be paid to Subscriber Organization for the [**Unsubscribed Energy and**] Unsubscribed RDG for a particular calendar month shall be as follows [**Drafting note: If PPA has energy payment, include the language in bold text**]:

(i) For the first six calendar months from and including the Commercial Operations Date, Company shall pay Subscriber Organization the Baseline SO Payment for the month in question.

(ii) Beginning with the seventh calendar month following the Commercial Operations Date, the amount payable to Subscriber Organization for the [**Unsubscribed Energy and**] Unsubscribed RDG for the month in question shall be equal to the Baseline SO Payment for such month as adjusted downward to account for any of the following reductions that may be applicable for such month based on the recalculations made as of the end of such month pursuant to Section 4(b) of this Attachment J (Company Payments for Energy Dispatchability and Availability of BESS):

(aa) if the Unsubscribed RDG for such calendar month exceeds 15% of the Contract Capacity, the percentage by which the amount payable to Subscriber Organization is to be reduced shall be equal to the percentage point differential between 100% and the actual percentage of the Contract Capacity represented by Unsubscribed RDG. For example, if the actual Unsubscribed RDG is 18% of Contract Capacity for the month in question, the percentage point differential is 18% and the percentage by which the amount

payable to Subscriber Organization is to be reduced is 18%;

- (bb) if the total of the Subscriber Allocations for all Residential Subscribers for such calendar month is less than 40% of the Contract Capacity, the percentage by which the amount payable to Subscriber Organization is to be reduced shall be equal to one-fourth (0.25) of the percentage point differential between 40% and the actual percentage of the Contract Capacity represented by the Subscriber Allocations for all Residential Subscribers. For example, if the actual total of the Subscriber Allocations for all Residential Subscribers is 32% of Contract Capacity for the month in question, the percentage point differential is 8% and the percentage by which the amount payable to Subscriber Organization is to be reduced is 2% (that is, one-fourth of the percentage point differential of 8%);
- (cc) if the Subscriber Organization has committed to an Enhanced Residential Threshold in excess of 40% of Contract Capacity, and the total of Subscriber Allocations for all Residential Subscribers for such calendar month is less than the Enhanced Residential Threshold, the percentage by which the amount payable to Subscriber Organization is to be reduced shall be equal to one-tenth (0.1) of the percentage point differential between the Enhanced Residential Threshold and the higher of (i) 40% or (ii) the percentage of Contract Capacity represented by the total of Subscriber Allocations for all Residential Subscribers. For example, using the same 32% of Contract Capacity for the actual percentage of the Subscriber Allocations for all Residential Subscribers that was used in the example set forth in Section 5(b)(ii)(bb) immediately above, the determination of the percentage point differential would be based on 40% because that is higher than 32%. Assuming that Subscriber Organization had committed to an Enhanced Residential Threshold of 50% of Contract Capacity, 10% is the

percentage point differential between 40% and the Enhanced Residential Threshold, and the percentage by which the amount payable to the Subscriber Organization is to be reduced is 1% (that is, one-tenth of the percentage point differential of 10%). For the example under discussion (that is, the percentage of Contract Capacity represented by the Subscriber Allocations for all Residential Subscribers is 32%), the aforementioned 1% reduction in the amount payable to Subscriber Organization would be in addition to the 2% reduction under Section 5(b)(ii)(bb);

(dd) if the Facility has less than 4 individual Subscribers for such calendar month, the percentage by which the amount payable to Subscriber Organization is to be reduced shall be equal to the percentage by which the Facility fell below the threshold of having 4 individual Subscribers. For example, if the actual number of individual Subscribers is 3 for the month in question, the shortfall in individual Subscribers is 1, which is 25% of 4. Thus, the amount payable to Subscriber Organization shall be reduced by 25%; and

(ee) if the Facility's CBRE Program has a LMI Threshold, and if the total of Subscriber Allocations for all LMI Subscribers for such calendar month is less than such LMI Minimum Threshold, the percentage by which the amount payable to Subscriber Organization is to be reduced shall be as set forth in Part III. Section E (Payment Reductions and Liquidated Damages) of the CBRE Tariff. The applicable percentage to be used to calculate such reduction, as determined pursuant to said Part III, Section E of the CBRE Tariff, is referred to below as the "Applicable LMI Percentage Reduction."

(iii) Beginning with seventh calendar month following the Commercial Operations Date, the amount payable to Subscriber Organization for **[Unsubscribed Energy and]** Unsubscribed RDG for such month shall be equal to the Baseline SO Payment for such month as

adjusted downward by a percentage equal to the sum for such calendar month obtained by adding up the percentage points as calculated for such month pursuant to Section 5(a)(ii) immediately above. For example, using the various percentage points used as examples in said Section 5(a)(ii), the amount payable to Subscriber Organization for such month would be reduced by the percentage equal to the sum of $18\%+2\%+1\%+25\%+\text{Applicable LMI Percentage Reduction}$. **[Drafting Note: If PPA has an Energy Payment, add the language in bold text.]**

- (b) Beginning with the seventh calendar month following the Commercial Operations Date, if there is no Unsubscribed RDG but the summing of the percentage points for such month pursuant to Section 5(a)(iii) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) results in a percentage that is more than zero, Subscriber Organization shall promptly pay upon demand, and Company shall accept, liquidated damages for failure to achieve the requisite thresholds for such month in an amount equal to the aforementioned percentage multiplied by the Lump Sum Payment for such month. For example, using the percentage points used in the examples set forth in Section 5(a)(ii) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the 18% figure would no longer be applicable because in this scenario there is no Unsubscribed RDG. Thus, the percentage used to calculate the liquidated damages payable under this Section 5(b) would be the sum of $2\%+1\%+25\%+\text{Applicable LMI Percentage Reduction}$. Company shall have the option of drawing such liquidated damages from the Operating Period Security.
6. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to Company during the Control System Acceptance Test but not during the Acceptance Test), provided Subscriber Organization shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. Company shall not compensate Subscriber Organization for test energy.
7. Tax Credit Pass Through. Company acknowledges and agrees that the Federal Refundable Tax Credit and Federal Non-

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

- (a) Because the Hawai'i tax treatment that will apply to renewable energy technologies on the Commercial Operations Date is uncertain, the parties acknowledge that the Contract Pricing was set assuming Subscriber Organization will not be eligible for any Hawai'i Renewable Energy Tax Credit. The intent of this Section 7 (Tax Credit Pass Through) is to entitle Company, for the benefit of its customers, to a payment equal to 100% of the maximum Hawai'i Renewable Energy Tax Credit for which Subscriber Organization is eligible with respect to the Facility and receives during the Term, as more fully set forth in this Section 7 (Tax Credit Pass Through).
- (b) If, as of the Commercial Operations Date, or, if not available at the Commercial Operations Date, at any subsequent time during the Term, a Hawai'i Refundable Tax Credit is reasonably available to Subscriber Organization or its Affiliates with respect to the Facility, the following shall apply:
 - (i) Subscriber Organization or Subscriber Organization's Affiliate will apply for such Hawai'i Refundable Tax Credit, it being understood and agreed that if Subscriber Organization applies for a Hawai'i Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Refundable Tax Credit;
 - (ii) Subscriber Organization shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Refundable Tax Credit within thirty (30) Days

after funds are received from the Hawai'i Department of Taxation;

- (iii) Upon application for the Hawai'i Refundable Tax Credit, an officer of Subscriber Organization will deliver to Company a notice (A) describing Subscriber Organization's efforts to apply for and obtain the Hawai'i Refundable Tax Credit, (B) confirming that Subscriber Organization has applied for the Hawai'i Refundable Tax Credit, and (C) certifying that Subscriber Organization has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Refundable Tax Credit as provided in this Section 7 (Tax Credit Pass Through);
 - (iv) Upon receipt of any funds from the Hawai'i Department of Taxation for the Hawai'i Refundable Tax Credit, an officer of Subscriber Organization or an Affiliate of Subscriber Organization, if applicable, will deliver a notice to Company certifying (A) the amount of funds received, (B) and the amount of payment that will be made to Company, net of any documented and reasonable financial, legal, administrative, and other costs required to claim and transfer such funds to Subscriber Organization, as supported by the officer's certificate as to the amount of such costs and the reasonableness thereof.
- (c) If, as of the Commercial Operations Date, a Hawai'i Refundable Tax Credit is unavailable, but a Hawai'i Non-Refundable Tax Credit is available to Subscriber Organization or its Affiliates with respect to the Facility, or at any subsequent time during the Term, a Hawai'i Non-Refundable Tax Credit becomes available to Subscriber Organization or its Affiliates with respect to the Facility, notwithstanding that Subscriber Organization may have applied for a Hawai'i Refundable Tax Credit, and in either case Subscriber Organization can claim, or enable its investors to claim, such Hawai'i Non-Refundable Tax Credit, the following shall apply:
- (i) Subscriber Organization or an Affiliate of Subscriber Organization will apply for any available Hawai'i Non-Refundable Tax Credit, it

being understood and agreed that if Subscriber Organization applies for a Hawai'i Non-Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Non-Refundable Tax Credit;

- (ii) Subscriber Organization shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Non-Refundable Tax Credit that Subscriber Organization can claim in the tax year in question within sixty (60) Days after the filing date of the applicable tax return for the tax year in which such Hawai'i Non-Refundable Tax Credit is claimed;
 - (iii) Upon the filing of the applicable tax return(s), an officer of Subscriber Organization or an Affiliate of Subscriber Organization, if applicable, will deliver a notice to Company (A) describing Subscriber Organization's efforts to apply for and obtain the Hawaii Non-Refundable Tax Credit, (B) confirming that Subscriber Organization has applied for the Hawai'i Non-Refundable Tax Credit, and (C) certifying that Subscriber Organization has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Non-Refundable Tax Credit as provided in this Section 7 (Tax Credit Pass Through);
 - (iv) Upon receipt of any funds for the Hawai'i Non-Refundable Tax Credit, an officer of Subscriber Organization or an Affiliate of Subscriber Organization, if applicable, will deliver a notice to Company certifying (A) the amount of funds received, (B) and the amount of payment that will be made to Company, net of any documented and reasonable financial, legal, administrative, and other costs required to claim, monetize and transfer such funds to Subscriber Organization, as supported by the officer's certificate as to the amount of such costs and the reasonableness thereof;
- (d) Subscriber Organization shall use commercially reasonable efforts to apply for and obtain the maximum

reasonably available Hawai'i Refundable and/or Non-Refundable Tax Credit as provided in this Section 7 (Tax Credit Pass Through). If Subscriber Organization fails to apply for and to use commercially reasonable efforts to obtain such Hawai'i Renewable Energy Tax Credit as described above, then Company shall be entitled to liquidated damages in an amount equal **[\$150,000 per MW of Contract Capacity]**. Subscriber Organization and Company agree and acknowledge that (i) the failure to use commercially reasonable efforts as provided in the preceding sentence would result in damages to Company in the form of reduction or loss of a benefit for Company's customers that would be difficult or impossible to calculate with certainty and (ii) **[Note - insert amount that equals \$150,000 per MW of Contract Capacity]** is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 7(d) shall constitute Company's exclusive remedy and fulfillment of all Subscriber Organization's liability with respect to its obligations to maximize the amount of Hawai'i Renewable Energy Tax Credit. Such liquidated damages shall be provided to Company in the form of a lump sum payment by Subscriber Organization or as a credit against any amounts due by Company to Subscriber Organization under this Agreement, as Company reasonably determines.

- (e) If, prior to the application in Section 7(b) or filing in Section 7(c) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), as applicable, a change in tax law occurs to introduce a Hawai'i Production Tax Credit or an alternative renewable tax credit, Subscriber Organization will use commercially reasonable efforts to determine which tax strategy is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of claimable tax credits. If, based on such efforts, Subscriber Organization determines that either Section 7(b) or Section 7(c) would result in a larger Net Amount of claimable tax credits, an officer of Subscriber Organization will deliver a notice to Company certifying that Subscriber Organization has reasonably determined that the selected form of Hawai'i Renewable Energy Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of claimable tax credits and explaining the rationale for such determination. If,

however, Subscriber Organization reasonably determines that such Hawai'i Production Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of claimable tax credits and that it reasonably can obtain such Hawai'i Production Tax Credit, Subscriber Organization shall promptly notify Company in writing and explain the rationale for such determination, and Subscriber Organization and Company shall negotiate in good faith and use commercially reasonable efforts to agree upon lump sum payments and/or credits or adjustments to the Contract Pricing and other terms of this Agreement as may be required to best benefit Company's customers with 100% of the Net Amount of such tax benefits and preserve the intended economic benefits to the Parties arising from this Agreement.

- (f) Company reserves the right to have Subscriber Organization's application for the Hawai'i Renewable Energy Tax Credit in Section 7(b) or Section 7(c), or the Hawai'i Production Tax Credit or alternative tax credit under Section 7(e) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) reviewed by an Independent Tax Expert to determine if such application is expected to maximize available tax credits to best benefit Company's customers, in which case, the provisions of this Section 7(f) shall apply. Company shall deliver to Subscriber Organization a written notice (the "Nomination Notice") of: (i) the names of three persons qualified and willing to accept appointment as an Independent Tax Expert; (ii) a description provided by each nominee of his or her qualifications to serve as an Independent Tax Expert; (iii) a written undertaking by each nominee to review Subscriber Organization's tax credit strategy and application, and (iv) each nominee's fee proposal. Subscriber Organization and Company shall agree on a mutually acceptable person to serve as the Independent Tax Expert within ten (10) Business Days of Subscriber Organization's receipt of Company's written notice. If the Parties fail to agree upon a mutually acceptable Independent Tax Expert within the aforesaid ten Business Day period, such disagreement shall be resolved pursuant to Section 7(g) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Company shall pay the fees and expenses of the Independent Tax Expert and Subscriber Organization shall

promptly reimburse Company for one-half of such fees and expenses.

- (g) Any dispute arising under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) shall constitute a "Dispute" within the meaning of Article 28 (Dispute Resolution) of this Agreement and shall be resolved as provided in said Article 28 (Dispute Resolution).

- (h) For purposes of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), an Affiliate of Subscriber Organization is a company that directly or indirectly controls, is controlled by, or is under common control with Subscriber Organization, and Subscriber Organization may perform its obligations under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) directly or through one or more Affiliates.

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

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

[For Developer Interconnection Build]

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
[SPECIFY DATE CERTAIN]	<u>Construction Financing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by [insert same date certain as in left column] or (ii) the financial capability to construct the Facility (" <u>Construction Financing Closing Milestone</u> ").
[SPECIFY DATE CERTAIN]	<u>Permit Application Filing Milestone</u> : Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Subscriber Organization of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: County Plan Approval
[SPECIFY DATE CERTAIN]	<u>Guaranteed Commercial Operations Date.</u>

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

ATTACHMENT K-1
SUBSCRIBER ORGANIZATION'S CONDITIONS PRECEDENT AND COMPANY
MILESTONES

[For Developer Interconnection Build]

Subscriber Organization's Conditions Precedent Date	Description of Each of Subscriber Organization's Conditions Precedent
	Subscriber Organization shall make payment to Company of the amount required under <u>Section 3(b)(ii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Subscriber Organization shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Subscriber Organization shall make payment to Company of the amount required under <u>Section 3(b)(iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Subscriber Organization's engineering, procurement and construction ("EPC") contractor shall obtain grading permit.
	Subscriber Organization's EPC contractor shall obtain and provide Company all permits (other than any required occupancy permits, if applicable), licenses, easements and approvals to construct the Company-Owned Interconnection Facilities, including the building permit.
No later than three (3) months prior to the commencement of	Subscriber Organization shall provide station service power, if applicable, as required by Company.

<p>the Acceptance Test</p>	
<p>No later than three (3) months prior to the commencement of the Acceptance Test</p>	<p>Subscriber Organization or Subscriber Organization's EPC contractor shall have Hawaiian Telcom Backup (or equivalent) installed which shall consist of a 1.5 Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Subscriber Organization's Facility to Company's EMS located at the Company's Control Center.</p>
	<p>Subscriber Organization's EPC contractor shall complete installation of physical bus and structures within Company's substation up to the demark point as necessary to interconnect.</p>
<p>[specify date] ("Test Ready Deadline")</p>	<p>Subscriber Organization's EPC contractor shall complete construction of the Subscriber Organization-Owned Interconnection Facilities, the Subscriber Organization shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2 (f) (ii) of Attachment G</u> (Company-Owned Interconnection Facilities) and Subscriber Organization is otherwise ready to conduct the Acceptance Test.</p>
	<p>Subscriber Organization shall close grading permit, unless Subscriber Organization provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.</p>

COMPANY MILESTONES

If Subscriber Organization satisfies the foregoing Subscriber Organization's Conditions Precedent, the following Company Milestones shall apply:

Company Milestone Date	Description of Each Company Milestone
[] Business Days following the Test Ready Deadline	Company shall, subject to Subscriber Organization's continued satisfaction of the requirements set forth in <u>Section 2 (f) (ii)</u> and <u>Section 2 (f) (iii) of Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

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

ATTACHMENT L
REPORTING MILESTONES

[For Developer Interconnection Build]

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Subscriber Organization shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction (" <u>EPC</u> ") or other general contractor agreements. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.
[Date]	Subscriber Organization shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility WTGs.
[Date]	Building Permit: Subscriber Organization or Subscriber Organization's EPC contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Subscriber Organization shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	All WTGs for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.

ATTACHMENT M
FORM OF LETTER OF CREDIT

Page 1 of 2

[Bank Letterhead]

[Date]

Beneficiary: Maui Electric Company, Limited

[Address]

[Bank's Name]

[Bank's Address]

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

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

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

Beneficiary at:

Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, 21st Floor
Honolulu, Hawai'i 96813

* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

and to
SVP and Chief Financial Officer
Hawaiian Electric Company, Inc.
1001 Bishop Street, Suite 2500
Honolulu, Hawai'i 96813

And copy to Applicant at:

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of **[Note - insert State of bank's location]** are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

[Bank's Name] :

By: _____
[Authorized Signature]

ATTACHMENT N
ACCEPTANCE TEST GENERAL CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection.

- (a) Based on manufacturer's specification, test the local operation of the Facility's ____ kV breakers, which connect the Facility to Company System - must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System (EMS) is the same as the actual physical status in the field.
- (b) Remotely test the operation of the Facility's ____ kV breakers which connect the Facility to Company System - must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, Attachment E (Single-Line Drawing and Interface Block Diagram) for the Facility.

- (d) All ____ kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).
- (e) Switching Station inspections - The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.
- (f) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths that tie the Facility to Company's communications system.
- (g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's ____ kV breakers, if any, open as they are designed to open. (Back up relay testing)
- (h) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of Company meters.

2. Telephone Communication.

- (a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test ("CSAT") in accordance with Good Engineering and Operating Practices and with the terms of this Agreement. The Control System RTU Points List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests:

1. SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility are working properly end-to-end.
2. Dispatch Test to verify if the Facility's active power limit controls and the Active Power Control Interface with the Company's EMS are working properly. The Test is generally conducted by setting different active power setpoints and limits and observing the proper dispatch of the appropriate ramp rate of the Facility's real power output.
3. Control Test for Voltage Regulation to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of Sections 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of Attachment B (Facility Owned by Seller) to this Agreement.
4. Primary Frequency Response Test to verify the Facility provides a frequency droop response as defined in this Agreement. Test is generally conducted by making adjustments of the frequency reference setting and verifying by

observation that the Facility responds per droop and deadband settings.

5. **[RESERVED]**
6. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-trip communication system. Test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.
7. Round Trip Efficiency Test to verify that the round trip efficiency of the BESS is not less than [_____] percent ([_]%). **[DRAFTING NOTE: The round trip efficiency percentage will be taken from Subscriber Organization's response to the RFP.]**
8. Capacity Test to verify the BESS Capacity Ratio.
9. Blackstart Test.

Monitoring Test:

- a) The monitoring test requires the Facility to operate as it would in normal operations.
- b) To ensure useful and valid test data is collected, the monitoring test shall end when one of the following criteria is met:
 - A. The Facility's power production is greater than 85% of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.
 - B. The recorded renewable energy resource at the Facility is above **[600 W/m²] [a Measured Wind Speed of 9 meters per second]** for at least eight (8) hours in any continuous 48-hour CSAT period.
 - C. 14 continuous Days from the start of the CSAT.
- c) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the test.
- d) The performance of the Facility during the period of a successfully completed monitoring test is evaluated for, e.g., voltage regulation, primary frequency response, dispatch control, operating limits and ramp rate performance, to verify the performance meets the requirements of this Agreement. The Facility is considered to have complied with a requirement if the Facility was compliant with the

requirement at least 99.0% of the time during the evaluation period and the Facility does not grossly violate the requirement when the Facility was in violation. The Parties understand and agree that these compliance conditions are limited only to determining whether the Facility successfully completes the CSAT monitoring test and are not for use in determining compliance during Commercial Operations, shall not be considered a waiver of any of the performance standards of Seller, all of which are hereby reserved, and shall not alleviate Seller from any of its obligations under the Agreement.

ATTACHMENT P
SALE OF FACILITY BY SUBSCRIBER ORGANIZATION

1. Company's Right of First Negotiation Prior to End of the Term.
 - (a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Subscriber Organization desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "Exempt Sale" (as defined below):
 - (i) Subscriber Organization shall first offer to sell such interest to Company by providing Company with written notice of the same (the "Offer Notice"), which notice shall identify the proposed purchase price for such interest (including a description of any consideration other than cash that will be accepted) (the "Offer Price") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at the Offer Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this Attachment P (Sale of Facility by Subscriber Organization). Subscriber Organization shall provide to Company as part of the Offer Notice, information in its possession regarding the Facility to allow Company to conduct due diligence on the potential purchase, including, but not limited to information on the operational status of the Facility and its components, and the amount of debt or other material Subscriber Organization obligations remaining with respect to the Facility (the Offer Notice and due diligence information on the Facility are collectively referred to as, the "Offer Materials"). Within five (5) Days of Company's receipt of the Offer Materials, if Company believes the due diligence information is incomplete, Company shall specify in writing the additional information Company requires to conduct its due diligence. The date on which Company receives the Offer Materials from Subscriber Organization is referred to hereinafter as the "Offer Date."

- (ii) If Company desires to purchase such interest, Company shall indicate so by delivering to Subscriber Organization a binding, written offer to purchase such interest at the Offer Price and on the terms and conditions specified in the Offer Notice within thirty (30) Days of the Offer Date (an "Acceptance Notice"). In the event Company timely delivers an Acceptance Notice, Subscriber Organization shall sell and transfer to Company the interest substantially on the terms and conditions contained in the Offer Notice consistent with this Attachment P (Sale of Facility by Subscriber Organization) and in accordance with definitive documentation to be entered into between Subscriber Organization and Company. The Parties shall have sixty (60) Days from the Company's Acceptance Notice, or such other extended timeframe as agreed to by the Parties in writing, to negotiate in good faith, the terms and conditions of a purchase and sale agreement. The period beginning with the Offer Date and ending with such sixty (60) Day period (as may be extended as aforesaid) is referred to as the "Right of First Negotiation Period".
- (iii) Subscriber Organization shall not solicit any offers for the sale of such interest to any other party during the Right of First Negotiation Period unless, during that period, Company provides Subscriber Organization with written notice that Company no longer desires to purchase such interest, whereupon negotiations shall terminate.
- (iv) In the event that (A) Company fails to timely deliver an Acceptance Notice, (B) Company delivers a notice to Subscriber Organization that it no longer desires to purchase the interest, or (C) the Parties are not able to execute a purchase and sale agreement within the 60-Day period set forth in Section 1(a)(ii) of this Attachment P (Sale of Facility by Subscriber Organization), Subscriber Organization may for a period of two hundred seventy (270) Days following the event specified in subsection (A), (B) or (C) above, commence solicitation of offers and negotiations from and with other parties for the sale of such interest. If the interest is not transferred to a purchaser

or purchasers for any reason within the two hundred seventy (270) Day period, the interest may only be transferred by again complying with the procedures set forth in this Section 1(a) (Right of First Negotiation) of Attachment P (Sale of Facility by Subscriber Organization); provided, however, if Subscriber Organization and the prospective purchaser have entered into definitive agreement(s) for the sale of the interest that was reasonably expected to close within such two hundred seventy (270) Day period and such agreement(s) remain in full force and effect between Subscriber Organization and such prospective purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) Day period shall be extended as to such agreement(s) and such prospective purchaser for up to one hundred eighty (180) additional Days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

(v) After expiration of the Right of First Negotiation Period, Company will not be precluded from providing offers or proposals to Subscriber Organization along with other prospective purchasers in accordance with any offer or bid procedures established by Subscriber Organization in its discretion.

(b) Change in Ownership Interests and Control of Subscriber Organization. Commencing as of the Commercial Operations Date, the Right of First Negotiation shall also be triggered by a transfer or sale of an ownership interest in Subscriber Organization (whether in a single transaction or a series of related or unrelated transactions) following which **[Note - insert parent entity]** or an entity controlled by **[parent entity]** is no longer a direct or indirect owner of at least fifty-one percent (51%) of the equity interest or voting control of Subscriber Organization (excluding any equity interest or voting control of Subscriber Organization held by a tax equity investor or for Financing Purposes (as defined below)) (such transfer of ownership interest and change in control collectively referred to as a "Change in Control"); provided, however that a transfer

or sale whereby **[parent entity]** retains the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of Subscriber Organization, whether through ownership, by contract, or otherwise, shall not be deemed a Change in Control.

- (c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, "Exempt Sales" means: (i) a change in ownership of the Facility or equity interests in Subscriber Organization resulting from the direct or indirect transfer or assignment by or of Subscriber Organization in connection with financing or refinancing of the Facility ("Financing Purposes"), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Subscriber Organization's right, title, or interest in the Facility or equity interests in Subscriber Organization undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Subscriber Organization to facilitate a tax credit financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, (iii) a sale that does not result in a Change in Control, and (iv) a sale or transfer of any interest in Subscriber Organization or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Subscriber Organization.
- (d) Subscriber Organization's Right to Transfer. The provisions of this Section 1(d) (Subscriber Organization's Right to Transfer) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P (Sale of Facility by Subscriber Organization). In such circumstances, Subscriber Organization shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to

transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving documentation from Subscriber Organization establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; and (ii) has experience in the ownership and at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of power generation and BESS facilities; provided, however, that Company shall be deemed to have consented to the assignment if, within ten (10) Business Days of receiving from Subscriber Organization the documentation establishing that the assignee meets all the foregoing criteria, Company does not either (y) deliver the required consent to Subscriber Organization, or (z) notify Subscriber Organization which of the foregoing criteria is not established by such documentation. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

- (e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Subscriber Organization) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Subscriber Organization), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Subscriber Organization).

- (f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of

this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Subscriber Organization) shall apply if (i) Subscriber Organization thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Subscriber Organization).) Subscriber Organization shall notify Company in writing of an offer that triggers this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Subscriber Organization) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this Attachment P (Sale of Facility by Subscriber Organization) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Subscriber Organization of its intent to exercise this right. If the offer of which Subscriber Organization notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Subscriber Organization notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Subscriber Organization), and otherwise consistent with this Attachment P (Sale of Facility by Subscriber Organization). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.

- (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Subscriber Organization therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Subscriber Organization a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.
- (b) Negotiations. Once Company has given such notice of preliminary interest to Subscriber Organization, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Subscriber Organization, the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Subscriber Organization) and a price equal to the Offer Price as presented by Subscriber Organization in accordance with the procedures identified in Section 1(a)(i) through (v) of this Attachment P (Sale of Facility by Subscriber Organization). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Subscriber Organization shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.
- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Subscriber Organization) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Subscriber Organization), such agreement

shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Subscriber Organization), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Subscriber Organization).

- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Subscriber Organization), and Subscriber Organization thereafter offers to sell the Facility to a third party for less than the final amount Company had offered to purchase the Facility, Subscriber Organization shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this Attachment P (Sale of Facility by Subscriber Organization) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Subscriber Organization of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

- (a) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 24.5 (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Subscriber Organization shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Subscriber Organization of a suitable confidentiality agreement in form reasonably acceptable to Subscriber Organization, Subscriber Organization shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and

costs of both appraisers, subject to Section 3(c) of this Attachment P (Sale of Facility by Subscriber Organization). Each of Company and Subscriber Organization shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Subscriber Organization to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

- (b) Company and Subscriber Organization shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.
- (c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter, the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Subscriber Organization's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Subscriber Organization shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Subscriber Organization's original appraiser.

- (d) The "Appraised Fair Market Value of the Facility" means the fair market value determined by appraisal pursuant to Section 3(a) or Section 3(c) of this Attachment P (Sale of Facility by Subscriber Organization) as applicable. In no event shall the Appraised Fair Market Value of the Facility or the fair market value of the Facility (in the event appraisers are not required) be determined to be less than the amount of debt remaining on the Facility, provided that such debt shall be incurred for the direct costs associated with the design, engineering, construction, maintenance and repair of the Facility ("Facility Debt"). In the event such value is less than the amount of debt, the Company agrees and understands that the liens on the Facility associated with such Facility Debt will remain until the Company has paid such debt in full.
4. Purchase and Sale Agreement. The purchase and sale agreement ("PSA") concluded by the Parties pursuant to this Attachment P (Sale of Facility by Subscriber Organization) (as applicable) shall contain, among other provisions, the following:
- (a) Subscriber Organization shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Subscriber Organization in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
 - (b) To the extent assignable or transferrable, Subscriber Organization shall assign or transfer to Company all of Subscriber Organization's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;
 - (c) Subscriber Organization shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

- (d) Subscriber Organization shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Subscriber Organization's affiliates, to be released prior to closing on the sale of the Facility to Company;
- (e) Subscriber Organization shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;
- (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Subscriber Organization on account of Company's purchase of the Facility, nor any other obligation to Subscriber Organization except for the purchase price, and Subscriber Organization shall indemnify Company against any such losses, liabilities or damages;
- (g) Company shall assume all of Subscriber Organization's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Subscriber Organization's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid directly by Company and deducted from the purchase price;
- (h) Subscriber Organization shall indemnify Company against all of Subscriber Organization's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Subscriber Organization against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;

- (i) Unless otherwise agreed to by the Parties, Subscriber Organization makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;
- (j) Subscriber Organization shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Subscriber Organization in conformity with all Laws;
- (k) Subscriber Organization shall warrant that Subscriber Organization provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Subscriber Organization);
- (l) If applicable, Subscriber Organization's lease of the Site from Company will terminate and Subscriber Organization will relinquish all rights, privileges and obligations relating to such lease; and
- (m) Subscriber Organization shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Subscriber Organization), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers,

warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.
 - (a) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Subscriber Organization will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Subscriber Organization understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Subscriber Organization shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.
 - (b) Subscriber Organization shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the PUC. The scope of Subscriber Organization's participation shall be determined by the PUC. However, Subscriber Organization expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Subscriber Organization chooses not to seek participation in the docket, then

Subscriber Organization expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Subscriber Organization shall not seek in the docket and Company shall not disclose any confidential information to Subscriber Organization that would provide Subscriber Organization with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- (c) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Subscriber Organization), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.
- (d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to Section 24.5 (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the twelve (12) month period. The term "Final Non-appealable Order from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such

an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-Appealable Order from the PUC shall constitute and be referred to as "PUC Approval" for purposes of this Attachment P (Sale of Facility by Subscriber Organization).

- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Subscriber Organization), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
 - (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Subscriber Organization), either (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
6. Make Whole Amount. For purposes of Section 24.5 (Consolidation), the "Make Whole Amount" shall be equal to the sum of the following: (a) Subscriber Organization's book value (including depreciation on a twenty (20) year straight line basis) of all actual verifiable costs of studies, designs, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Subscriber Organization), including cancellation charges and other costs of unwinding construction and demobilization if the determination is made prior to the Commercial Operation Date, (b) Subscriber Organization's book value of all actual verifiable costs and expenses acquiring real estate rights for the Facility and Interconnection Facilities, (c)

Subscriber Organization's book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Subscriber Organization's book value of all actual verifiable costs of financing the Facility and the Interconnection Facility, including fees and expenses of bankers, consultants and counsel, and any discounts or premiums paid in connection with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company's purchase of the Facility, (g) tax costs, including recapture of federal or state tax credits and payment of transfer taxes, and (h) interest on the foregoing amounts at annual rate equal to the Prime Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Subscriber Organization with support and verified by Company. The items described in clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the "Financial Termination Costs".

ATTACHMENT Q
CALCULATION OF CERTAIN METRICS

[DRAFTING NOTE: THE PERFORMANCE METRICS SET FORTH IN SECTIONS 1
SUBJECT TO MODIFICATION.]

1. Modified Pooled OMC Equipment Availability Factor ("MPXEEAF").

NERC formula

$$OutageHrs = (FTH + MTH + PTH)$$

$$DeratedHrs = (EFDTH + EMDTH + EPDTH)$$

$$OMCHrs = (oFTH + oMTH + oPTH)$$

$$DeratedOMCHrs = (oEFDTH + oEMDTH + oEPDTH)$$

$$PXEEAF = \frac{\sum[ACTH - (OutageHrs + DerateHrs) + (OMCHrs + DeratedOMCHrs)]}{\sum ACTH} * 100$$

Modified Pooled OMC Equipment Equivalent Availability Factor (MPXEEAF)

$$MPXEEAF = \frac{[(ACTH - ExcludedTime) - (OutageHrs) + (OMCHrs)]}{ACTH - ExcludedTime} * 100$$

Modifications made to the NERC formula are:

1. Deleted impact due to DeratedHrs. Derations will be assessed using the Performance Index metric.

Where:

Active Turbine Hours (ACTH) is the sum of all turbine-hours that the turbines are in an active state. See [Exhibit Q.1](#)

Contact Turbine Hours (CTH) is the sum of all turbine-hours that the turbines are synchronized to the system. It is the turbine-hours that the contactors are closed and generation is connected to the grid. The term is similar to service hours used in conventional generation.

Forced Turbine Hours (FTH) is the sum of all turbine-hours that that the turbine is off-line due to forced events. FTH are all forced events where the WTG must be removed from service for repairs before the next Sunday at 23:59 (just before Sunday becomes Monday).

OMC Forced Turbine Hours (oFTH) is a subset of FTH that equals any forced turbine-hours that were due to causes deemed to be OMC.

Maintenance Turbine Hours (MTH) is the sum of all turbine-hours that the turbine is off-line due to a Maintenance Event.

OMC Maintenance Turbine Hours (oMTH) is a subset of MTH that equals any maintenance turbine-hours that were due to causes deemed to be OMC.

Planned Turbine Hours (PTH) is the sum of all turbine-hours that the turbine is off-line due to a planned event. A Planned Event is scheduled well in advance and is of predetermined duration and can occur several times a year.

OMC Planned Turbine Hours (oPTH) is a subset of PTH that equals any planned turbine-hours that were due to causes deemed to be OMC.

Equivalent Forced Derated Turbine Hours (EFDTH) is the equivalent forced turbine hours when turbine output is reduced for forced issues.

OMC Equivalent Forced Derated Turbine Hours (oEFDTH) is a subset of EFDTH that equals any turbine-hours when turbine output is reduced for forced issues deemed to be OMC.

Equivalent Maintenance Turbine Hours (EMDTH) are the equivalent maintenance turbine hours when the turbine output is reduced for maintenance turbine hours, EMDTH must meet the requirements for a maintenance outage. The turbine must be capable of running until the following week unless the outage occurs on the weekend the turbine must be capable of running through the following week.

OMC Equivalent Maintenance Derated Turbine Hours (oEMDTH) are OMC equivalent maintenance hours when turbine output is reduced for OMC maintenance issues. This is a subset of EMDTH.

Equivalent Planned Turbine Hours (EPDTH) is the equivalent planned turbine hours when turbine output is reduced for a planned issue.

OMC Equivalent Planned Derated Turbine Hours (oEPDTH) are OMC equivalent planned hours when turbine output is reduced for OMC planned issues. This is a subset of EPDTH.

Equivalent Reserve Shutdown Derated Turbine Hours (ERSDTH): are the equivalent reserve shutdown hours when turbine output is reduced for economic reasons.

Outside Management Control (OMC): are events (other than Subscriber Organization-Attributable Non-Generation events) that occur beyond the Facility boundaries or are caused by abnormal weather. OMC events can be Planned, Maintenance, Forced Outage, or Derating Events. OMC events can be due to Company dispatching the Facility resulting in a deration of the Facility's output or to Grid constraints, such as transmission/distribution maintenance or switching. OMC events do not include Subscriber Organization-Attributable Non-Generation events.

ExcludedTime: ExcludedTime is unavailability as a result of the WTG(s) and the BOP or a portion of any of the foregoing being unavailable due to Force Majeure. The hours and/or equivalent hours of ExcludedTime shall be subtracted from Active Turbine Hours. This is calculated by multiplying the actual duration of the event that counts as ExcludedTime (in hours) by the number of WTG(s) in the Facility that are offline and dividing by the total number of WTG(s) in the Facility. These equivalent hour(s) are then summed.

The effect of Force Majeure is taken into account in calculating the Modified Pooled OMC Equivalent Availability Factor over the 12 calendar month LD Period as follows: When an LD Period

contains a month during which the WTG(s) and the BOP or a portion of any of the foregoing are unavailable due to Force Majeure, then such month shall be excluded from the LD Period and the LD Period shall be extended back in time to include the next previous month during which there was no such unavailability due to Force Majeure.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a MPXEEAF calculation and is included for illustrative purposes only:

A	B	C	D	E	F	G	H
TID	ACTH	FTH	MTH	PTH	OFTH	OMTH	OPTH
Turbine1	100.00	5.05	6.20	3.75	4.00	4.25	3.05
Turbine2	100.00	5.05	6.15	3.75	4.00	4.25	3.05
Turbine3	100.00	5.05	6.20	3.75	4.00	4.25	3.05
SUM	300.00	15.15	18.55	11.25	12.00	12.75	9.15

$$[B - (C+D+E) + (F+G+H)]/B * 100$$

MPXEEAF
96.3

2. Performance Index.

$$PI_{Facility} = \frac{\sum_{i=1}^N Actual\ Generation_{WTG_i} [MWh]}{\sum_{i=1}^N Expected\ Generation_{WTG_i} * (1 - 0.001 * (Applicable\ Contract\ Year - 1)) [MWh]}$$

Performance Index Calculation

- Performance Index will not be calculated or assessed for the first Contract Year.
- For each calendar month, Subscriber Organization shall calculate the Actual Generation at each WTG and estimate the Expected Generation at each WTG for all periods where the WTG's operational state is categorized as CTH excluding periods where the WTG's operational state is categorized as ERSDTH, oEFDTH, oMPTH, oEPDTH, or Environmental Derate. See Exhibit Q.2
- Subscriber Organization shall use the equation set forth above to calculate the Performance Index for the previous rolling 12 months.
- Subscriber Organization shall also provide the Company the Measured Power Curve that was used for each WTG and data from periods where Actual Generation and Expected Generation were calculated for such WTG.

See also Section 8.3 (Company Rights of Dispatch) of this Agreement.

Example: The following is an example of a Performance Index Calculation and is included for illustrative purposes only:

A	B	C	D	E	F	G	H
ACTUAL GENERATION [MWH]							B - (C+D+E+F+G)
TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate	Actual Generation
Turbine1	900.00	20.00	10.00	15.00	5.00	5.00	845.00
Turbine2	1,000.00	15.00	10.00	15.00	5.00	5.00	950.00
Turbine3	1,200.00	20.00	10.00	15.00	5.00	5.00	1,145.00
Sum	3,100.00	55.00	30.00	45.00	15.00	15.00	2,940.00
EXPECTED GENERATION [MWH]							B - (C+D+E+F+G)
TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate	Expected Generation
Turbine1	945.00	35.00	15.00	20.00	10.00	10.00	855.00
Turbine2	1,115.00	40.00	15.00	25.00	10.00	15.00	1,010.00
Turbine3	1,300.00	35.00	18.00	21.00	10.00	10.00	1,206.00
Sum	3,360.00	110.00	48.00	66.00	30.00	35.00	3,071.00
H6/H13 * 100							
Performance Index							
95.7							

3. Calculation of Density-Adjusted Wind Speed. For purposes of calculating Density-Adjusted Wind Speed for each WTG for each PI Evaluation Period, the 10-minute averaged wind speed measurement from the nacelle anemometer for such turbine shall be adjusted for the 10-minute averaged ambient air temperature and the 10-minute averaged ambient air pressure (both as measured by the field measurement devices located at approximately "hub height" on the Facility's MMTs) by calculating the Density-Adjusted Wind Speed for such turbine for each 10-minute increment as follows:

$$V_n = V_{obs} \left(\frac{\rho_{calc}}{\rho_0} \right)^{1/3}$$

where:

V_n = Density-Adjusted Wind Speed [m/s];

V_{obs} = Measured Wind Speed (10-minute averaged) [m/s]

ρ_0 = 1.225 kg/m³

ρ_{calc} = Calculated Air Density (10-minute averaged) [kg/m³]

$$= \frac{B_{obs}}{R_0 * T_{K_{obs}}}$$

where:

B_{obs} = Measured Ambient Air Pressure (10-minute averaged) [Pa]

R_0 = specific gas constant for dry air (287.057 J/kg*K)

T_{Kobs} = Measured Ambient Air Temperature (10-minute averaged) [K]

For unit conversion purposes:

$$1 \text{ Pa} = 0.01 \text{ mbar}$$

$$T_{Kelvin} = T_{Celsius} + 273.15$$

The foregoing formulae are based on the formulae found at Section 8.1 of IEC 61400-12-1.

4. Determination of Measured Power Curve.

- During the first Contract Year, the Subscriber Organization shall collect data to create a Measured Power Curve for each WTG that will be used for the remainder of the Initial Term to calculate the Expected Generation. The Measured Power Curve for each WTG will not be updated.
- To develop the Measured Power Curve for each WTG, Subscriber Organization shall use data for such WTG during periods when such WTG is in the operational state categorized as CTH excluding periods where the WTG's operational state is categorized as ERSDTH, EFDTH, EMPH, EPDTH, oEFDTH, oMPH, oEPDTH, or Environmental Derate. See Exhibit Q.3

Following the end of the first Contract Year, the Measured Power Curve for each WTG shall be calculated by Subscriber Organization using the following data from the first Contract Year: (aa) the Density-Adjusted Wind Speed (for avoidance of doubt, the only referenced air density shall be the ISO standard atmosphere for sea level air density of 1.225 kg/m³ as set forth in Section 3 (Calculation of Density-Adjusted Wind Speed) of this Attachment Q (Calculation of Certain Metrics), (bb) the 10-minute averaged Measured Wind Speed and (cc) the 10-minute averaged power output of such WTG. The data set used for calculating the Measured Power Curve shall include only Measured Wind Speed and power output measurements during the periods specified in the second bullet point above. The Measured Power Curve shall be calculated using (i) 0.5 m/s wind bins ranging from 1 m/s below the manufacturer's specified cut-in-wind speed to, at least, 1.5 times the wind speed specified by the manufacturer as associated with 85% of the rated power of the WTG and (ii) the 10-minute averaged power output for each wind speed bin. The data set used to calculate the Measured Power Curve should include a minimum of 180 hours of sampled data from periods during the preceding Contract Year, where each wind

bin includes the minimum of 30 minutes of sampled data, i.e. a minimum of 3 data points. If the aforementioned required minimums of sampled data are not available, Subscriber Organization and Company may agree in writing upon a smaller data set to calculate the Measured Power Curve. Except as necessary to satisfy the foregoing requirements of this Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics), the Measured Power Curve shall be calculated in a manner consistent with Clause 8.1 and Clause 8.2 of IEC 61400-12-1. Upon Subscriber Organization's calculation of the Measured Power Curve for each WTG as provided in this Section 4 (Determination of Measured Power Curve), Subscriber Organization shall provide written notice to Company of such Measured Power Curve(s).

5. Calculation of Expected Generation for Each WTG. The Expected Generation for each WTG shall be based on (i) the Density-Adjusted Wind Speed for such turbine for each 10-minute increment or portion thereof during the period and (ii) the Measured Power Curve for the WTG as determined as set forth in Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics).

6. Resolution of Disagreements. Disagreements between Subscriber Organization and Company concerning the calculations to be provided under this Attachment Q (Calculation of Certain Metrics) shall be resolved as set forth in Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).

EXHIBIT Q.1

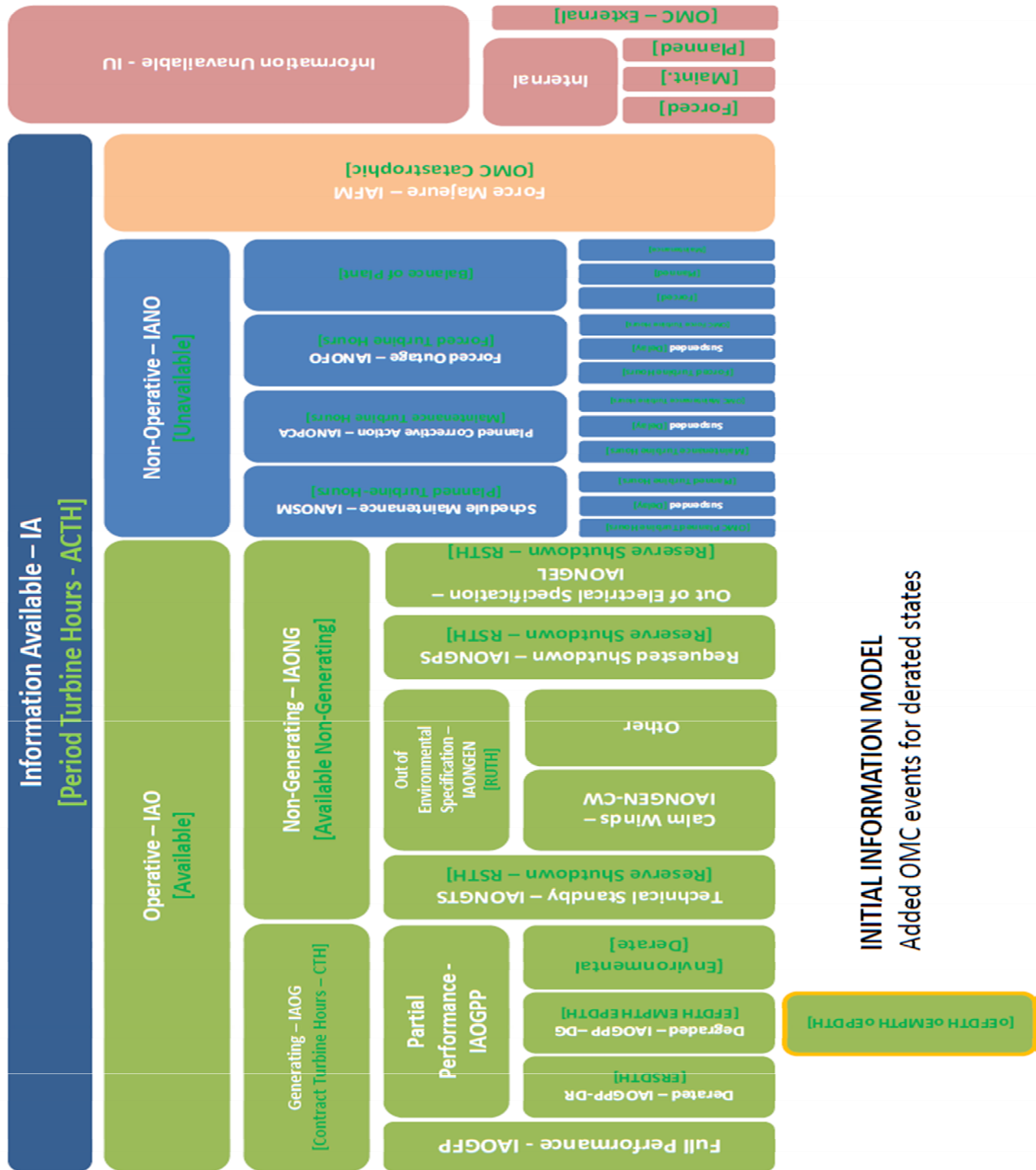


EXHIBIT Q.2

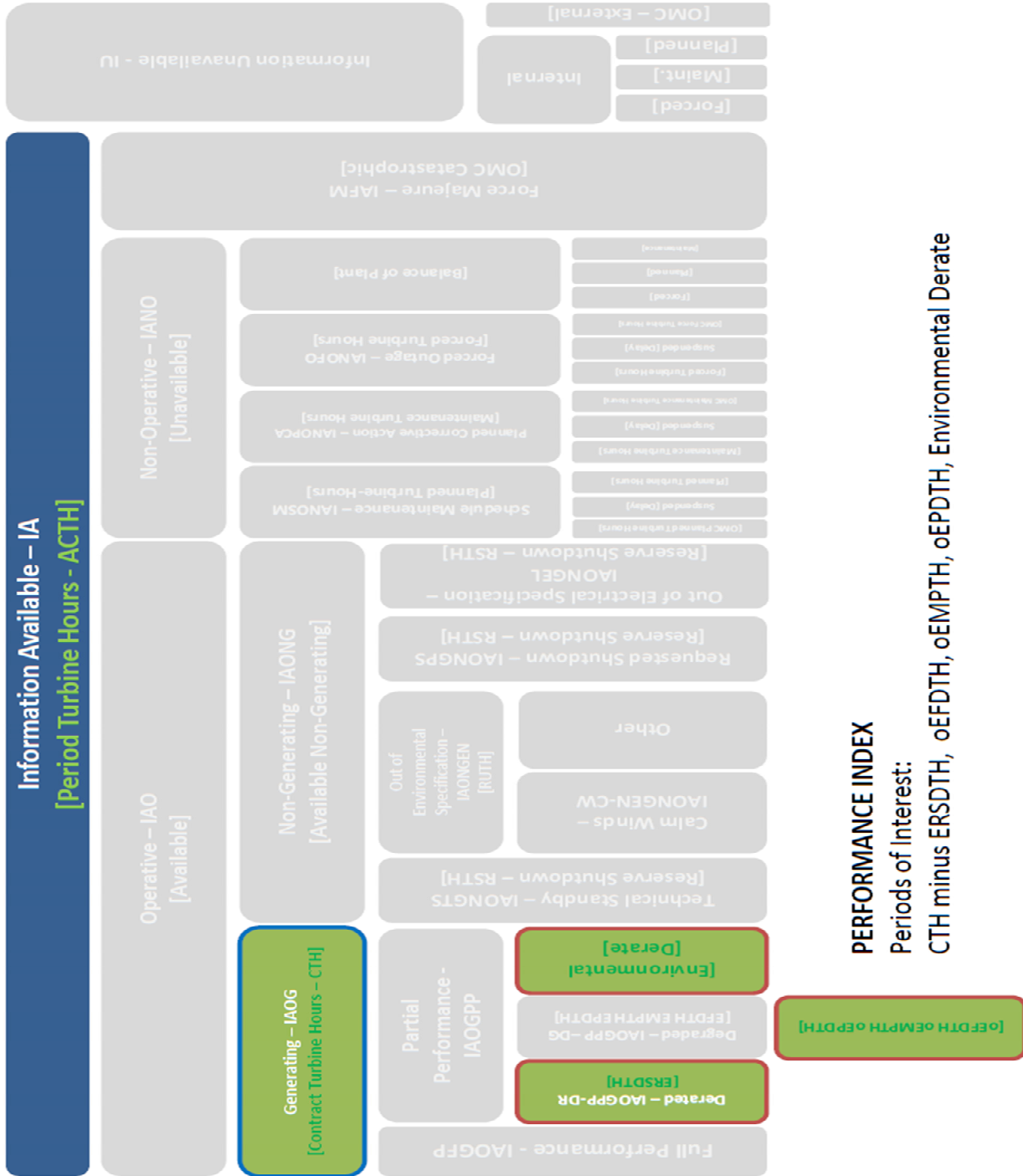
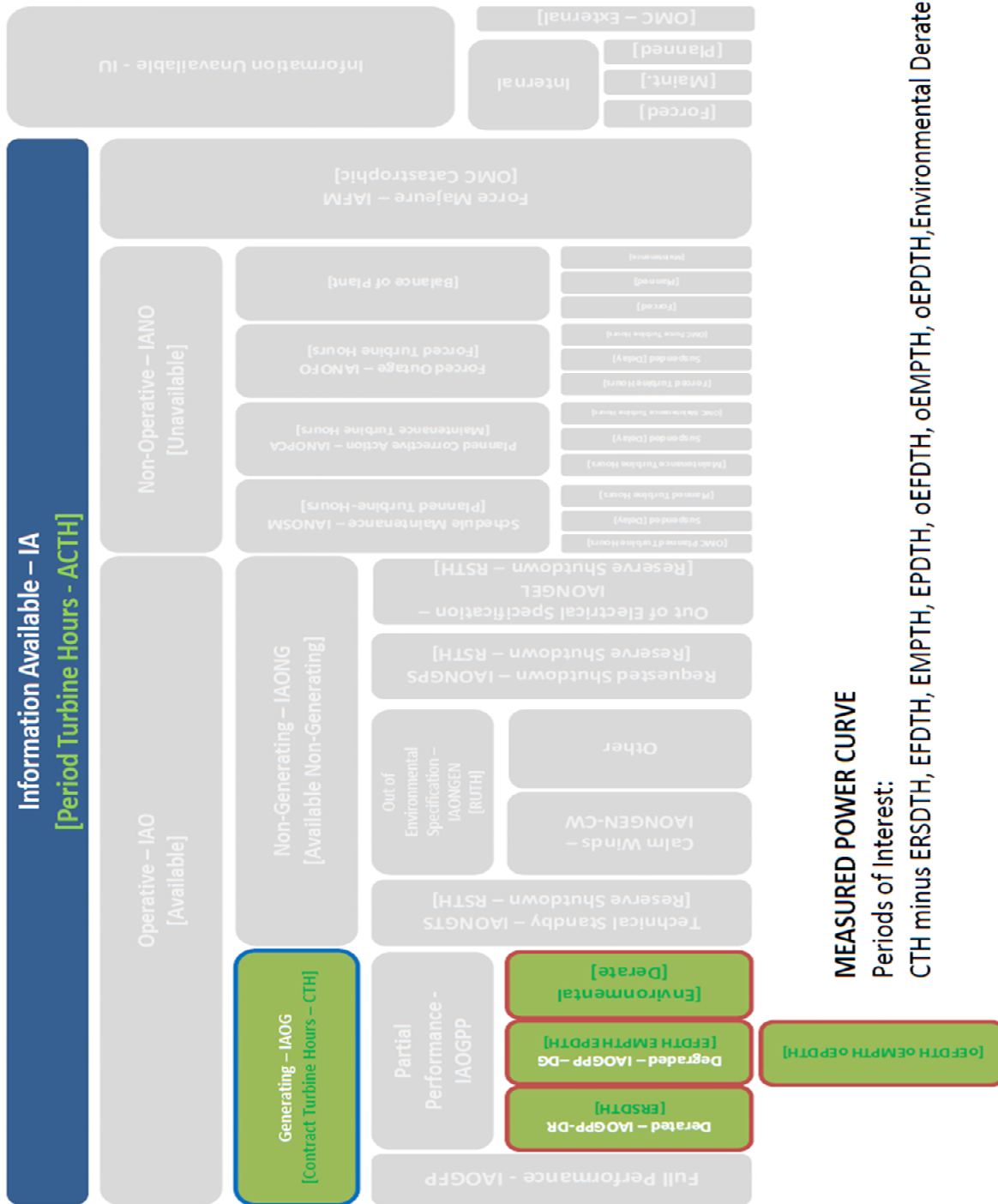


Exhibit Q.3



ATTACHMENT R
REQUIRED INSURANCE

(See also Article 18 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident
Bodily Injury by Disease - \$1,000,000 each Employee
Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

- (i) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Subscriber Organization. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:

- (a) Premises, operations, and mobile equipment,
- (b) Products and completed operations,
- (c) Claims resulting from alleged damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
- (d) Blanket contractual liability,
- (e) Broad form property damage (including completed operations),
- (f) No exclusion for (XCU) explosion, collapse and underground hazard,
- (g) Personal injury liability, and

(h) Failure to supply liability, which may be provided as a sublimit of \$1,000,000 per occurrence under the general liability policy, on ISO endorsement CG 22 50 or equivalent, so long as such coverage is available on a commercially reasonable basis.

(ii) Limits of liability for Bodily Injury & Property Damage shall be:

\$10,000,000 combined single limit per occurrence and;
\$20,000,000 aggregate annually

Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned (if any), leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate annually. If exposure exists, the policy shall be endorsed to include Transportation Pollution Liability insurance, covering hazardous materials to be transported by Subscriber Organization, as appropriate.
4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property in transit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and supplies of any nature whatsoever, the property of the Subscriber Organization or of others for which the Subscriber Organization may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in Section 5 (All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction)) of this Attachment R (Required Insurance). The amount of coverage shall be purchased on a full replacement cost basis, except for earthquake, windstorm and

flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling report, if such insurance amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Subscriber Organization and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Subscriber Organization and Company ten (10) Days' notice that Subscriber Organization has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Subscriber Organization or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) and Comprehensive Mechanical and Electrical Breakdown Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake, windstorm and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling reports, if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Subscriber Organization and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Subscriber Organization and Company ten (10) Days' notice that Subscriber Organization has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Subscriber Organization or Company shall thereupon have the right to pay such premium directly to the insurer.

6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Subscriber Organization's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to operate for a period of at least twelve (12) months following a covered physical damage loss deductible period or reasonable dollar deductible or waiting period.
7. [Reserved]
8. Ocean Transit. Subscriber Organization shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Subscriber Organization's own insurance coverage.

ATTACHMENT S
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement for Renewable As-Available Energy by and between _____, a _____ ("Subscriber Organization"), and Hawaiian Electric Company, Inc., a Hawai'i corporation, dated _____, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the Agreement, Subscriber Organization shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Subscriber Organization and which in Subscriber Organization's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Subscriber Organization intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Subscriber Organization is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Subscriber Organization's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Subscriber Organization's business or prospects which reasonably could be

expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Subscriber Organization's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Subscriber Organization of, any legal or regulatory requirement which would reasonably be expected to materially threaten Subscriber Organization's ability to attain any Construction Milestone;

(iv) Any material change in the Subscriber Organization's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Subscriber Organization's proposed actions to remedy or overcome such matter or issue.

For the purpose of this report, "EPC Contractor" means the contractor responsible for engineering, procurement and construction of the Facility, including Subscriber Organization if acting as contractor, and including all subcontractors.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.1.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.1.2 Financing
- 2.1.3 Governmental Approvals for Development
- 2.1.4 Site Control
- 2.1.5 Land Rights for Company-Owned Interconnection Facilities

- 2.1.6 Design and Engineering
- 2.1.7 Major Equipment Procurement
- 2.1.8 Construction
- 2.1.9 Interconnection
- 2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

- 2.2.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.2.2 Financing
- 2.2.3 Development Permits
- 2.2.4 Site Control
- 2.2.5 Land Rights for Company-Owned Interconnection Facilities
- 2.2.6 Design and Engineering
- 2.2.7 Major Equipment Procurement
- 2.2.8 Construction
- 2.2.9 Interconnection
- 2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

- 2.3.1 **[Insert Construction Milestones from Attachment K and Attachment L, if needed]**
- 2.3.2 Financing
- 2.3.3 Governmental Approvals for Development
- 2.3.4 Site Control
- 2.3.5 Land Rights for Company-Owned Interconnection Facilities
- 2.3.6 Design and Engineering
- 2.3.7 Major Equipment procurement
- 2.3.8 Construction
- 2.3.9 Interconnection
- 2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.4.1 Construction Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Land Rights for Company-Owned Interconnection Facilities
- 2.4.6 Design and Engineering
- 2.4.7 Major Equipment procurement
- 2.4.8 Construction
- 2.4.9 Interconnection

2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in Attachment K and Attachment L and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [<i>specify reason</i>]; current expected completion date)
-------------------------------	--------------------------------------------------	------------------------------------------------------------------------------------------------------------------

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Subscriber Organization's course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Construction Milestone
- 3.2.2 Explain plans to achieve missed Construction Milestone
- 3.2.3 Explain plans to achieve subsequent Construction Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Subscriber Organization intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission

__/__/____
 (expected /
 actual)

**Date application/submission deemed
 complete by agency**

__/__/____
 (expected /
 actual)

Date of initial study (if applicable)

__/__/____
 (expected /
 actual)

Process (e.g., Notice of Exemption,
 Negative Declaration, Mitigated
 Negative Declaration, Environmental
 Impact Report)

Date of Notice of Preparation

__/__/____
 (expected /
 actual)

Date of Draft ND/MND/EIR

___/___/___
(expected /
actual)

Date Notice of Determination filed at
OPR or County Clerk

___/___/___
(expected /
actual)

Governmental Approvals

Please describe each of the Governmental Approvals to be obtained by Subscriber Organization and the status of each:

Status Summary

e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

Agency / Approval

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Subscriber Organization intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Subscriber Organization intends to follow to obtain control of the Land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	__/__/____ (expected / actual)
	__/__/____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Subscriber Organization and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Subscriber Organization or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)
		___/___/___ (expected / actual)	___/___/___ (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Subscriber Organization or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Subscriber Organization and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Subscriber Organization or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/_____ (expected / actual)
		___/___/_____ (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Subscriber Organization or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		__/__/____ (expected / actual)
		__/__/____ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Community Outreach

Please describe all community outreach efforts undertaken since the last report.

16. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Subscriber Organization's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT T
MONTHLY REPORTING AND DISPUTE
RESOLUTION BY INDEPENDENT AF EVALUATOR

1. Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Subscriber Organization shall provide to Company a Monthly Report in Excel, Lotus or such other format as Company may require, which Monthly Report shall include (i) the data for the calendar month in question populated into the form of "Monthly Report" below, (ii) the data for the BESS Measurement Period ending with the calendar month in question populated into the form of "BESS Measurement Period Report" below, and (iii) Subscriber Organization's calculations of the performance metrics and any liquidated damages assessments for the LD Period ending with such calendar month as set forth below. Subscriber Organization shall deliver such Monthly Report to Company by the tenth (10th) Business Day following the close of the calendar month in question. Subscriber Organization shall deliver the Monthly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Monthly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Subscriber Organization shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Monthly Report.

Monthly Report

NAME OF IPP FACILITY: [Facility Name]

MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the total number of hours for each WTG and state during the reporting period (to 2 decimal places).

TID	ACTH	FTH	MTH	PTH	OFTH	OMTH	OPTH
Turbine1							
Turbine2							
Turbine3							
...							

Enter the Actual Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate
-----	-----	--------	--------	--------	--------	-------------

Turbine1						
Turbine2						
Turbine3						
...						

Enter the Expected Generation (MWh) for each WTG and state during the reporting period (to 2 decimal places).

TID	CTH	ERSDTH	OEFDTH	OEMPTH	OEPDTH	Env. Derate
Turbine1						
Turbine2						
Turbine3						
...						

Calculated Pooled OMC Equipment Equivalent Availability Factor for the reporting period: _____

Calculated Performance Index for the reporting period: _____

BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information from operational data collected during the most recently completed BESS Capacity Test to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the applicable information from operational data collected during the most recently completed BESS RTE Test to demonstrate satisfaction of the BESS Round Trip Efficiency Performance Metric during the reporting period.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	Charging Energy (MWh) (B)	BESS RTE Ratio 100% x (A ÷ B)

Enter the information for each ExcludedTime event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Calendar hours in the reporting period: _____

Total equivalent ExcludedTime for the reporting period (from above) with proper accounting for any simultaneous events: _____

Please provide the following BESS availability information even for months containing Force Majeure even though it is OMC for purposes of Attachment Q (Calculation of Certain Metrics).

Enter the information for each Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: _____

Total Outage hours for the reporting period (from above): _____

Available Hours (AH) in the reporting period: _____

AH from the last three (3) reporting periods: _____

AH for the last four (4) reporting periods: _____

Enter the information for each BESS Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start	Date/Time End (B)	Duration (hrs)	Size of Reduction	Maximum Rated Output	Equivalent Hours

(A)		(C) = (B-A)	(MW) (D)	(MW) (E)	(hrs) (C x D)/E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: _____

EPDH from the last three (3) reporting periods: _____

EPDH for the last four (4) reporting periods: _____

Enter the information for each BESS Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D)/E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: _____

EUDH for the last three (3) reporting periods: _____

EUDH for the last four (4) reporting periods: _____

Period Hours (PH) (8760 hours if no 29th day in February in that last month twelve months otherwise 8784 hours).

Enter the Available Hours, EPDH and EUDH for the last four (4) reporting periods as calculated above.

AH (A)	EPDH (B)	EUDH (C)	PH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C)/D

Enter the information for each Unplanned (Forced) Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period (from above): _____

FOH from the last three (3) reporting periods: _____

FOH for the last four (4) reporting periods: _____

Enter the FOH and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B)/8760$

If the BESS Measurement Period for which this report has been prepared contains a month with a BESS Force Majeure event, please indicate the proper 12 month period used to calculate the BESS Annual Equivalent Availability Factor for this report.

2. Monthly Report Disagreements.

- (a) Notice of Disagreement With Monthly Report. Within ten (10) Business Days following the close of the calendar month in question, Subscriber Organization shall provide to Company the Monthly Report for such calendar month and the LD Period, the PI Assessment Period and the BESS Measurement Period (if any) ending with such calendar month, as provided in Section 1 (Monthly Report) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). Within ten (10) Business Days after Company's receipt of a Monthly Report, Company shall provide written notice to Subscriber Organization of any Monthly Report Disagreement, including with respect to the data for the calendar month covered by such Monthly Report and Subscriber Organization's calculation of, as applicable, (i) the Modified Pooled OMC Equipment Availability Factor for the LD Period ending with such calendar month, (ii) the PI Assessment Period ending with such Performance Index

calendar month, or (iii) any of the BESS Capacity Ratio, the RTE Ratio, the BESS Annual Equivalent Availability Factor or the BESS Equivalent Forced Outage Factor for the BESS Measurement Period (if any) ending with such calendar month ("Notice of Disagreement"). Together with any such Notice of Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Disagreement within said 10-Business Day period, the Monthly Report provided by Subscriber Organization shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Subscriber Organization.

(b) **[RESERVED]**

(c) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Disagreement and attempt to resolve such Monthly Report Disagreement. If the Parties are able to agree on a resolution of any Monthly Report Disagreement, the resulting corrected Monthly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Monthly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Monthly Report Disagreement affects future Monthly Reports, such future Monthly Reports shall be prepared, and the Modified Pooled OMC Equipment Availability Factor, the Performance Index, the BESS Annual Equivalent Factor and the BESS Annual Equivalent Forced Outage Factor in such future Monthly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Monthly Report Disagreement within ten (10) Business Days after Company's issuance of such Notice of Monthly Report Disagreement, either Party may, within five (5) Business Days after the end of such 10-Business Day period, submit the unresolved Monthly Report Disagreement to an Independent AF Evaluator for resolution. Notwithstanding anything to the contrary in this Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator), once the Measured Power Curve has been (i) deemed to be accepted by Company pursuant to Section 3

(Measured Power Curve Disagreement) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), (ii) resolved pursuant to Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator), or (iii) resolved pursuant to Section 4(d) (Written Decision of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), the issue of the Measured Power Curve may not be reopened by either Party in the guise of a Monthly Report Disagreement.

(d) **[RESERVED]**

1. Measured Power Curve Disagreements.

- (a) Notice of Disagreement With Determination of Measured Power Curve. Within ten (10) Business Days after the first day of the second Contract Year, Subscriber Organization shall provide written notice to Company of the Measured Power Curve for each WTG as provided in Section 4 (Determination of Measured Power Curve) of this Attachment Q (Calculation of Certain Metrics). Within thirty (30) Days after Company's receipt of Subscriber Organization's written notice of the Measured Power Curve for each WTG, Company shall provide written notice to Subscriber Organization of any disagreement with any such determination ("MPC Disagreement"). Together with any such notice of disagreement ("Notice of MPC Disagreement"), the Company shall include its own calculations and other support of its position. If Company fails to provide a Notice of MPC Disagreement within said 30-Day period, the Measured Power Curve for each WTG as calculated by the Subscriber Organization pursuant to the aforesaid Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Subscriber Organization.
- (b) Submission of MPC Disagreement to Independent AF Evaluator. Upon issuance of a Notice of MPC Disagreement, the Parties shall review the Measured Power Curve(s) in question together with such Notice of MPC Disagreement and attempt to resolve such MPC Disagreement. If the Parties are able to agree on a

resolution of such MPC Disagreement, the resulting Measured Power Curve for each WTG shall be set forth in a writing executed by both Parties, following which such Measured Power Curve for such WTG shall be deemed to be the Measured Power Curve for such WTG under this Agreement and shall no longer be subject to dispute by either Party. If the Parties are unable to agree on a written resolution of such MPC Disagreement within thirty (30) Days after Company's issuance of such notice of disagreement, either Party may submit the unresolved MPC Disagreement to an Independent AF Evaluator for resolution. If, within five (5) Business Days following the expiration of said 30-Day period, neither Party has submitted such MPC Disagreement to an Independent AF Evaluator, the Measured Power Curve for each WTG as calculated by Subscriber Organization pursuant to Section 4 (Determination of Measured Power Curve) of Attachment Q (Calculation of Certain Metrics) shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Subscriber Organization.

2. Independent AF Evaluator Process.

- (a) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved MPC Disagreement, unresolved Monthly Report Disagreement to an Independent AF Evaluator, it shall provide written notice to that effect (the "Submission Notice") to the other Party, which notice shall designate which of the engineering firms on the OEPR Consultants List is to act as the Independent AF Evaluator for purposes of resolving such dispute; provided, however, for purposes of facilitating consistency in the resolution of Monthly Report Disagreements, all Monthly Report Disagreements concerning the same Performance Metric arising out of any one or more of the twelve (12) Monthly Reports issued for a given Contract Year shall be submitted to the same Independent AF Evaluator unless such Independent AF Evaluator declines to accept any such submission(s). A Submission Notice must be provided within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). A Submission Notice must

be provided within whichever of the following time periods is applicable:

- (i) For any MPC Disagreement, within the 5-Business Day period provided in Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator);
- (ii) for any Monthly Report Disagreement, within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator).

The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent AF Evaluator.

- (b) Eligibility for Appointment as Independent AF Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to serve as Independent AF Evaluator. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) Participation of Parties. Promptly following the issuance of a Submission Notice as provided in Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), Subscriber Organization and Company shall provide the Independent AF Evaluator which such data as they consider to be material to the resolution of the disputed issue(s). Subscriber Organization and Company shall also provide such additional data and information as the Independent AF Evaluator may reasonably request. The Parties shall assist the Independent AF Evaluator throughout the process of resolving such dispute, including making key personnel and records available to the Independent AF Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent AF

Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

- (d) Written Decision of Independent AF Evaluator. The terms of engagement with the Independent AF Evaluator shall require the Independent AF Evaluator to issue its written decision resolving the disputed issues submitted to it within the applicable time period set forth below, which time periods are subject to any tolling that may be applicable pursuant to Section 4(e) (Sequence to Resolving Interrelated Disagreements) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator):
- (a) 30 Days as measured from the issuance of the Submission Notice; or (b) such other time period as the Parties may agree in writing. Unless otherwise agreed by the Parties in writing:
 - (i) for a MPC Disagreement, the written decision of the Independent AF Evaluator shall set forth the Measured Power Curve for the WTG in question;
 - (ii) for a Performance Metric Disagreement concerning the Modified Pooled OMC Equipment Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) for the calendar month in question, the correct values for equation used in calculations under Section 1 (Modified Pooled OMC Equipment Availability Factor) of Attachment Q (Calculation of Certain Metrics) of this Agreement as determined by such Independent AF Evaluator if any such values were in dispute and (bb) for the LD Period ending with the calendar month in question, the Modified Pooled OMC Equipment Availability Factor for such LD Period as determined by such Independent AF Evaluator if such Modified Pooled OMC Equipment Availability Factor was in dispute;
 - (iii) for a Performance Metric Disagreement concerning the Performance Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values of the equation to be used in the calculation under Section 2 (Performance Index) of Attachment Q (Calculation of Certain Metrics) that include such calendar month if any

such values were in dispute, (bb) if a PI Test was conducted during the month in question, the correct data points from such PI Test to be used in the calculation of PI under Section 2.6(a) (Calculation of Performance Index) of this Agreement for the PI Assessment Periods that include the month preceding the month covered by the Monthly Report in question if any such data points were in dispute, and (cc) for the PI Assessment Period ending with the calendar month in question, the Performance Index if such Performance Index was in dispute;

- (iv) for a Performance Metric Disagreement concerning the BESS Capacity Ratio or the RTE Ratio, the written decision of the Independent AF Evaluator shall set forth the BESS Capacity Ratio and/or the RTE Ratio (as applicable) for the BESS Measurement Period ending with the calendar month in question;
- (v) for a Performance Metric Disagreement concerning the BESS Annual Equivalent Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values to be used for AH, EPDH, EUDH and PH under Attachment X (BESS Annual Equivalent Availability Factor) for the calendar month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Availability Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Availability Factor was in dispute; and
- (vi) for a Performance Metric Disagreement concerning the BESS Annual Equivalent Forced Outage Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values for FOH and EUDH under Attachment Y (BESS Annual Equivalent Forced Outage Factor) for the calendar month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Forced Outage Factor was in dispute.

(e) Sequence for Resolving Interrelated Disagreements.

- (i) If an MPC Disagreement is unresolved at the time a Monthly Report Disagreement is submitted to an Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), and the resolution of such MPC Disagreement is necessary to the resolution of such Monthly Report Disagreement, the time period for an Independent AF Evaluator to issue its written decision resolving such Monthly Report Disagreement shall be tolled until the resolution of such MPC Disagreement pursuant to either Section 3(b) (Submission of MPC Disagreement to Independent AF Evaluator) or Section 4(d) (Written Decision of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator).
- (ii) If at the time a Performance Metric Disagreement is submitted to an Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved Performance Metric Disagreements concerning the same Performance Metric and the same LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other Performance Metric Disagreement(s) is necessary to the resolution of the Performance Metric Disagreement that has been newly submitted to a new Independent AF Evaluator as aforesaid, the time period for such new Independent AF Evaluator to issue its written decision resolving such newly submitted Performance Metric Disagreement shall be tolled until such pending Performance Metric Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance ratio data and calculations for a given calendar month or a given BESS Measurement Period shall (i) not

be subject to resolution twice and (ii) once resolved, shall not be reopened.

- (f) Final, Conclusive and Binding. The Parties acknowledge the inherent uncertainty in calculating the Performance Metrics, and hereby assume the risk of such uncertainty and waive any right to dispute the qualification of the person or entity appointed as the Independent AF Evaluator pursuant to Section 4(a) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) and/or the appropriateness of the methodology used by Independent AF Evaluator in resolving such Performance Metric Disagreements. Without limitation to the generality of the preceding sentence, the decision of the Independent AF Evaluator as to each Performance Metric Disagreement submitted to an Independent AF Evaluator shall be final, conclusive and binding upon Company and Subscriber Organization and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement.
4. Periodic Review of Method of Calculating and Reporting Performance Metric. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metric under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metric calculations in this Agreement shall be mutually agreed to by both Subscriber Organization and Company.
5. Future Changes in Reporting Requirements. Subscriber Organization shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U
CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

1. Net Energy Potential.

(a) Net Energy Potential and the Intent of the Parties.

The essence of this Agreement is that Company is paying to Subscriber Organization a Lump Sum Payment in exchange for Company's right to dispatch, subject to Renewable Resource Variability, the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years excluding losses due to availability and Company Dispatch; (ii) is subject to adjustment from time to time as provided in this Attachment U (Calculation and Adjustment of Net Energy Potential); and (iii) as so adjusted, provides a basis for calculating and adjusting the Lump Sum Payment, as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. The Net Energy Potential shall be calculated using, but not limited to, long-term resource data correlated with on-site measurements (if available), the most current construction design and equipment specifications, and industry-accepted energy simulation models. Loss factors and uncertainty analysis are to be determined using industry best practices and standard assumptions. Loss factors shall include, but not be limited to, electrical losses. Loss factors will exclude losses due to availability and Company Dispatch. In the case of the Initial OEPR and any Subsequent OEPR evaluation, the Net Energy Potential shall also consider historical operational data further described in this Attachment U Section 4(e). It is the intent of the Parties that the estimate of Net Energy Potential, as calculated and adjusted as foresaid, should reflect the following risk allocation between the Parties under this Agreement:

- (i) Subscriber Organization has assumed the risk of downward adjustment to the Net Energy Potential

(and hence the Lump Sum Payment) to account for any of the following circumstances:

- (aa) if the Renewable Resource Baseline (as estimated on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is lower than Subscriber Organization had assumed when it submitted its RFP Proposal;
 - (bb) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and delivering such electric energy to the Point of Interconnection as Subscriber Organization had assumed when it submitted its RFP Proposal; and
 - (cc) if the Facility's level of operational efficiency is below the standard of comparable facilities;
- (ii) Company has assumed the risk of the following (i.e., the following are to be disregarded for purposes of estimating Net Energy Potential (and hence the Lump Sum Payment)):
- (aa) Renewable Resource Variability; and
 - (bb) the possibility that, at any given moment, Company does not need to dispatch any or all of the electric energy that the Facility is then capable of generating and delivering to the Point of Interconnection.

The foregoing is not intended as an exhaustive list of the risks assumed by either Party under this Agreement or as a limitation on the circumstances that an OEPR Evaluator, in its professional judgment, may decide to take into account in preparing its OEPR under Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (b) NEP RFP Projection. In its RFP Proposal, the Subscriber Organization projected that the Facility would have a Net Energy Potential (as defined in this Agreement) of [REDACTED] **[Note - insert NEP from RFP**

proposal] MWh, and Company relied on Subscriber Organization's NEP RFP Projection in deciding to contract with Subscriber Organization in lieu of other developers. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Subscriber Organization if (i) the IE Energy Assessment does not support the NEP RFP Projection and/or (ii) the operational performance of the Facility indicates a Net Energy Potential that is below the applicable thresholds set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (c) NEP IE Estimate and Company-Designated NEP Estimate. Prior to the closing of the construction financing for the Facility but in no event later than the Commercial Operations Date, the Subscriber Organization shall provide Company with a copy of the IE Energy Assessment Report. In addition, Subscriber Organization shall obtain from the administrative agent of the Facility Lender and provide to Company, at financial close of the construction debt financing, a confirmation letter confirming to Company that the IE Energy Assessment Report provided by Subscriber Organization to Company is the final energy assessment prepared for the Facility Lender as part of the Facility Lender's due diligence leading up to the Facility Lender's legally binding commitment (subject to certain conditions precedent) to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing Documents. If the IE Energy Assessment Report fails to provide a NEP IE Estimate that is consistent with the requirements of this Agreement in all material respects, or if the aforementioned confirmation letter is not provided, Company shall have the option, exercisable by written notice to Subscriber Organization issued no later than 30 Days, or such longer period as the Parties may agree in writing, following the first to occur of Company's receipt of (i) the IE Energy Assessment Report or (ii) notice that Company will not be provided with a copy of the IE Energy Assessment Report, to designate such Company-Designated NEP Estimate as Company, in its sole discretion, determines to be reasonable in light of the information then available to Company. In connection with Company's decision as to whether to

designate a Company-Designated NEP Estimate, Company shall have the right to require Subscriber Organization to pay for an energy assessment to be performed by an independent engineer selected by Company. In such case, the aforesaid 30-Day period for Company's decision to designate a Company-Designated NEP Estimate shall be tolled for the time necessary to prepare such assessment. If Company fails, within the aforesaid 30-Day period as such period may be tolled as provided in the preceding sentence, to designate a Company-Designated NEP Estimate, the NEP RFP Projection shall constitute the First NEP Benchmark, unless the Parties agree in writing on a lower First NEP Benchmark.

(d) NEP IE Estimate, Liquidated Damages and Subscriber Organization's Null and Void Right. If the NEP IE Estimate is higher than the NEP RFP Projection, the NEP RFP Projection shall constitute the First NEP Benchmark. In any other case, Subscriber Organization shall have the option to declare this Agreement null and void by written notice to Company as follows:

(i) if (aa) the NEP IE Estimate is lower than the NEP RFP Projection and (bb) Subscriber Organization issues its null and void notice to Company not later than 30 Days after issuance of the IE Energy Assessment Report; or

(ii) if (aa) Company exercises its right to designate a Company-Designated NEP Estimate under Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of this Attachment U (Calculation and Adjustment of Net Energy Potential), (bb) such Company-Designated NEP Estimate is lower than the NEP RFP Projection, and (cc) Subscriber Organization issues its null and void notice to Company not later than 30 Days after Company's notice of the Company-Designated NEP Estimate.

If Subscriber Organization fails to declare this Agreement null and void under the conditions set forth in either clause (i) or clause (ii) above, then: (x) the NEP IE Estimate or the Company-Designated NEP Estimate, as applicable, shall thereafter constitute the First NEP Benchmark and (y) Subscriber Organization shall, within five (5) Business Days

following the expiration of the applicable 30-Day period for the issuance of Subscriber Organization's null and void notice, pay liquidated damages equal to \$10 for every MWh by which the NEP RFP Projection exceeds the First NEP Benchmark for the initial Contract Year.

2. Initial OEPR. Following the Initial NEP Verification Date, the Initial OEPR shall be prepared pursuant to the process set forth in Section 4 (Preparation of OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential) and the Initial NEP OEPR Estimate shall be as set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If the Initial NEP OEPR Estimate differs from the First NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.ii (Lump Sum Payment During Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.
3. Subsequent OEPRs.
 - (a) Required Subsequent OEPR. If Subscriber Organization makes any changes to the Facility that involve (i) replacing any step-up transformer(s) or (ii) making any other changes (e.g., changing the characteristics of the Facility equipment or the specifications used in the IRS) that Company reasonably determines require an updated IRS, then Subscriber Organization shall also be required to have a subsequent OEPR prepared as of the first Day of the calendar month following the second anniversary of the date such change to the Facility was completed.
 - (b) Voluntary Subsequent OEPR. Without limitation to the generality of Section 3(a) (Required Subsequent OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential), if the Subscriber Organization makes any changes to the Facility (e.g., replacing original equipment) that does not trigger a required Subsequent OEPR but which changes Subscriber Organization has reasonable grounds to believe will improve the Facility's Net Energy Potential, Subscriber Organization shall have a one-time option, exercisable by written notice to Company issued not

less than 120 Days prior to the Applicable NEP Verification Date, of having a subsequent OEPR prepared as of a date no sooner than 24 months following completion of the then most recent OEPR.

- (c) Subsequent OEPR and Adjustment to Lump Sum Payment. If the Subsequent NEP OEPR Estimate differs from the Most Recent Prior NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.iii (Lump Sum Payment Following Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

4. Preparation of OEPR. The following provisions apply to the Initial OEPR and any Subsequent OEPR:

- (a) Selection of OEPR Evaluator. No later than 90 Days prior to the Applicable NEP Verification Date, Company and Subscriber Organization shall select, in accordance with the terms of this Section 4(a) (Selection of OEPR Evaluator), an independent engineering firm from the firms listed on the OEPR Consultants List (the "OEPR Evaluator") to prepare an operational energy production report ("OEPR"). Each party shall select the names of two (2) firms from the OEPR Consultants List. If there is mutual agreement on one or both of the named firms, then the Subscriber Organization shall select one of the named firms to serve as the OEPR Evaluator. If there is no agreement on any of the named firms, then Subscriber Organization shall select one of the firms named by the Company.
- (b) Eligibility for Appointment as OEPR Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. By mutual agreement between the Parties in writing, both Parties acting reasonably, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured

meteorological and production data from the OEPR Period of Record. However, although the OEPR Period of Record is a twelve-month period, the Parties acknowledge that, in certain circumstances (e.g., Force Majeure), there may not be twelve months of data available for the OEPR Period of Record. In such case, (i) it is the intent of the Parties that the OEPR be prepared using such measured meteorological and production data that is available from the OEPR Period of Record and (ii) Parties may, by written agreement, direct the OEPR Evaluator to use such additional data outside of the OEPR Period of Record as the Parties may agree. The preceding sentence does not constitute a limitation on the professional judgment of the OEPR Evaluator as to the appropriateness of using measured meteorological and/or production from outside of the OEPR Period of Record.

- (d) Participation of Parties. Promptly following the Applicable NEP Verification Date, Subscriber Organization and Company shall provide the OEPR Evaluator with such data from the OEPR Period of Record as they consider to be material to the preparation of the OEPR. Subscriber Organization and Company shall also provide such additional data and information as the OEPR Evaluator may reasonably request. The Parties shall assist the OEPR Evaluator throughout the process of preparing the OEPR, including making key personnel and records available to the OEPR Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the OEPR Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. Subscriber Organization and Company shall have forty-five (45) Days from issuance of the draft OEPR Report to review and provide feedback to the OEPR Evaluator on such report.
- (e) Terms of Engagement. Upon selection of the OEPR Evaluator, as set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential), the Subscriber Organization shall retain and contract with the OEPR Evaluator in accordance with the terms of this Attachment U (Calculation and Adjustment of

Net Energy Potential). The OEPR Evaluator's scope of work and expected deliverables for all OEPRs must be acceptable to Company and shall, among other things, require the OEPR Evaluator to provide (i) an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years; (ii) a BOP Benchmark Metric for purposes of allowing the Parties to evaluate the BOP Efficiency Ratio of this Agreement; and (iii) any additional information that may be reasonably required by a Party with respect to the methodology used by the OEPR Evaluator to reach its conclusion. The provisions of this Attachment U (Calculation and Adjustment of Net Energy Potential) do not impose a limit on the OEPR Evaluator's professional judgment as to what other estimates (if any) to include in the OEPR. Without limiting the professional judgment of the OEPR Evaluator in estimating the Net Energy Potential and the BOP Benchmark Metric, the following is a general description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to implement the intent of the Parties as set forth in Section 1(a) (Net Energy Potential and the Intent of the Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential) by evaluating (i) whether, when the Renewable Resource Baseline (as estimated by the OEPR Evaluator on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is present and the Facility is in Full Dispatch, the Facility is capable of doing what the Parties expected the Facility to do: i.e., generating and delivering to the Point of Interconnection electric energy in an amount consistent with the then applicable Net Energy Potential of the Facility (i.e., the estimate of Net Energy Potential then being used to calculate the monthly Lump Sum Payment pursuant to Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy,

Dispatchability and Availability of BESS to this Agreement); and (ii) if the Facility is not doing what the parties expected in this regard, identifying a new estimated single number with a P-Value of 95 for annual Net Energy that could be generated and delivered by the Facility based on the estimated long-term monthly and annual total of such production over a period of the next ten years.

At a high level, the analysis relies on reported Actual Output (i.e., energy delivered to the Point of Interconnection) during the OEPR Period of Record and the total reported Actual Generation and the WTGs (i.e., energy production measured at the WTGs) during the OEPR Period of Record to estimate Facility performance over a future evaluation period of ten years. The data from the OEPR Period of Record are first quality screened and evaluated. One-time events are assessed and removed from the record where appropriate. Values for potential energy are then calculated from the reported Actual Generation and the WTGs by adjusting for 100% availability and undispached energy. Suitable long-term reference data sets are then identified by analyzing the reference for Density-Adjusted Wind Speeds and the normalized values for potential energy production of the WTGs over the OEPR Period of Record. Relationships between selected long-term reference wind speed data sets and normalized values for potential energy production of the WTGs are used to calculate long-term values for such on a monthly and annual basis. Finally, estimates of future Facility availability (taking into account anticipated maintenance) and losses (such as system degradation and BOP losses) are applied in order to calculate the Net Energy Potential. For this purpose, no reductions are made for future estimates of energy that Company may choose not to dispatch. If a copy of the IE Energy Assessment Report is available to the

OEPR Evaluator, the OEPR Evaluator should review such Report before commencing preparation of the OEPR and evaluate whether it is appropriate for the OEPR Evaluator to take into account any of the work reflected in the IE Energy Assessment Report.

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to provide for Party review a draft OEPR that shall include a NEP OEPR Estimate and a BOP Benchmark Metric within 30 Days following the NEP Applicable Verification Date. The OEPR Evaluator shall be required to provide its completed OEPR ("First OEPR") within 30 Days following the end of the Parties' 45-Day review period under Section 4(d) (Participation of the Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the OEPR Evaluator in connection with the Initial OEPR. For the Initial OEPR, the OEPR Evaluator's fees and costs must be acceptable to Company. Subscriber Organization shall pay all of the fees and expenses charged by the OEPR Evaluator in connection with any Subsequent OEPR. Subscriber Organization shall also pay for any reasonable internal fees and costs incurred by the Company as a result of its participation in the process set forth in Section 4(d) (Participation of Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (g) Review of the First OEPR Evaluator Report. In the event Company or Subscriber Organization does not agree with the NEP OEPR Estimate or BOP Benchmark Metric determined by the First OEPR Evaluator, Subscriber Organization or Company may, within 30 Days of issuance of the First OEPR, engage, at its own cost, a different expert evaluator from the OEPR Consultants List (the "Second OEPR Evaluator") to prepare a second OEPR that shall include a NEP OEPR Estimate or BOP Benchmark Metric, as applicable ("Second OEPR"). The terms of engagement with the Second OEPR Evaluator shall require the Second OEPR Evaluator to issue the Second OEPR within 60 Days following the date of its appointment. In the event the NEP OEPR Estimates or BOP Benchmark Metric, as

applicable, provided by the First OEPR Evaluator and the Second OEPR Evaluator are different then, within ten (10) Days of the issuance of the Second OEPR, the Parties shall, with the two evaluators, confer in an attempt to mutually agree upon a NEP OEPR Estimate or BOP Benchmark Metric, as applicable ("OEPR Conference").

- (h) Review of the Second OEPR Evaluator Report. If the Parties are unable to agree upon an NEP OEPR Estimate or BOP Benchmark Metric, as applicable, within 30 Days of the OEPR Conference, then within ten (10) Days thereafter the First OEPR Evaluator and Second OEPR Evaluator shall, by mutual agreement, select a third firm from the OEPR Consultants List to act as an independent OEPR Evaluator ("Third OEPR Evaluator"). The Third OEPR Evaluator shall not be a person from the same entity as the First OEPR Evaluator or the Second OEPR Evaluator. The Parties shall direct the Third OEPR Evaluator to review the First OEPR and Second OEPR and select one as the final and binding NEP OEPR Estimate and/or BOP Benchmark Metric, as applicable ("Third OEPR"). The Third OEPR Evaluator shall complete its review and selection of the NEP OEPR Estimate within thirty (30) Days following his or her retention. If the Third OEPR Evaluator selects the First OEPR, then the Party requesting the Second OEPR shall pay for the cost of the Third OEPR. If the Third OEPR Evaluator selects the Second OEPR, then the Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Third OEPR Evaluator in connection with the Third OEPR.
- (i) Final, Binding and Conclusive. The Parties acknowledge the inherent uncertainty in estimating the Net Energy Potential and BOP Benchmark Metric and hereby assume the risk of such uncertainty and waive any right to dispute any of the qualification of the person or entity appointed as the OEPR Evaluator pursuant to Section 4(a) (Selection of OEPR Evaluator) and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement, the appropriateness of the methodology used by OEPR Evaluator in preparing the OEPRs, the NEP OEPR Estimate and/or the BOP Benchmark Metric. Without limitation to the generality of the preceding

sentence, the determination of the NEP OEPR Estimate and BOP Benchmark Metric in the First OEPR, Second OEPR (if applicable), or final decision of the Third OEPR Evaluator (if applicable) shall be final, conclusive and binding upon Company and Subscriber Organization and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement; provided that, nothing in this Section 4(i) (Final, Binding and Conclusive) of this Attachment U (Calculation and Adjustment of Net Energy Potential) shall preclude Subscriber Organization from engaging an OEPR Evaluator to issue a Subsequent OEPR as allowed pursuant to Section 3 (Subsequent OEPRs) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (j) Acceptable Persons and Entities. The OEPR Evaluator and Second OEPR Evaluator shall be selected from the following engineering firms listed below, subject to such additions or deletions effectuated by the Parties as provided in Section 4(b) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential):

DNV GL

UL

Black & Veatch

Leidos Engineering

ATTACHMENT V
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED
IN PRIOR CALENDAR YEAR

(See Article 5)

DATE WORK ORDER SUBMITTED: 06/28/96

WO#: 11451

EQUIPMENT #: 1CCF-TNK-1

EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1

PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR
UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR
OPERATION.

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96

WO#: 11136

EQUIPMENT #: 1WSA-BV-12

EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION

PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON
SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH
STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

ATTACHMENT W
BESS TESTS

Prior to achieving Commercial Operations and in each BESS Measurement Period, unless waived by Company, Subscriber Organization shall demonstrate that the BESS satisfies the (1) BESS Capacity Performance Metric, and (2) the RTE Performance Metric, each as defined and further described below.

BESS Capacity Performance Metric

The BESS Capacity Performance Metric reflecting the net output of the BESS from the Point of Interconnection can be demonstrated either through (i) operational data or (ii) a scheduled formal BESS Capacity Test.

The "BESS Capacity Performance Metric" shall be deemed to be satisfied where the BESS Capacity Ratio is not less than **100%** for an applicable BESS Measurement Period. The "BESS Capacity Ratio" shall be the number, expressed as a percentage, equal to the total "Discharge Energy" (MWh discharge) delivered to the Point of Interconnection to bring the BESS from (i) its maximum State of Charge or (ii) 100% State of Charge to a 0% State of Charge, divided by the BESS Contract Capacity.

A "BESS Capacity Test" is when the Company coordinates Company Dispatch to demonstrate the BESS maintains the power output required to follow the dispatch signal provided by the Company through a control setpoint, as measured at the Point of Interconnection, and is able to continuously discharge energy to the Point of Interconnection according to Company Dispatch to bring the BESS from (i) its maximum State of Charge or (ii) 100% State of Charge to a 0% State of Charge.

The BESS Capacity Test can only be performed when the BESS is at the lower of: (i) its maximum State of Charge or (ii) 100% State of Charge prior to the start of the BESS Capacity Test and during the BESS Capacity Test the Company Dispatch allows for continuous discharge of the BESS to 0% State of Charge with energy delivered to the Point of Interconnection.

RTE Performance Metric

The "RTE Performance Metric" is set forth in Section 2.10(a) (RTE Test and Liquidated Damages). The RTE Performance Metric reflecting the charging/discharging of the BESS can be

demonstrated either through (i) operational data or (ii) a scheduled formal RTE Test.

Demonstration of the RTE Performance Metric requires measurement of "Charging Energy" (MWh charge) at the BESS inverters' AC input to bring the BESS from a 0% State of Charge to a 100% State of Charge from the WTG(s) or grid according to Company Dispatch, followed by measurement at the Point of Interconnection of the "Discharge Energy" (MWh discharge) delivered to the grid to bring the BESS to a 0% State of Charge according to Company Dispatch. The exact point of measurement for Charging Energy will be mutually agreed to by the Parties on the Facility's single-line diagram attached to the Agreement as Attachment E (Single-Line Drawing and Interface Block Diagram).

For the purposes of evaluating satisfaction of the RTE Performance Metric, the "RTE Ratio" shall be equal to the number, expressed as a percentage, equal to the total Discharge Energy delivered to the Point of Interconnection during the BESS Capacity Test, divided by the Charging Energy measured at the BESS inverters' AC input.

The formula for the RTE Ratio is as follows:

$$\text{RTE Ratio} = 100\% \times (\text{MWh discharge}) / (\text{MWh charge})$$

The RTE Performance Metric will be deemed to have been "passed" or "satisfied" to the extent the RTE Ratio is not less than the RTE Performance Metric set forth in Section 2.10(a) (RTE Test and Liquidated Damages).

An "RTE Test" is when the Company coordinates Company Dispatch to demonstrate the charging/discharging requisite to satisfy the RTE Performance Metric.

The RTE Test maybe conducted concurrently with a BESS Capacity Test.

For purposes of the RTE Test, the charging cycle shall begin when the BESS is at a 0% State of Charge prior to a (i) 100% discharge cycle or (ii) BESS Capacity Test if being conducted concurrently and the Charging Energy is the amount of energy, as measured at the BESS inverters' AC input, that brings the BESS to a 100% State of Charge.

BESS Test Procedures

After Commercial Operations, Subscriber Organization shall demonstrate satisfaction of the BESS Capacity Performance Metric by reference to the operational data reflecting the net output of the BESS from the Point of Interconnection, or by conducting a scheduled formal BESS Capacity Test during such BESS Measurement Period. Once Subscriber Organization demonstrates satisfaction of the BESS Capacity Performance Metric through either operational data or a scheduled formal BESS Capacity Test (100% discharge cycle), the BESS shall be deemed to have met the BESS Capacity Performance Metric and satisfied ("passed") the BESS Capacity Test for the applicable BESS Measurement Period.

After Commercial Operations, Subscriber Organization shall demonstrate satisfaction of the RTE Performance Metric by reference to the operational data reflecting the charging/discharging of the BESS, or by conducting a scheduled formal RTE Test during such BESS Measurement Period. Once Subscriber Organization demonstrates satisfaction of the RTE Performance Metric through either operational data or a scheduled formal RTE Test (100% charge/discharge cycle), the BESS shall be deemed to have met the RTE Performance Metric and satisfied ("passed") the RTE Test for the applicable BESS Measurement Period.

Any BESS Capacity Test or RTE Test (each a "BESS Test" and collectively, the "BESS Tests"), scheduled in lieu of being demonstrated by reference to operational data as provided below, shall be performed at a time reasonably requested by the Company in its sole discretion.

Subscriber Organization shall be permitted up to a total of three (3) BESS Tests (100% discharge cycles) within a BESS Measurement Period to demonstrate satisfaction of the BESS Capacity Performance Metric and RTE Performance Metric, for such BESS Measurement Period, unless additional such tests are authorized by Company. If upon completion of the first BESS Test, Subscriber Organization does not "pass" either the BESS Capacity Test or the RTE Test, Company shall attempt to notice up to two (2) additional BESS Tests within a BESS Measurement Period, for Subscriber Organization to further demonstrate its performance. If a scheduled formal BESS Test is requested by Subscriber Organization, Company shall attempt to schedule a formal BESS Test and Company shall provide notice to Subscriber Organization no less than three (3) Business Days prior to conducting such scheduled formal BESS Test.

If, during a BESS Measurement Period, Subscriber Organization fails to pass a BESS Capacity Test, the BESS shall nevertheless be deemed to have satisfied the BESS Capacity Performance Metric for the applicable BESS Measurement Period if either (i) Company failed to notice up to three BESS Capacity Tests in order for Subscriber Organization to further demonstrate the BESS' performance during such BESS Measurement Period, or (ii) Subscriber Organization was unable to perform at least two (2) such noticed BESS Capacity Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Subscriber Organization-Attributable Non-Generation or (b) an act or omission by Company. If Subscriber Organization-Attributable Non-Generation is cause for the inability to demonstrate the BESS Capacity Performance Metric, the BESS Capacity Ratio used to assess LDs shall be the highest demonstrated in operational data or the most recently completed test during the applicable BESS Measurement Period.

If, during a BESS Measurement Period, Subscriber Organization does not demonstrate satisfaction of the BESS Capacity Performance Metric by reference through operational data or a BESS Capacity Test, assessment of Liquidated Damages will be based on the last of the BESS Capacity Tests performed.

If, during a BESS Measurement Period, Subscriber Organization both fails to pass a RTE Test noticed by Company and fails to demonstrate satisfaction of the RTE Performance Metric by reference to operational data for such BESS Measurement Period, the BESS shall nevertheless be deemed to have satisfied the RTE Performance Metric for the applicable BESS Measurement Period if either (i) Company failed to notice up to three RTE Tests during such BESS Measurement Period, or (ii) Subscriber Organization was unable to perform at least two (2) such noticed RTE Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Subscriber Organization-Attributable Non-Generation or (b) an act or omission by Company. . If Subscriber Organization-Attributable Non-Generation is cause for not adequately demonstrating the RTE Performance Metric, the RTE Ratio used to assess LDs shall be the highest demonstrated in operational data or the most recently completed test during the applicable BESS Measurement Period.

If, during a BESS Measurement Period, Subscriber Organization does not demonstrate satisfaction of the RTE Performance Metric

through operational data or RTE Tests, assessment of Liquidated Damages will be based on the last of the RTE Tests performed.

Company will conduct any necessary BESS Test(s) through Company Dispatch. Company shall have the right to attend, observe and receive the results of all BESS Tests. Subscriber Organization shall provide to Company the results of each BESS Test (including time stamped graphs of system performance based in operational data or test data) no later than ten (10) Business Days after any BESS Test.

ATTACHMENT X
BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR

To the extent the Commercial Operations Date occurs on a date other than the first day of a BESS Measurement Period, the period between the Commercial Operations Date and the first day of the next BESS Measurement Period if any, shall be ignored for purposes of this BESS Availability Factor.

For the purposes of calculating the BESS Annual Equivalent Availability Factor for the first three (3) full BESS Measurement Periods in the first Contract Year, the calculation will assume that the BESS is one hundred percent (100%) available for the remaining hours of the Contract Year.

"BESS Annual Equivalent Availability Factor" shall be calculated as follows:

$$\begin{array}{l} \text{BESS Annual} \\ \text{Equivalent} \\ \text{Availability} \\ \text{Factor} \end{array} = 100\% \times \frac{AH-EDH}{PH}$$

Where:

PH is period hours (8760 hours; except leap year is 8784).

Available Hours (AH) is the number of hours that the BESS is not on Outage. It is sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

A "BESS Outage" exists whenever the entire BESS is offline and unable to charge or discharge electric energy and is not in Reserve Shutdown state.

Service Hours (SH) is the number of hours during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods that the BESS is online and (i) charging from the WTGs or the Company System, or (ii) discharging electric energy to the Company System.

Reserve Shutdown Hours (RSH) is the number of hours the BESS is available but not charging or discharging electric energy or is offline at the Company's request for reasons other than Subscriber Organization-Attributable Non-Generation.

A "BESS Derating" exists when the BESS is available but at less than Maximum Rated Output, including deratings due to Subscriber Organization-Attributable Non-Generation or those by Company pursuant to Section 8.3 (Company Rights of Dispatch). For the avoidance of doubt, if there is a BESS Outage occurring, there cannot also be a BESS Derating.

Equivalent Derated Hours (EDH) is the sum of ESADH, EPDH, and EUDH. For deratings due to BESS inverter unavailability, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the number of inverters in the BESS unavailable and dividing by the total number of inverters in the BESS. For deratings that do not impact the availability of an entire BESS inverter or set of entire BESS inverters, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW) and dividing by the Maximum Rated Output.

Equivalent Subscriber Organization-Attributable Derated Hours (ESADH): A Subscriber Organization-Attributable Derating occurs when a derating exists due to Subscriber Organization-Attributable Non-Generation or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). Each individual derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

EPDH is the equivalent planned derated hours, including Planned Derations (PD) and Maintenance Derations (D4). A Planned Deration is when the BESS experiences a Deration scheduled well in advance and for a predetermined duration. A Maintenance Deration is a Deration that can be deferred beyond the end of the next weekend (Sunday at midnight or before Sunday

turns into Monday) but requires a reduction in capacity before the next Planned Deration (PD). Each individual Deration is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

EUDH is the equivalent unplanned derated hours. An Unplanned Derating (Forced Derating) occurs when the BESS experiences a derating that requires a reduction in availability before the end of the nearest following weekend. Each individual Unplanned Deration is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

The effect of Force Majeure is taken into account in calculating the BESS Annual Equivalent Availability Factor over a 12 calendar month period as follows: When such 12 month period contains any hours in a month during which the BESS or a portion of the BESS is unavailable due to Force Majeure, then such month shall be excluded from the 12 month period and the calculation period shall be extended back in time to include the next previous month during which there was no such unavailability of the BESS or a portion thereof due to Force Majeure. This means the BESS Equivalent Availability Factor would not change from that determined in the month directly preceding a month containing Force Majeure.

The following examples are provided as illustrative examples only:

Example A: The BESS was continuously available, with no BESS Outages or BESS Deratings during the applicable BESS Measurement Period and in the immediately preceding three (3) full BESS Measurement Periods. In this case AH = 8760 hours, EDH = 0 hours as ESADH, EPDH, and EUDH each = 0 hours

= 100%

$$\text{BESS EAF} = 100\% \times \frac{8,760-0}{8,760}$$

Example B: During the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods: (a) The BESS was online and charging from the PV system or discharging electric energy to the Company System for 8,400 hours and was available but not discharging electric energy due to lack of stored energy (i.e., not Subscriber Organization-Attributable Non-Generation) for 226 hours; (b) The BESS experienced a Planned Derating of 7.2 MWs for 100 hours for maintenance that was scheduled a month in advance; (c) The BESS also experienced an Unplanned Derating of 62 BESS inverters for 100 hours as the derating could not be deferred to beyond the nearest following weekend. (d) The BESS did not experience any outage or derating due to Subscriber Organization-Attributable Non-Generation during this period.

The BESS Maximum Rated Output is 10 MW and the BESS contains 100 total inverters.

$$\begin{aligned} \text{PH} &= 8,760 \text{ hours in 12 calendar months} \\ \text{SH} &= 8,400 \text{ hours} \\ \text{RSH} &= 226 \text{ hours} \\ \text{AH} &= \text{SH} + \text{RSH} = 8,400 + 226 = 8,626 \text{ hours} \end{aligned}$$

$$\begin{aligned} \text{ESADH} &= 0 \\ \text{EPDH} &= 100 \text{ hours} \times 7.2 \text{ MW}/10 \text{ MW} = 72 \text{ hours} \\ &\text{(Planned Maintenance)} \\ \text{EUDH} &= 100 \text{ hours} \times 62 \text{ inverters}/100 \text{ inverters} = \\ &62 \text{ hours (Unplanned Deration (Forced Derating))} \end{aligned}$$

$$\text{EDH} = 72 \text{ hours} + 62 \text{ hours} = 134 \text{ hours}$$

$$\text{BESS EAF} = 100\% \times \frac{8,626-134}{8,760} = 96.9\%$$

ATTACHMENT Y
BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

$$EFOF = 100\% \times \frac{(FOH + EUDH)}{8760}$$

Where:

Equivalent Unplanned (Forced) Derated Hours (EUDH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Forced Outage Hours (FOH) = Sum of all hours the BESS experienced an Unplanned (Forced) Outages during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

Unplanned (Forced) Outage: An outage that requires removal of the entire BESS from service before the end of the nearest following weekend that is not planned, including those caused by Subscriber Organization-Attributable Non-Generation or those imposed by Company pursuant to Section 8.3 (Company Rights of Dispatch).

EXAMPLE CALCULATION:

Assume a 50 MW BESS that for the BESS Measurement Period in question was completely out of service for 50 hours. For the BESS Measurement Period in question, it also had the following deratings:

Duration of Derating	MW Size Reduction
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding BESS Measurement Periods, the BESS had a total of 150 Forced Outage Hours and a total of 100 Equivalent Forced Derated Hours.

FOH = 50 hours + 150 hours = 200 hours

EUDH = ((100x25)/50)+((20x20)/50)+((50x5)/50))+100 = 163 hours

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$

ATTACHMENT Z
FACILITY'S CBRE PROGRAM

1. CBRE Program. The purpose of the CBRE Program is to facilitate the continued expansion of renewable energy by allowing developers of renewable energy projects to provide Company's retail customers with the opportunity to avail themselves of the benefits of the CBRE Tariff by utilizing Bill Credits to offset all or a portion of their on-going electricity usage. To this end, Subscriber Organization has established Facility's CBRE Program. Subscriber Organization acknowledges that it has been informed that Facility's CBRE Program must at all times comply with the requirements of the CBRE Program, the CBRE Tariff, the CBRE Framework, guidance from the PUC, guidance from the CBRE IO, and applicable Laws, including (i) the federal securities laws, including the registration requirements under the Securities Act of 1933 and the Securities and Exchange Act of 1934 and all rules and regulations promulgated thereunder (collectively, "Federal Securities Laws"); (ii) the State securities laws, including the registration requirements under the Hawai'i Uniform Securities Act and all rules and regulations promulgated thereunder (collectively, "State Securities Laws"); (iii) Laws concerning the dissemination of personally identifiable information; and (iv) Laws concerning consumer protection. The purpose of this Attachment Z (Facility's CBRE Program) is to set forth certain requirements of the CBRE Program as of the Execution Date. Company reserves the right to modify the requirements of the CBRE Program upon PUC order and/or guidance from the CBRE IO where such modifications are necessary to comply with the CBRE Tariff, the CBRE Framework, or, applicable Laws, and Subscriber Organization shall comply with all such modifications. Without limitation to the generality of the foregoing, in the event of any conflict between the requirements of the CBRE Program, on the one hand, and any one or more of the CBRE Tariff, the CBRE Framework, guidance from the PUC, guidance from the CBRE IO, and/or applicable Laws, on the other hand, the CBRE Tariff, the CBRE Framework, guidance from the PUC, guidance from the CBRE IO, and applicable Laws, shall control and Subscriber Organization shall comply with the CBRE Tariff, the CBRE Framework, guidance from the PUC, guidance from the CBRE IO, and applicable Laws.

2. Subscriber Agreement. Subscriber Organization shall require all prospective Subscribers to execute a Subscriber Agreement as a precondition to enrollment as a Subscriber in the Facility's CBRE Program. The Subscriber

Agreement must satisfy the requirements of the CBRE Tariff, the CBRE Framework, this Agreement and any additional guidance from the PUC. Without limitation to the generality of the preceding sentence, the Subscriber Agreement must include the right for the Subscriber to sell the subscription, either a portion or the entirety thereof, back to Subscriber Organization. The Subscriber Agreement shall require that Subscriber Organization must buy back the interest in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement within thirty (30) Days of the Subscriber's request. Prior to executing the Subscriber Agreement, Subscriber Organization shall make to the Subscriber the disclosures required under the Disclosure Checklist (Appendix II to the CBRE Tariff). A copy of the Disclosure Checklist signed by both Subscriber Organization and the Subscriber shall be attached to the executed Subscriber Agreement. Subscriber Organization shall also disclose to the Subscriber that a failure to pay such Subscriber's monthly retail electric bill that results in Company issuance of a disconnection notice will result in forfeiture of Bill Credits for the duration of such disconnection. For each Subscriber, there must be a completed and fully executed Subscriber Agency Agreement and Consent Form (Appendix I to the CBRE Tariff), which is delivered to the Company prior to the Commercial Operations Date, or prior to adding each Subscriber.

3. Funds Received From Subscribers Prior to the Commercial Operations Date. Any payments made to Subscriber Organization by Subscribers prior to the Commercial Operations Date shall be deposited into an escrow account or other alternative proposed by Subscriber Organization and approved by the CBRE IO ("Pre-COD Escrow"), to hold or segregate any pre-development enrollment fees or deposits from Subscribers (with appropriate mechanisms to refund such fees/deposits to Subscribers should Subscriber Organization not complete its Facility), which shall be released to Subscriber Organization upon commercial operation of the Facility. These funds may not be withdrawn from the Pre-COD Escrow by Subscriber Organization until the Commercial Operations Date. The Pre-COD Escrow must conform to the CBRE Tariff, the Phase 2 CBRE Framework, applicable Laws, and any additional guidance from the PUC.

4. Requirements Applicable to Subscriber Organization's Relationship with its Subscribers. Subscriber Organization must comply with all of the following:
- a. Subscriber Information. Subscriber Organization shall issue subscriptions in the Facility's CBRE Program only to eligible retail electric service customers of the Company and provide to the Company the name, account number and service address attributable to each Subscription and the Subscriber Allocation for each Subscriber's subscription. Subscriber Organization shall take care to preserve the privacy expectations of the Subscribers, such as not publicly providing a Subscriber's confidential account information, Subscriber energy usage data, or Bill Credits. Subscriber Organization will not disclose or share such information except as permitted by the Subscriber Agency Agreement and Consent Form executed by Subscriber in connection with Subscriber's acquisition of its Subscription in the Subscriber Organization's Facility's CBRE Program or otherwise unless the Subscriber has provided explicit informed consent or if such disclosure is compelled by Law.
 - b. Subscriber Exit or Transfer of Interest in the Facility's CBRE Program. The transfer, cancellation, termination and/or exit of a Subscriber's interest in the Facility's CBRE Program shall be completed in full accordance with all applicable CBRE Program rules, in addition to any other terms, conditions or requirements imposed by the Subscriber Organization in the Subscriber Agreement, which Subscriber Organization shall ensure is also consistent with and in compliance with applicable CBRE Program rules. The CBRE Rule 29 Tariff requirements shall take precedence over any inconsistent or conflicting provisions found in the Subscriber Agreement.
 - c. If Subscriber requests to sell all or any portion of their Subscription back to Subscriber Organization, Subscriber Organization shall buy back the interest in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.
 - (1) Subscriber Organization shall complete the buy-back of the Subscriber's interest within thirty (30) days of the Subscriber's request.

- (2) Upon completion of a subscription buy-back, Subscriber Organization shall notify the Company by the last day of the month the transaction was completed. The Company shall confirm such buy-back in the Subscriber database and cease Bill Credits effective as communicated by Subscriber Organization on the first day of the month of notification if such transaction was completed on or prior to the twentieth (20th) Day of the month. Transactions completed after the twentieth (20th) Day of the month will be effective as of the first (1st) Day of the next month.
5. Updating Subscriber Information. Subscriber Organization shall provide to the Company the Monthly Subscriber Information together with any and all updates to the Monthly Subscription Information as provided in Section 4 (Updating Monthly Subscriber Information Used to Calculate Bill Credits and Other Matters) to Attachment J (Company Payments for Energy, Dispatchability and Availability of Bess) to the Agreement.
6. Responsibility for Verification.
- a. Subscriber Verification. If not already qualified by the CBRE Online Portal, Subscriber Organization shall verify that each Subscriber is eligible to be a Subscriber in the Subscriber Organization's Facility's CBRE Program and that the CBRE Tariff requirements are met.
- b. Where Subscriber Organization intends to enroll a Subscriber as a Low-to Moderate-Income (LMI) Subscriber, Subscriber Organization shall confirm such Subscriber's LMI Subscriber status, maintain the records of such LMI Subscriber's eligibility (but not any of such LMI Subscriber's Personally Identifiable Information (PII) (as defined in the CBRE Tariff)) in accordance with the requirements of the CBRE Tariff. Subscriber Organization shall cooperate with Company in verifying Subscriber Organization's efforts to verify each LMI Subscriber's eligibility for LMI status in accordance with the CBRE Tariff.
- c. LMI Subscriber Verification. In addition to the requirements of above Section 6.b, Subscriber Organization must obtain the required LMI Subscriber affidavit to verify that:
- (1) All LMI Subscribers, at the time the LMI Subscriber applies for CBRE participation, have met the definition of a Low-Income and/or Moderate-Income Subscriber under Part

III of the LMI Specific provisions of the CBRE Phase 2
Tariff; and

- (2) Each LMI Subscriber applying to participate in the CBRE Program has resided at their current residence for a minimum of six (6) months prior to acceptance and/or enrollment.

7. Disclosure of Production Information. Subscriber Organization acknowledges and agrees that, in order for the Company to carry out its responsibilities in applying Bill Credits to each Subscriber's retail electric bills, the Company may be required and shall be permitted to provide access or otherwise disclose and release to any Subscriber any and all production data related to the Facility in its possession and information regarding the total Bill Credits applied by the Company with respect to the Facility's CBRE Program and any information pertaining to a Subscriber's Subscription. Any additional detailed information requested by a Subscriber shall be provided only upon Subscriber Organization's consent in writing or email to the Company, or unless the Commission or the CBRE IO requests that the Company provide such information to the Subscriber, or as otherwise required by law.
8. Disclosure of Facility Information. Subscriber Organization acknowledges and agrees that the Company may publicly disclose the Facility's location, nameplate capacity and production data. Additionally, the Company will periodically provide a bill message to Subscribers clarifying that questions or concerns related to their Subscription should be directed to Subscriber Organization, including a statement that Subscriber Organization is solely responsible for resolving any disputes with the Company or the Subscriber about the accuracy of the Subscriber Organization's Facility CBRE Program data and that the Company is solely responsible for resolving any disputes with the Subscriber about the applicable rate used to determine the amount of the Bill Credit.
9. Additional Representations of Subscriber Organization. Subscriber Organization represents, warrants and covenants that:
- (a) Subscriber Organization shall disclose to each Account Holder before enrolling such Account Holder as a Subscriber:

- (1) Subscriber Organization's experience in developing and operating renewable energy projects similar to the Facility.
 - (2) The circumstances under which the Lump Sum Payment can be reduced through the OEPR process and the impact of such reduction on Bill Credits.
 - (3) The circumstances under which the Bill Credits can be reduced if Performance Metrics LDs are unpaid by Subscriber Organization.
 - (4) **[Drafting Note: If PPA has an Energy Payment, include:** The fact that, because the Facility is dispatchable, the Actual Output of the Facility, and thus the amount of the Energy Payment, is within the sole discretion of the Company.]
- (b) Subscriber Organization shall not knowingly allow the transfer of any Subscriber Allocations at a price other than that set forth in the repurchase/resale price schedule attached to the Subscriber Agreement.
- (c) Facility's CBRE Program:
- (1) As of the Execution Date, complies with all applicable Federal Securities Laws, and shall continue to be in compliance for the duration of Facility's CBRE Program.
 - (2) As of the Execution Date, complies with all applicable State Securities Laws, and shall continue to be in compliance for the duration of Facility's CBRE Program.
 - (3) As of the Execution Date, complies with all applicable Laws concerning the dissemination of personally identifiable information, and shall continue to be in compliance for the longer of (i) the duration of Facility's CBRE Program and (ii) for as long as Subscriber Organization continues to hold or otherwise have access to any personally identifiable information of Account Holders or former customers of Company.
 - (4) As of the Execution Date, complies with all applicable Laws concerning consumer protection, and

shall continue to be in compliance for the duration of Facility's CBRE Program.

- (5) Shall achieve the various Subscriber thresholds set forth in Section 5(a)(ii)(aa) through (ee) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS).
- (6) As of the Execution Date, Subscriber Organization is an approved "Subscriber Organization" under the CBRE Tariff and committed to operating, maintaining and administering its CBRE Project in accordance with this Agreement, the CBRE Tariff and the CBRE Framework for the Term.
- (7) The Company makes no warranty or representation concerning the taxable consequences, if any, to Subscriber Organization or its Subscribers with respect to its Bill Credits to the Subscribers for participation in the Facility's CBRE Program. Additionally, the Company makes no warranty or representation concerning the implication of any federal or state securities laws on how Subscriptions to the Subscriber Organization's Facility's CBRE Program are handled.

10. Subscriber Organization Fees. Subscriber Organization shall pay to Company the following fees:

- \$250 Application Fee
- All applicable late fees for failure to meet Commercial Operations Date
- \$5/kW AC Program Administration Fee (annually), from the Commercial Operations Date
- \$25.00 (monthly) Revenue Meter Administration Fee
- Such other fees as the PUC may establish for the CBRE Program

If Company has not received prior payment of any of the above fees, Company may set off the unpaid amounts against Company payments to Subscriber Organization for Unsubscribed RDG, draw from the Security Funds , or, in its sole discretion, Company shall invoice Subscriber Organization for payment to Company of the foregoing fees. Subscriber Organization shall make payment

to Company within 15 Days of Subscriber Organization's receipt of such invoice.

11. Marketing and Sales of the Subscriber Allocations. Subscriber Organization represents, warrants and covenants that Subscriber Organization's marketing of the Subscriber Allocations, including but not limited to Subscriber Organization's marketing and sales materials, shall comply with all applicable Federal Securities Laws and State Securities Laws and shall not complete sales or subscriptions of Subscriber Allocations until after the Effective Date.
12. CBRE Online Portal and CBRE Program Data. Subscriber Organization shall utilize the CBRE Online Portal and provide Company with CBRE Program data as required under the CBRE Tariff and/or the CBRE Framework.
13. Additional Responsibilities. Subscriber Organization shall perform the responsibilities of "Subscriber Organizations" under the CBRE Framework and the CBRE Tariff, including but not limited to complying with the Subscriber Agreement requirements, complying with the consumer protection measures, unlocking the market for LMI Subscribers and data collection requirements. Subscriber Organization shall cooperate with the CBRE IO as and when requested by the CBRE IO to facilitate the performance of the CBRE IO's responsibilities under the CBRE Framework.
14. Full Cooperation with the PUC. The Parties agree to fully cooperate with any request for information from the PUC or the CBRE IO pertaining in any way to the Facility and will provide such information upon request in a timely manner. To the extent to which any request calls for producing a specific Subscriber's confidential account information, Subscriber energy usage data or Bill Credits, such information shall be provided and marked as Confidential Information.
15. Fair Disclosure; Disclosure Checklist. Prior to the time when any person or entity becomes a Subscriber, Subscriber Organization will fairly disclose the future costs and benefits of the Subscription and all other matters specified in the Disclosure Checklist and provide to the potential Subscriber a copy of the Agreement. Subscriber Organization shall comply with all other requirements of the PUC and applicable Laws with respect to communications with Subscribers.
16. LMI Subscribers.

- a. If Subscriber Organization's Facility has been awarded a project from one of Company's CBRE LMI RFP's, then Subscriber Organization has proposed, and hereby agrees, that all Subscribers enrolled for Subscriptions in the Facility CBRE Program for this Facility shall be LMI Subscribers.
- b. If Subscriber Organization, in its bid in response to any other Company CBRE RFP, has pledged to recruit a certain percentage of LMI Subscribers for its Facility CBRE Program, then Subscriber Organization hereby agrees to recruit LMI Subscribers to meet this pledged commitment for LMI Subscribers into Subscriber Organization's Facility CBRE Program.

If Subscriber Organization has an LMI Subscriber commitment under either Section 8(a) or Section 8(b) of this Attachment Z (Facility's CBRE Program), then Subscriber Organization shall comply with the requirements of Part III of the CBRE Tariff to (1) qualify LMI Subscribers, (2) provide verification of Subscriber Organization's confirmation efforts to verify such LMI Subscribers' qualifications upon Company's request, and (3) comply with the minimum applicable requirements for LMI Subscribers and report monthly Subscriber Organization's LMI Subscriber percentage status for Company's review. Subscriber Organization understands and agrees that failure to maintain the required percentages of LMI Subscribers in Subscriber Organization's Facility CBRE Program may subject Subscriber Organization to payment reductions and/or liquidated damages as specified in the CBRE Tariff.

EXHIBIT 21

Redline of Rule 29 CBRE Phase 2

Rule No. 29
COMMUNITY-BASED RENEWABLE ENERGY PROGRAM
PHASE 2

PART I: For Projects Sized Less Than 250kW AC

A. AVAILABILITY

Phase 2 (“Phase 2”) of the Company’s Community-Based Renewable Energy (“CBRE”) program (“Program”) for CBRE Small Projects (as defined below) is available to residential and commercial customers of the Company¹ (“Customers”) as follows:

1. Capacity: Thirty (30) megawatts (MW) of available capacity (“CBRE Small Projects Phase 2 Capacity”) shall be apportioned across the islands of Hawai‘i, Maui and O‘ahu as follows:
 - a. Tranche 1:
 - Hawai‘i: 2.5 MW
 - Maui: 2.5 MW + 0.975 MW transferred from CBRE Phase 1
 - O‘ahu: 15 MW
 - b. Tranche 2:
 - Hawai‘i: 2.5 MW
 - Maui: 2.5 MW
 - O‘ahu: 5 MW
2. Eligibility shall be limited to photovoltaic or wind generation project sizes greater than 4 kW AC and less than 250 kW AC with battery storage strongly recommended. If battery storage is included in the project, the storage capacity and duration of the output shall be at the discretion of the Subscriber Organization but subject always to the limitations, terms and obligations of applicable tariff rules. A CBRE project proceeding under this Tariff Rule No. 29 for Phase 2 shall be referred to as a “CBRE Small Project.”
3. Interconnection of CBRE Small Projects including projects with energy storage shall be subject to the requirements of Rule No. 14H.

¹ The “Company” refers to Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., or Hawaii Electric Light Company, Inc., in their role as “Administrator” of the CBRE Program for the island in which such Company provides electric service to its Customers.

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4. CBRE Small Projects may participate in future grid services programs. Such participation shall be subject to the terms, conditions and eligibility requirements of future rulemaking by the State of Hawai'i Public Utilities Commission ("Commission").
5. CBRE Small Projects may participate in future non-wires alternatives opportunities in locations that help defer or obviate investments in transmission and distribution infrastructure, and/or that are located in facilities that provide community resilience benefits. Such participation shall be subject to the terms, conditions and eligibility requirements of future rulemaking by the Commission.

B. CUSTOMER PARTICIPATION AND ELIGIBILITY

A Customer who subscribes to a CBRE Phase 2 facility ("Facility"), defined as and herein referred to as a "Subscriber," shall meet the following participation and eligibility requirements:

1. Eligible Customers shall be allowed to acquire, lease, or subscribe to, an interest in the energy output (contract capacity) of any eligible CBRE Small Project on the same island as their service address that is allocated CBRE Phase 2 Program capacity to offset their energy consumption.
2. Eligibility:

Customer has a current electricity account with the Company and has (a) received service at the same location for which they are requesting participation for at least 6 months at the time of enrollment and (b) commencing two (2) years after the effective date of this Rule No. 29, has not received any disconnection notifications at the same location within the last 12 months;

Customer is not currently enrolled or participating in Schedule Q, Net Energy Metering, Feed-in Tariff, Standard Interconnection Agreement, Customer Grid Supply, Customer Grid Supply Plus, Smart Export, or Customer Self-Supply tariff program, or similar customer program at the same service location where CBRE participation is requested;

Customer is not currently a Subscriber for another CBRE Phase 1 or Phase 2 Facility; and

For the purpose of satisfying a CBRE Facility's Residential Customer Requirement per Part I, Section C.11 below, a Subscriber shall be considered a residential customer if the

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Subscriber is served under any of the following Company rate schedules: Schedule R, TOU-R, TOU-RI, TOU EV, or any other residential rate option.

3. Customers shall be required to enter into an appropriate CBRE Subscriber Agreement (“Subscriber Agreement”) with a CBRE subscriber organization (“Subscriber Organization”). The Subscriber Agreement shall contain standard information and provisions that ensure transparency and proper consumer protection. The Subscriber Agreement shall include or be supplemented by, at minimum, the following elements:
 - a. CBRE Phase 2 Facility and Subscriber Organization information
 - i. CBRE Phase 2 Facility name and address;
 - ii. CBRE Subscriber Organization and/or owner name, address, website URL, phone number, and email address;
 - iii. Subscriber name, address, phone number, and email address; and
 - iv. Subscriber’s utility name and account number;
 - b. Financial Information:
 - i. Credit rate (“Credit Rate”) and calculation;
 - ii. Bill credit mechanism and timing;
 - iii. Tax and securities implications;
 - iv. Any fees, charges or payments to be made by the participant to enroll or over the life of the contract;
 - v. Use of escrow account, or other alternative proposed by Subscriber Organization and approved by the Independent Observer to hold or segregate any pre-development enrollment fees or deposits from Subscribers (with appropriate mechanisms to refund such fees/deposits to Subscribers should the Subscriber Organization not complete its Facility), which shall be released to Subscriber Organization upon commercial operation of the Facility; and
 - vi. Transfer, cancellation, termination and/or exit terms and any applicable fees;
 - c. The Subscriber Agency Agreement and Consent Form attached hereto as Appendix I, which each Subscriber Organization shall complete with each Subscriber acquiring, leasing, or subscribing to, an interest in such Subscriber Organization’s CBRE Facility, permitting the sharing of:

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- i. Subscriber's account and energy usage data as required to verify eligibility, determine the appropriate subscription size, and shall not include interval data from advanced metering;
 - ii. Subscription information;
 - iii. Aggregated CBRE Project data and anonymized Subscriber data in response to information requests from the Commission or the State of Hawai'i Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("CA"); and
 - iv. Subscriber data in response to information requests from the Commission or the CA.
- d. The standard form disclosure checklist ("Disclosure Checklist") is attached hereto as Appendix II, which each Subscriber Organization shall complete with each Subscriber acquiring an interest in such Subscriber Organization's CBRE Facility.
4. Interested Customers shall (a) obtain confirmation of eligibility and maximum buy-in level and (b) apply to enroll into the CBRE Program through the Company's online portal for the CBRE Program (the "CBRE Portal"). Through the CBRE Portal, Company shall facilitate completion of these tasks, but final approval and enrollment of the Customer into a Subscriber Organization's CBRE Phase 2 Facility shall rest with such Subscriber Organization.
5. Subscriber's effective kilowatt ("kW") alternating current ("AC") interest in the CBRE Phase 2 Facility shall be calculated based on the Subscriber's portion of the renewable energy output (contract capacity) of the CBRE Phase 2 Facility multiplied by the total contract capacity of the CBRE Phase 2 Facility in kW AC.
6. Subscribers shall be required to acquire a minimum of 1 kW AC. A lower minimum requirement has been set for Low- and Moderate-Income ("LMI") Subscribers as specified in Part III, Section C.67 herein.
7. Subscribers shall be permitted to acquire a CBRE Program interest equivalent to an expected production of no more than 100% of their historic energy consumption for the previous 12 months.
 - a. Company shall use the 12 months immediately prior to application submission to determine the Subscriber's previous 12 months of energy consumption.

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- b. If Subscriber does not have a 12 month billing history prior to application submission, and there is not 12 months of billing history, including billing history of another customer associated with the Subscriber's premises, the Company shall use the available monthly average consumption multiplied over 12 months in order to generate a proxy average annual consumption.
8. Subscriber shall maintain, for the duration of their participation in the CBRE Program, an electricity account and service address on the same island as the CBRE Phase 2 Facility in which they are participating.
9. Subscriber may change the premises to which the CBRE Phase 2 Facility generation shall be attributed, as long it is on the same island and meets the eligibility requirements set forth herein. No transfer fee shall be applied.
10. For CBRE Phase 2 Projects using a Pay-As-You-Go model for Subscriber interests:
 - a. ~~A Subscriber may not transfer their interest to another Customer.~~ If a Subscriber wishes to terminate their interest in a CBRE Phase 2 Facility, the Subscriber shall either cancel or terminate their subscription with the Subscriber Organization in accordance with the provisions of the Subscriber Agreement.
 - b. If a Subscriber requests to transfer their interest to another Customer, the Subscriber Organization shall confirm that Customer's eligibility as set forth herein. Any transfer of a Subscriber's Pay-As-You-Go interest in a CBRE Phase 2 Facility must be for 100% of such Subscriber's interest. Any payment for the transfer shall be in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.
 - i. There shall be no transfer charge/fee if the meter associated with the account remains unchanged.
 - ii. A transfer shall be for no less than all (100%) of the selling Subscriber's interest.
 - iii. Any transfer will not be effective until the Subscriber Organization notifies the Administrator of the transfer. For any notice of transfer on or prior to the twentieth (20th) day of any month, such transfer will be effective as of the first (1st) day of that month. For any notice of transfer after the twentieth (20th) day of a month, the transfer will be effective as of the first (1st) day of the next month.

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A “Pay-As-You-Go” model refers to any lease or subscription interest in a CBRE project or its energy output in which a Subscriber does not make any up-front payment (except for fixed administrative or other costs not based on the level of Subscriber’s interest) to the Subscriber Organization for Subscriber’s interest and instead makes periodic, e.g., monthly, payments to the Subscriber Organization for Subscriber’s interest, with such payment to be commensurate with the extent of the Subscriber’s interest in the CBRE project.

11. For CBRE Phase 2 Projects using a Pay-Up-Front model for Subscriber interests:
- a. If a Subscriber requests to transfer their interest to another Customer, the Subscriber Organization shall confirm that Customer’s eligibility as set forth herein. Any payment for the transfer shall be in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.
 - i. There shall be no transfer charge/fee if the meter associated with the account remains unchanged.
 - ii. A transfer shall be for no less than all (100%) of the selling Subscriber’s interest.
 - iii. Any transfer will not be effective until the Subscriber Organization notifies the Administrator of the transfer. For any notice of transfer on or prior to the twentieth (20th) day of any month, such transfer will be effective as of the first (1st) day of that month. For any notice of transfer after the twentieth (20th) day of a month, the transfer will be effective as of the first (1st) day of the next month.
 - b. If Subscriber requests to sell all or any portion of their Subscription back to the Subscriber Organization, Subscriber Organization shall buy back the interest in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.
 - i. Subscriber Organization shall complete the buy-back of the Subscriber’s interest within 30 days of the Subscriber’s request.
 - ii. Upon completion of a subscription buy-back, the Subscriber Organization shall notify the Company by the last day of the month the transaction was completed. The Company shall confirm such buy-back in the Subscriber database and cease CBRE bill credits effective as communicated by the Subscriber Organization on the first day of the month of notification if such transaction was completed on or

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prior to the twentieth (20th) day of the month. Transactions completed after the twentieth (20th) day of the month will be effective as of the first (1st) day of the next month.

A “Pay-Up-Front” model refers to any asset-type interest in a CBRE project or its energy output where the Subscriber is required to make an up-front payment to the Subscriber Organization for Subscriber’s interest and thereafter is not required to make further periodic payments to the Subscriber Organization for Subscriber’s interest in the CBRE project.

The descriptions for the Pay-As-You-Go and Pay-Up-Front models are limited to payment models for the interest in the CBRE project offered by the Subscriber Organization and do not include other payments that may be necessary from a Subscriber to the Subscriber Organization, such as operations and maintenance, insurance and other cost items that may be specified in the Subscriber Agreement between Subscriber and Subscriber Organization for a particular CBRE project.

12. Subscriber Organization shall determine the eligibility and permitted size of any transferee’s subscription interest by inquiry to the Company electronically through the CBRE Online Portal.

~~12.~~13. Nothing in the Subscriber Agreement shall be deemed to alter or modify any rate schedule, charge, or condition of service established from time to time by the Commission for electric service provided by the Company. All such rates and charges from the Customer’s applicable rate schedule shall apply and remain subject to change in accordance with Commission rules.

C. CREDIT RATE

1. Subscribers to a CBRE Program interest shall continue to receive electric service from the Company and shall be billed in accordance with the Company’s Rule No. 8, the applicable rate schedule and Company rules filed with the Commission. All rates, terms, and conditions from the applicable rate schedules and Company rules shall continue to apply, except for the adjustments described below.
2. Subscribers shall receive CBRE bill credits applied to their electric bill in accordance with the applicable credit rates (“Credit Rates”) for CBRE Phase 2 subscriptions purchased or leased by Subscribers for each rate schedule as follows:

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Energy Credit Rates for Each Applicable Rate Schedule:

Schedule R, TOU-RI, TOU-R, TOU-EV	15.00 cents per kWh daily
Schedule G, TOU-G	15.00 cents per kWh daily
Schedule J, TOU-J, U, SS, EV-F	15.00 cents per kWh daily
Schedule P	15.00 cents per kWh daily
Schedule DS	15.00 cents per kWh daily
Schedule F	15.00 cents per kWh daily

Credit Rates shall be fixed at the above levels for the term of the Subscriber Agreement unless a Competitive Credit Rate Procurement (“CCRP”) is triggered.

The CCRP mechanism will be used when CBRE Phase 2 applications, over a four-month application window, exceed the Tranche 1 capacity or Tranche 2 capacity for each particular island specified in Part I Section A.1 above, in which case, the Tranche 1 credit rate will be dictated by the procurement and the credit rates for Phase 2 Tranche 1 will be capped at Phase 1 credit rates or at the lowest credit rate determined through the CCRP from Tranche 1. Thereafter, the applicable energy credit rates shall be subject to modification by the Commission. The CCRP process is further described in Part I, Section E.5 below.

3. The monthly CBRE bill credit for each Subscriber shall begin to accrue on the first day of the month in which Subscriber completes the purchase or lease of Subscriber’s subscription into a CBRE Phase 2 Facility, provided that Subscriber Organization notifies the Administrator of Subscriber’s subscription no later than the last calendar day of the month in which Subscriber subscribed into the CBRE Phase 2 Facility. Subscriber’s monthly CBRE bill credit shall begin accruing on the first (1st) day of the next month if the ~~notice by the Subscriber Organization~~ purchase or transfer of all or any portion of a Subscriber’s Allocation is made after the twentieth (20th) day of the month. The amount of the Subscriber’s monthly CBRE bill credit shall be equal to the Subscriber’s interest in the energy output of the Facility, multiplied by the Facility’s actual energy output, multiplied by the applicable Credit Rate per kilowatt-hour (“kWh”).
4. A Subscriber’s monthly CBRE bill credit shall be applied to offset eligible charges on the Subscriber’s electric bill no earlier than the 15th day of the following month but no later than ~~three~~two billing cycles. Subscribers will see eligible credits on a future bill depending on the day their meter is read. Eligible charges on the Subscriber’s electric bill shall be all light and power charges.

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5. The Subscriber's electric bill cannot be reduced below the sum of the customer charge, the Green Infrastructure Fee, and any other per-customer charge for the customer's applicable rate schedule or the minimum bill applicable in the underlying tariff, whichever is greater.
6. If the Subscriber's monthly CBRE bill credit exceeds the eligible charges, the value of excess credits shall be carried over to the next billing period(s) within the current 12-month period, as a CBRE bill credit and applied to the Subscriber's electric bill(s) subject to Part I Sections C.4 and C.5 above.
7. Reconciliation will be made at the end of every 12-month period by applying the Subscriber's remaining CBRE bill credit to the Subscriber's remaining eligible charges within the 12-month period. Any CBRE bill credit that remains unused at the end of each 12-month period shall be extinguished.
8. If the Subscriber terminates its CBRE service prior to the end of any 12-month period, the Company shall reconcile the remaining CBRE bill credit to remaining eligible charges at the end of the monthly billing period when service was terminated, similar to the reconciliation that would have been performed at the end of the normal 12-month period. Any CBRE bill credit that remains unused shall be extinguished.
9. Compensation for Unsubscribed Energy:
 - a. "Unsubscribed Energy" is CBRE Phase 2 Facility output that is not associated with any Subscriber subscription and therefore not allocated to a Subscriber. The designated Subscriber Organization under the Standard Form Contract ("SFC") with the Company shall be compensated for Unsubscribed Energy at the same Credit Rate for Subscribers as described in the SFC except as specified in Part I, Section C.9.b below.
 - b. The following shall be effective 6 months from the date of initial commercial operations. Compensation for Unsubscribed Energy shall be as follows:

For any Facility with more than 15% Unsubscribed Energy, the Credit Rate for compensation for the Unsubscribed Energy for that month shall be discounted by the percentage of energy that is unsubscribed.

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Unsubscribed capacity shall be calculated at the end of the month and applied retroactively to the CBRE Facility when calculating that month's prior Unsubscribed Energy payment.

Table 1 below illustrates the effect of this Unsubscribed Energy provision as applied to a 100kW CBRE Facility eligible for a 15.00 cents/kWh Credit Rate, assuming varying levels of unsubscribed capacity.

Table 1: Illustrative Treatment of Unsubscribed Energy for CBRE Small Projects

Example CBRE Facility Characteristics	
Credit Rate (cents/kWh)	15.00
Facility Capacity (kW)	100

Billing Month	Subscribed Capacity (kW)	Unsubscribed Capacity	Unsubscribed Energy Credit Rate (cents/kWh)
1	25	75%	15.00
2	25	75%	15.00
3	45	55%	15.00
4	65	35%	15.00
5	80	20%	15.00
6	90	10%	15.00
7*	90	10%	15.00
8	90	10%	15.00
9	80	20%	12.00
10	65	35%	9.75
11	75	25%	11.25
12	85	15%	15.00

*Unsubscribed Energy provision becomes applicable

- A Subscriber Organization shall be required to have a minimum of 4 individual Subscribers per CBRE Facility at all times. For a period of 6 months following initial commercial operations, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum number of Subscribers. Effective after 6 months of commercial operations, the following shall be placed into effect for the remainder of the term of the CBRE Facility:

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- a. For any CBRE Facility which does not have the minimum 4 individual Subscribers for any month during the term of its SFC, the unmet percentage of Subscribers to the minimum number of 4 required Subscribers shall reduce the Subscriber Organization's Credit Rate used for compensation for Unsubscribed Energy delivered by such percentage. For example, if a CBRE Small Project has only 3 Subscribers for any given month, the unmet number of Subscribers is 1 and the percentage to the 4 minimum Subscribers required will be 25% and the Subscriber Organization's Credit Rate will be reduced by 25%.
- b. If the Subscriber Organization's Unsubscribed Energy for that CBRE Facility is also greater than 15% in such month, the Credit Rate for compensation for Unsubscribed Energy shall be reduced by the sum of the percentage determined from sub-part a. above plus the percentage of Unsubscribed Energy for that month.
- c. If the Subscriber Organization does not have a minimum of 4 individual Subscribers but does not have any Unsubscribed Energy, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below. Continued failure to meet the 4 individual Subscriber threshold under these circumstances by any Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule No. 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Maintain Minimum Number of Subscribers: The percentage determined in sub-part a. shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part a. percentage * 15.00 cents/kWh or applicable CCRP rate) to equal a dollar amount liquidated damages for the Subscriber Organization's failure to maintain the requisite number of Subscribers for any given month.

11. Residential Customer Requirement: In Phase 2, 40% of the CBRE Facility's contract capacity shall be reserved for individual subscriptions for residential Customers. For a period of 6 months following initial commercial operations, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum percentage of residential Subscribers. Effective after 6 months of commercial operations, the following shall be placed into effect for the remainder of the term of the CBRE Facility:
 - a. For any CBRE Facility which does not have the minimum 40% residential Subscribers for any month during the term of its SFC ~~or PPA~~, the difference in percentage between the project's actual residential Subscriber percentage and the

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40% minimum shall reduce the Subscriber Organization's Credit Rate for compensation for Unsubscribed Energy delivered by a factor equal to one-fourth (0.25) of such percentage difference. For example, if a project's residential Subscriber percentage is 30%, the difference, 10%, from the 40% minimum requirement, shall be multiplied by 0.25 ($10\% * 0.25 = 2.5\%$). The 2.5% result shall reduce the Credit Rate for Unsubscribed Energy for that month by such percentage.

- b. If the Subscriber Organization's Unsubscribed Energy for that CBRE Facility is also greater than 15% in such month, the compensation for Unsubscribed Energy delivered in that month shall be reduced by the sum of the percentage payment reduction for the unmet residential Subscriber percentage plus the percentage of Unsubscribed Energy for that month.
- c. If the Subscriber Organization does not have the required minimum percentage of Residential Subscribers but does not have any Unsubscribed Energy, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below. Continued failure to meet the Residential Subscriber minimum requirement under these circumstances by any Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule No. 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Maintain Minimum Percentage of Residential Subscribers:
The percentage determined in sub-part a. shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part a. percentage * 15.00 cents/kWh or applicable CCRP rate) to equal a dollar amount liquidated damages for the Subscriber Organization's failure to maintain the requisite percentage of residential Subscribers for any given month.

- 12. Payment reductions from Subscriber Organization's compensation for Unsubscribed Energy under Part I, Sections C.10 and C.11 above shall be cumulative in effect. In any given month after the first 6 months of commercial operations, if the Subscriber Organization fails to meet multiple minimum requirements or exceeds maximum thresholds, the percentage reductions in Subscriber's compensation specified above will be added and the aggregate sum of such percentages shall be used to reduce the Subscriber's compensation for Unsubscribed Energy in any given month.

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D. SUBSCRIBER ORGANIZATION ELIGIBILITY

1. Eligibility to be awarded a CBRE Small Project shall be open to all ownership types, including independent power producers, the Companies, and any of their affiliates.
2. For utility self-build projects, the Commission will not require the utility to submit an additional application pursuant to General Order No. 7, but the Commission will hold the bidding utility to the terms of its application, similar to independent power producers.
3. For affiliate and affiliate-related projects, the Commission will not require an additional review pursuant to the Affiliate Transaction Requirements adopted in Docket No. 2018-0065, but the Commission will hold the bidding utility to the terms of their application.

E. SUBSCRIBER ORGANIZATION PARTICIPATION FOR CBRE SMALL PROJECTS

1. A CBRE Small Project may be developed by an approved Subscriber Organization. An applicant seeking to become an approved Subscriber Organization shall be referred to as an “Applicant” until approved.

A CBRE Small Project must be a new facility not otherwise subject to a power purchase agreement with the Company. The CBRE Small Project may participate in such other future grid services and/or non-wires alternative projects as described in Part I, Section A above.

2. Demonstrating transparency and a willingness to engage in early communication with communities is an important part of a Project’s viability and success. A community outreach and communications plan (“Community Outreach Plan”) is an essential roadmap that guides a Subscriber Organization as they work with various communities and stakeholders to raise awareness and collect input for a project. A Subscriber Organization for a project between 100 kW and 250 kW should have a Community Outreach Plan to provide nearby community members information. The Community Outreach Plan should identify efforts the Subscriber Organization will make to provide the community within a one (1) mile radius of the project boundaries with information regarding the project, including, but not limited to the following information: Project description, Project benefits, government approvals, and development process (including Project schedule). Community outreach requirements for projects that are 250 kW and larger will be detailed in the request for proposals and associated contract documents for such projects.

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3. Applications during Tranche 1 of CBRE Phase 2 shall be accepted beginning on the effective date of this Rule No. 29 and continue for 4 months from such date, upon which time the application period shall close.
4. Prior to developing a Facility, an Applicant shall submit a completed application to the Company, which shall provide the following in order to be considered a complete application:
 - a. A one-time, non-refundable application processing fee of \$250 per application;
 - b. Applicant company name, contact information, and address, and indicate their role (e.g., Subscriber Organization, owner, or operator);
 - c. Applicant contact person name, contact information, and address;
 - d. Entity name, contact information, address, and identity role of the Subscriber Organization if approved; if entities other than the Subscriber Organization will act as either owner or operator of the CBRE Facility, name, role identification, contact information, and address shall be provided for those other entities;
 - e. Proposed CBRE Phase 2 Facility name, address, and estimated completion date;
 - f. CBRE Phase 2 Facility system nameplate direct current (DC) capacity, AC output (inverter nameplate), mount location, tracker type, azimuth, and tilt;
 - g. CBRE Phase 2 Facility system description of storage operations, total units, total size per unit (kW), max capacity per unit (kWh), charge/discharge per unit (kW);
 - h. A Certificate of Good Standing for the Applicant obtained from the State of Hawai'i Department of Commerce and Consumer Affairs dated no earlier than 30 days prior to submittal by the Applicant. If the Applicant is a foreign entity, confirmation from the State of Hawai'i Department of Commerce and Consumer Affairs that the Applicant is currently authorized to do business in the State of Hawai'i as of the date of submittal;
 - i. Maximum Discounted Credit Bid that the Applicant is willing to accept for its CBRE project for CCRP auction purposes. For example, if an Applicant is willing to accept a maximum discounted Credit Rate of 12 cents/kWh (from the established Credit

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Rate of 15 cents/kWh), the Applicant shall specify the lowest Discounted Credit Rate for its application at 12 cents/kWh;

- j. Demonstrate project viability by providing site plan with proposed interconnection point, construction plan and commissioning timeline, details of major equipment, and subscriber marketing and outreach timeline and plan, specifically including LMI ratepayers;
- k. Establish a minimum production guarantee (e.g., 85% of projected generation output);
- l. Demonstrate/establish financial creditworthiness through posting of a surety bond, a financial guarantee, a letter of credit, or other sufficient evidence of financial ability to develop the project;
- m. Provide a refundable deposit of \$75/kW AC, through check, wire transfer or credit card, for the installed capacity made available for CBRE. The Independent Observer (“IO”) has the authority to lower or waive this deposit requirement for these CBRE Small Projects and/or non-profit subscription organizations. Deposits will be held in an escrow account and refunded within 30 calendar days after the Date of Commercial Operation or upon auction results in which a CBRE Subscriber Organization is not selected. If the CBRE Subscriber Organization informs the Administrator that it will no longer continue to pursue completion of the CBRE Project, or if the Date of Commercial Operation does not occur within the specified timeline (including day-for-day extensions) detailed in the SFC, the Company shall not return to the CBRE Subscriber Organization the deposit paid;
- n. Applicant must also submit with its application all requirements necessary for Company to complete the Rule No. 14H completeness review. See Rule No. 14H at Sheets 34D-2 through 34D-3 for these requirements. While applicants shall receive a timestamp for completed applications that comply with this Part I, Section E.4 requirements, such application shall not be deemed complete until Applicant’s Rule No. 14H completeness review is deemed complete. Time frames to review and for Applicant to provide requested information shall be as specified in Rule No. 14H;
- o. Demonstrating Site Control for the Site required for the successful implementation of a specific Facility must include all Interconnection Facilities required for the Facility. The need for a firm commitment is necessary to ensure that applications are realistic and shovel-ready so that there is a high likelihood that the proposed project will be

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developed to completion. In addition, developmental requirements and restrictions such as zoning of the Site and the status of easements must be identified and will be considered in determining whether the application meets the Site Control requirement.

The project “Site” shall be the (1) real property or (2) area upon a structure upon which the CBRE project shall be situated, inclusive of the generating facilities, control facilities and project-owned interconnection facilities for project.

To meet this “Site Control” requirement, Applicant must complete one of the following:

- i. Provide documentation confirming (1) that the Applicant has an existing legally enforceable right to use and control the Site, either in fee simple or under leasehold for a term at least equal to the term of the SFC as specified in the application and (2) the applicable zoning for the Site and that such zoning does not prohibit the development of the Site consistent with the application; or
- ii. Provide documentation confirming, at a minimum, (1) that the Applicant has an executed binding letter of intent, memorandum of understanding, option agreement, or similar document, with the land owner (a “binding commitment”) which sets forth the general terms of a transaction that would grant the Applicant the required Site Control, and (2) the applicable zoning for the Site and that such zoning does not prohibit the development of the Site consistent with the application. The binding commitment does not need to be exclusive to the Applicant at the time the application is submitted and may be contingent upon approval of the application and awarding of a project in Phase 2. If multiple applications are provided a binding commitment for the same Site, the documents granting the binding commitments must not prevent the Company from moving forward with the application that otherwise would have been selected.
- iii. Government/Public Lands Only: The above two points may not be feasible where government or publicly owned lands are part of the Site or are required for the successful implementation of the application. In such a case, at a minimum the Applicant must provide a credible and viable plan, including evidence of any steps taken to date, to secure all necessary Site Control for the application, including but not limited to evidence of sufficient progress toward

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approval by the government agency or other body vested with the authority to grant such approval (as demonstrated by records of the agency). The Applicant will be required, however, to demonstrate Site Control as required in the applicable SFC.

- p. If an Applicant submits an application that does not contain all the required items listed in this Part I, Section E.4 above, the application shall be deemed incomplete and the timestamp for the completed application shall be when the last item(s) is/are received from the Applicant that renders the application complete under Part I, Section E.4 , with the exception of (1) Part I, Section E.4.a, regarding application processing fee payment and (2) Part I, Section E.4.m regarding the refundable deposit. If the (1) application fee and/or (2) refundable deposit are the only missing items and are received within 15 calendar days from the date of submission, the timestamp will be the date the application was submitted electronically. Partially completed applications will be deemed abandoned if all required items are not submitted so as to render the application complete after 60 calendar days.

Applications deemed complete (providing all information required under Part I, Section E.4 above and completing Rule No. 14H completeness review) shall receive a timestamp which shall serve as the date of the Applicant's application for award and queue purposes.

5. So long as CBRE Small Project applications do not exceed the CBRE Program capacity available under that classification in Phase 2, CBRE Program capacity shall be awarded to qualified applicants on a first-come, first-served basis and the Credit Rate for all applications awarded capacity shall be as specified in Part I, Section C above.

However, if the CBRE Program capacity requested by Facility applications, at the close of the four-month application window, exceeds the available CBRE Program capacity for CBRE Facilities starting in Phase 2, a CCRP mechanism shall be triggered as a means to award CBRE Program capacity for CBRE Small Projects and to set the applicable Credit Rate for such projects.

Table 2: Awarding CBRE Program Capacity

Awarding CBRE Program Capacity
<ul style="list-style-type: none">• If applications do not exceed the CBRE Program capacity available under the active Phase, then capacity is awarded on a first-come, first-served basis.• If applications do exceed the available CBRE Program capacity, then a CCRP mechanism will be employed to award capacity.

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- As part of their application, all Subscriber Organizations must submit the lowest Discounted Credit Rate Bid that they would accept (in increments of 0.1 cents per kW, for example 14.7 cents or 14.6, but not in between).
- CCRP ranks bidders by the lowest Discounted Credit Rate Bids and assigns capacity from lowest Discounted Credit Rate to highest until all available capacity is exhausted.
- If there is a tie, the project with the earliest timestamp showing either when the application is received (if the application is complete) or when it is deemed complete (if the original submission was incomplete). See Part I, Section E.3.p above. All awarded program capacity will be compensated at the highest accepted Discounted Credit Rate Bid for administrative ease.

Table 3: Example: Competitive Credit Rate Procurement (5 MW of available capacity)

	Discounted Credit Rate Bid (cents/kWh)	Capacity Requested (MW)	Rank	Bid Accepted	Awarded Credit Rate (cents/kWh)	Total Capacity Awarded
Project 1	13.5	3	3	Yes	13.5	5
Project 2	13.3	0.5	2	Yes		
Project 3	12.8	1.5	1	Yes		
Project 4	14	3	4	No		
Project 5	14.2	2	5	No		

6. In the event that the last application to be tentatively accepted to fill the remaining CBRE capacity does not exactly fill the amount of available CBRE Program capacity, the Applicant will be provided the opportunity to secure the remaining capacity at the highest accepted credit rate bid but only for the capacity remaining. For example, in Table 3 suppose 6 MW of capacity had been available rather than 5 MW. After Projects 1, 2 and 3 had been awarded capacity based on their winning credit rate bids, 1 MW of capacity would remain available, but the next lowest bidder (Project 4) had proposed a 3 MW project. Under the CBRE Program rules, that bidder would be offered the 1 MW of remainder capacity at its discounted credit rate bid, and, if they refused, then the next lowest bidder would be offered the same and so forth until the capacity was successfully awarded. If the remainder capacity remains unawarded at the end of this described process, the capacity will be allocated to the next active capacity release cycle.

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7. Completed Phase 2 applications for CBRE Small Projects that have been allocated Tranche 1 (or Tranche 2, after it is opened) program capacity (“Selected Projects”) shall be accepted into Phase 2 of the CBRE Program. Upon notification by the Administrator, successful Applicants must accept the awarded capacity and the applicable Credit Rate within 10 business days of notification. Selected Projects accepting program capacity shall proceed to Initial Technical Review under Rule No. 14H.
8. Where program capacity was allocated on a first-come, first-serve basis, Selected Projects which drop out or are terminated will not be replaced. Excess capacity not allocated in Tranche 1 will be added to Tranche 2 when it is opened.

If, however, a CCRP mechanism is used to allocate program capacity and there is a queue of applications which were not selected, then a queue process, in effect for ~~46~~ months after Selected Projects are notified of their selection, will be in effect to replace allocated capacity should a Selected Project drop out or is terminated after selection. Upon such occurrence during the queue process, the allocation for such Selected Project shall be added back to the capacity allocation for the respective island and the first completed application for a CBRE Small Project in the queue for that island shall be offered the opportunity to become a Selected Project subject to such Applicant agreeing to (1) accept the remaining capacity allocation (up to its original application proposal) and (2) accept the current Credit Rate established from the CCRP mechanism. If the first Applicant in the queue refuses the allocation, the next Applicant will be offered the allocation under the same terms and the process will continue until the program capacity is filled or there are no remaining Applicants in the queue. If unallocated capacity remains unawarded at the end of this described process, the capacity will be allocated to Tranche 2 when it is opened or to the next active capacity release cycle.

If there is no active queue of available applications, or after the ~~four~~six-month queue process has run, as applicable, any subsequent failure of a CBRE Small Project in Phase 2 shall not be replaced.

9. Phase 2 Tranche 1 will terminate upon the commencement of Phase 2 Tranche 2. Phase 2 Tranche 2 will terminate upon direction by the Commission. If, at the conclusion of Phase 2, there remains excess capacity and no Applicants in the queue desiring to use such capacity, the remaining unused capacity shall be extinguished or added to the next available capacity release, as directed by the Commission.

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10. Additional fees and deposit required from Subscriber Organizations in addition to the application processing fee shall include:
- a. Any applicable interconnection fees, costs and expenses necessary to interconnect the CBRE Phase 2 Facility to the system grid; and
 - b. A \$5/kW AC Program Administration Fee assessed annually commencing on the first day of the month immediately succeeding the date of initial commercial operations for any CBRE Phase 2 Facility.

F. CO-LOCATION LIMITATIONS

If more than one Facility is located on a single parcel of land (i.e., Tax Map Key) and sharing a single point of interconnection is being considered for participation in the CBRE Program, they shall be considered as a single Facility for the purpose of determining whether the cumulative size of the facilities fall within the project size limitations set forth in Part I, Section A. The IO will monitor and review interconnection/program applications to guard against co-location.

G. COMMUNICATIONS AND CONTROLLABILITY

1. The Facility shall include a telemetry and control interface which allows the Company to remotely measure, monitor, evaluate and verify technical compliance, CBRE Facility performance, and power quality and, if necessary, control the CBRE Facility (“Communication and Controls”). The acceptable method(s) of implementing the Communication and Controls requirements will be specified by the Company and may be modified after technical review. Such Communication and Controls will be securely achieved through available cellular networks or comparable technology. Monitoring will be performed by system dispatchers or operators at the Company’s control center.
2. Current Communication and Controls through cellular or comparable technology shall ~~be required, require a telemetry and, could include but not be limited to control interface capable of~~ monitoring of the following data points. In addition, the cellular or comparable technology control will allow the utility to trip and/or curtail the interrupting device ~~pursuant to the terms of an interconnection agreement (“Interconnection Agreement”) between the Subscriber Organization and the Company, attached hereto as Appendix III.~~

Telemetry:

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- a) Facility Online/Offline Status
- b) Facility output (kW) that is being exported to the Company System
- c) Facility's confirmation of Customer's a Company Control being received and the value of that control as implemented (control echo from Facility controller)
- a)d) If applicable: Status of Facility's distribution/generation tie breaker CB-A (HECO# XXXX);-

Control:

- a) Export limit to the Company System, to be specified as a setpoint and/or discrete on/off control [i.e. may be an active power output control setpoint in a percentage of maximum capacity]
- b) If applicable: Customer's distribution/generation tie breaker CB-A (HECO# XXXX)

The CBRE Facility's Communication and Controls must be capable of supporting, at a future date, the monitoring of additional telemetry data as may be requested by the Company. The Company may request in writing to the Subscriber Organization that the Communications and Control provide some or all of the following data points, as applicable:

- a. Distribution line amps (3 phase), distribution voltage (3 phase L-N), frequency, NET MWkW, NET MVARkVAR, and NET power factor at point of interconnection. Power factor to be a calculated value;
- b. PV MWkW and MVARkVAR output;
- c. BESS MWkW and MVARkVAR output/charge;
- d. Received kWh accumulator, sent kWh accumulator, received kVARh accumulator, Sent kVARh accumulator;:
- ~~e. Status Indicating when Maximum Power Limit is in effect;~~
- ~~f. Latest received Maximum Power Limit and Power Reference Limit Setpoints;~~
- ~~g.c. Plane of Array~~ Solar Irradiance in Watts/m2;
- ~~h.f.~~ kW output for each inverter;
- ~~i.g.~~ Status for each inverter;
- ~~j-h.~~ PlantFacility Net Power Possible (MWkW);
- ~~i.~~ Volt-Var curve and deadband settings;
- ~~j.~~ Volt-Var Enabled/Disabled Status;
- ~~k.~~ Volt-Watt curve and deadband settings;
- ~~l.~~ Volt-Watt Enabled/Disabled Status;
- ~~k-m.~~ Frequency Droop percent-Watt curve and deadband settings;

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~~1.n.~~ BESS State of Charge (%);
~~m.o.~~ BESS Energy remaining (~~MWH~~kWH);
~~n.p.~~ kW set point for each inverter.

The Subscriber Organization shall make the requested data points available to the Company within 90 days of Company's written request and at no additional cost to the Company. If the data points are not made available to the Company within 90 days, or not to the Company's satisfaction, the Company may take corrective action including reducing the Facility's export or disconnecting the Facility from the system until the points are provided to the Company's satisfaction.

H. INTERCONNECTION

1. All CBRE Phase 2 Facilities shall be designed to interconnect and operate in parallel with the Company's system without adversely affecting the operations of its customers and without presenting safety hazards to the Company's or other customers' personnel. Such Facilities and the interconnection systems shall be in compliance with all applicable safety and performance standards of the National Electric Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the Company's interconnection standards and procedures provided in Rule No. 14H, and Rule No. 19, as amended from time to time, and also subject to any other requirements as may be specified in the Interconnection Agreement or the SFC, attached hereto as Appendix IV.
2. CBRE Phase 2 Facilities interconnected at the Distribution Level² that are selected shall follow the applicable Rule No. 14H interconnection process at the time of interconnection with an added provision of an expedited review. An expedited review of a CBRE Phase 2 Facility shall be applied as follows:
 - If an interconnection requirements study (IRS) is required, the IRS shall be completed within 90 calendar days after all information required to commence and complete the IRS is provided by the Subscriber Organization.

² Distribution system (Level) is defined as interconnection to electrical wires, equipment, and other facilities at the distribution voltage levels (such as 25kV (Hawaiian Electric only), 12kV, or 4kV) owned or provided by the Company, through which the utility provides electrical service to its customers.

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- If the Facility is ~~onserved by a secondary distribution³ system that is customer-owned dedicated service transformer~~ and on a circuit with available hosting capacity an IRS shall not be required. Any necessary mitigation required for an applicable facility to interconnect shall be determined within the standard initial technical or supplemental review timeframe.

Exceptions from the expedited review that would still need to be subject to the standard timelines in Rule 14H:

- CBRE systems on 4kV and 2.4 kV circuits
 - CBRE systems on Moloka'i and Lāna'i
3. CBRE Phase 2 Facilities interconnecting at the Sub-Transmission level shall follow the interconnection process applicable to their Facilities at the time of interconnection.
 4. Each CBRE Phase 2 Facility shall have one interconnection point and suitable metering equipment to measure the energy output and data required for calculation of Curtailment (as defined in the SFC) of the Facility.

I. SUBSCRIBER ORGANIZATION AGREEMENTS

1. Successful Subscriber Organizations (completed application process and is offered CBRE Program capacity) shall execute the SFC and Interconnection Agreement for CBRE Small Projects with the Company after successful completion of the Rule No. 14H technical review. ~~Subscriber Organizations shall not be permitted to announce availability, market, solicit, sign up or~~ Prior to executing the SFC and Interconnection Agreement, but only after the Subscriber Organization has been awarded CBRE Phase 2 program capacity, Subscriber Organizations may announce the availability, market, and solicit Subscribers provided that they disclose the project is not yet final. Subscriber Organizations may also accept deposits for interests in such Subscriber Organization's CBRE Facility provided that the Subscriber Organization has established an IO-approved escrow account. Subscriber Organizations shall not be permitted to formally complete subscriptions with Subscribers until the Subscriber Organization has executed and delivered to the Company the applicable SFC and Interconnection Agreement or PPA and

³Secondary distribution system (Level) is defined as interconnection to electrical wires, equipment, and other facilities at a low voltage level (less than or equal to 600 volts, such as 120V, 208V, or 480V), through which the utility provides electrical service to its customers.

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all other required documents and agreements with Company necessary for the Subscriber Organization to commence development and construction of its CBRE Facility.

2. The SFC and Interconnection Agreement shall remain in effect for the Term set forth therein.
3. Subscriber Organizations shall pay fees as described in Part I, Sections E.4 and Part I, Section E.10 above.
4. Subscriber Organizations shall ensure CBRE Facilities are built within the specific number of months as specified in the SFC.
5. Subscriber Organizations are responsible for their own operation and maintenance of their Facility to ensure the Facility meets agreed performance warranties, pursuant to the terms and conditions set forth in the applicable SFC, Interconnection Agreement and/or Rule No. 14H.
6. Electric energy delivered to the Subscriber Organization by the Company shall be billed under the Company's applicable rate schedule. Electric energy delivered to the Subscriber Organization by the Company shall be metered separately from the electric energy delivered by the Subscriber Organization to the Company, either by use of multiple meters or a meter capable of separately recording the inflow and outflow of electricity. Electric energy generated by the CBRE Small Project shall not be used to offset electric energy needs of the Facility itself so as to maximize the output of the Facility and the corresponding bill credits of the Subscribers to such Facility.
7. Subscriber Organization will calculate and will be responsible for the accuracy of the Subscriber's monthly credit. The Subscriber's monthly credit will be provided by the Subscriber Organization to the Company in dollars, per Part I, Section C above and the SFC, no later than ten days after the end of each calendar month.
8. Subscriber Organization's notification of a Subscriber's acquisition of a subscription shall be Subscriber Organization's representation and warranty that the Subscriber Organization has executed a Subscriber Agreement with the Subscriber and provided a completed Disclosure Checklist executed by the Subscriber that is attached to the Subscriber Agreement for such Subscriber. The Administrator, IO for the CBRE Program, or the Commission may request copies of all Subscriber Agreements and/or Disclosure Checklists completed by the Subscriber Organization with its Subscribers at any time during the term of the Subscriber Organization's Facility.

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9. The Company may, but shall not be required to, confirm that the Subscribers submitted by the Subscriber Organization are qualified pursuant to Part I, Section B above for participation in the CBRE Phase 2 Program. If any Subscribers are not qualified or are not purchasing an interest within the allowed limits set out in Part I, Section B above, then the Subscribers shall not be accepted into Phase 2 of the CBRE Program and the Company shall notify the Subscriber Organization of all disqualified Subscribers and remove them from the roster of that Subscriber Organization's list of Subscribers.
10. Generator/Equipment Certification By Subscriber Organization: The Subscriber Organization shall ensure that the CBRE Projects utilize inverter technology compliant with Institute of Electrical and Electronics Engineers IEEE Std 1547-2018, Underwriters Laboratories and the Company's Source Requirement Document Version 2.0 (though not preferred, the Company will accept compliance with the Company's Source Requirement Document Version 1.1 for CBRE Projects with an executed Interconnection Agreement and SFC prior to or on June 30, 2021). The Subscriber Organization shall certify that the installed generating equipment will meet the appropriate preceding requirement(s) and can supply documentation that confirms compliance, including a certification of the same from the Installing Electrical Contractor upon request by the Company.

J. ALLOWED CBRE FACILITY DEVELOPMENT TIMEFRAME

1. Pre-Execution Requirements: Prior to execution of the SFC and Interconnection Agreement, CBRE Facilities must comply with the requirements of this CBRE Rule No. 29 and prove that the CBRE Facility is "shovel-ready" and actively progressing towards completion. Company shall issue a written notice to the Subscriber Organization that will list all documentation that is required from the Subscriber Organization and/or any action that must be taken by the Subscriber Organization in order to comply with the CBRE Rule No. 29. Unless otherwise expressly specified in an existing tariff, the Subscriber Organization shall have 15 calendar days from the date of such notice to submit the required documentation and/or provide evidence that the required action has been completed.
2. Project Development Updates: Once the SFC and Interconnection Agreement are executed the Subscriber Organization agrees to provide the Company informational updates related to the development of the CBRE Facility upon request. Unless otherwise expressly specified in an existing tariff, the Subscriber Organization shall have 15 calendar days from the date of such notice to submit the required documentation and/or

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provide evidence that the required action has been completed. These updates can include but are not limited to:

- Construction Milestones
- Financing
- Governmental Approvals for Development
- Site Control
- Land Rights for Company-Owned Interconnection Facilities
- Design and Engineering
- Major Procurement
- Construction
- Interconnection
- Startup Testing and Commissioning

3. Commercial Operations Date: CBRE Phase 2 Facilities must be placed into operation within the timeframe specified in the SFC and measured from the Execution Date of the SFC. After completion of required testing by the Company, a Subscriber Organization will be permitted to commence commercial operations as of the first (1st) day of the month immediately following the Company's acceptance of the CBRE Phase 2 Facility.

K. REMOVAL OF CBRE FACILITY FROM CBRE PROGRAM AND TERMINATION:

1. Failure to Meet Pre-Execution Requirements or Post-Execution Requirements: Should a Subscriber Organization fail to comply with pre-execution (before execution of the Interconnection Agreement or SFC) requirements, the Subscriber Organization's Facility shall be subject to removal from the CBRE Program. Should a Subscriber Organization fail to meet post-execution requirements specified in this Rule No.29, the SFC or the Interconnection Agreement, the SFC and the Interconnection Agreement shall be subject to termination in accordance with the terms of the SFC, the Interconnection Agreement (as applicable) and this Rule No. 29. Company, with concurrence of the IO, shall notify the Subscriber Organization when a requirement has been missed or defaulted upon (after any applicable cure period) in accordance with the notice provisions under the SFC or the Interconnection Agreement. The Subscriber Organization shall have 5 business days to provide proof that the Company and IO's determination was in error. If no response is received or if the proof is deemed insufficient by the Company and IO, the Subscriber Organization's Facility in question may be removed from the CBRE Program or the SFC and Interconnection Agreement may be terminated, as may be applicable, with notice to the Subscriber Organization, which termination shall be effective no earlier than 30 days after such notice. Company shall provide a copy of such notice of termination to all Subscribers of such Facility, the IO and the Commission. Concurrence of both the

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Company and the IO shall be required before a CBRE Facility can be removed from the CBRE Program or an SFC and Interconnection Agreement can be terminated. Upon removal of a CBRE Facility from the CBRE Program or termination of an SFC and Interconnection Agreement, any fees and security deposits paid to the Company by the Subscriber Organization for such Facility shall be forfeited.

2. Failure to Meet Commercial Operations Date: Should a Subscriber Organization fail to place a CBRE Phase 2 Facility into operation within the timeframe specified in the SFC, the SFC (and Interconnection Agreement) may be terminated and any fees and security deposits paid to the Company by the Subscriber Organization will be forfeited all as specified in the SFC. If terminated by the Company, Subscriber Organization shall not retain its capacity and/or queue space in the CBRE Program once terminated. If the Subscriber Organization subsequently wishes to complete its CBRE Phase 2 Facility, the Subscriber Organization will be required to re-apply to be a Subscriber Organization under these tariff rules, subject to all requirements herein, including capacity limitations and payment of fees.
3. Failure to Comply with CBRE Program Tariff: Should a Subscriber Organization fail to abide by any of the CBRE Program rules of this Rule No. 29, the Subscriber Organization's CBRE Facility may be subject to termination and removal from the CBRE Program. If the IO is still overseeing the CBRE Program, the Company shall obtain concurrence from the IO before any termination of a CBRE Facility may occur. No termination may occur prior to 30 days after notice of termination is provided by the Company to the Subscriber Organization.
4. IO Oversight: The IO will monitor the CBRE Small Projects to ensure an impartial and fair process. The IO's oversight over CBRE Small Projects shall continue until projects reach commercial operations, subject to direction and oversight by the Commission.

L. EXTENSIONS FOR GOOD CAUSE

When extraordinary circumstances exist that may cause a Subscriber Organization to miss a pre-execution requirement, post-execution milestone or delay the completion of a CBRE Facility within the allowed Facility development timeframe, the Subscriber Organization may request an extension, not to exceed 90 days, of the applicable deadline. All requests for extensions must be made at the time of the event that necessitated the need for an extension. The Company and the IO may each unilaterally approve a request for an extension. A request for an extension may only be rejected by the joint approval of the Company and IO. To the extent that any delays are caused by the Company, a day-for-day extension of time for

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the period of the delay shall be granted to the affected CBRE Facility to comply with the applicable deadline.

M. COMMISSION OVERSIGHT

The Commission shall have ultimate oversight over the CBRE Program. Material disputes unresolved after consultation with the IO may be presented to the Commission for review and the Commission may issue guidance and/or orders to resolve such disputes consistent with this Rule No. 29. Contractual disputes between Subscribers and Subscriber Organizations and/or between Subscriber Organizations and Company shall be resolved in accordance with the applicable contract between the parties. The IO, pursuant to the Framework, may act as a mediator in any dispute between Subscriber Organizations and the Company.

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PART II: For CBRE Project Sizes 250kW and Above

A. AVAILABILITY AND PROGRAM CHARACTERISTICS

1. Availability and Capacity

- a. Phase 2 of the Company's CBRE Program is available to Customers.
- b. Capacity: Two hundred (200) megawatts (MW) of available capacity shall be apportioned across the islands of Hawai'i, Maui and O'ahu as follows:

Tranche 1:

Hawai'i: 12.5 MW
Maui: 12.5 MW
O'ahu: 75 MW

Tranche 2:

Hawai'i: 12.5 MW
Maui: 12.5 MW
O'ahu: 75 MW

Moloka'i: 2.75 MW (combined for Tranches 1 and 2)

Lāna'i: 3 MW (combined for Tranches 1 and 2)

2. Project Classes: Eligibility shall be limited to photovoltaic or wind generation project sizes greater than or equal to 250kW up to 5 MW (O'ahu) and 2.5 MW (Hawai'i and Maui) ("CBRE Mid-Tier Projects"). All projects proposed with sizes above the CBRE Mid-Tier Projects are referred to hereafter as ("CBRE Large Projects").
3. Project selection for the allocated Capacities specified above shall be accomplished by a request for proposals ("RFP") conducted under the applicable competitive bidding framework rules issued by the Commission.⁴ All capacity available for Moloka'i and Lāna'i will be available in single procurement in Tranche 1. CBRE project procurement for Lāna'i shall be combined with the Company's Variable Renewable Dispatchable Generation Paired With Energy Storage RFP. Details for all RFPs will be available when such RFPs are issued following Commission direction and order.

⁴ Currently, the Framework for Competitive Bidding or the "Framework" dated December 8, 2006, adopted by the Commission in Docket No. 03-0372.

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- a. Interconnection of CBRE Mid-Tier Projects shall be specified in the Power Purchase Agreement for Renewable Dispatchable Generation for CBRE Mid-Tier Projects (the “Mid-Tier RDG PPA”) and applicable rules and requirements under Rule No. 14H.
- b. Interconnection of CBRE Large Projects shall be specified in the Power Purchase Agreement for Renewable Dispatchable Generation for CBRE Large Projects (the “Large RDG PPA”²)
- c. Battery storage requirements shall be specified in the applicable Mid-Tier RDG PPA or Large RDG PPA (references to “RDG PPA” herein shall mean the Mid-Tier RDG PPA or the Large RDG PPA, as applicable).
- d. Independent RFP solicitations will be conducted by the applicable Company for the islands of Hawai‘i, O‘ahu and Maui for CBRE projects dedicated to LMI customers (“CBRE LMI Projects”). There will be no cap on the size of any CBRE LMI Project, and a minimum project size of 250 kW. The form of contract used, either the Mid-Tier RDG PPA or the Large RDG PPA, including provisions regarding interconnection and battery storage, will be predicated on project size and subject to system limitations established by the Company. See Part III below.

B. CUSTOMER PARTICIPATION AND ELIGIBILITY

The Customer participation and eligibility requirements of Part I, Section B of this Rule No. 29 shall apply to Customer participation in CBRE Mid-Tier Projects and CBRE Large Projects.

C. CREDIT RATE

1. Subscribers who subscribe to a CBRE Program interest shall continue to receive electric energy from the Company in accordance with Rule No. 8, the applicable rate schedule and Company rules filed with the Commission. All rates, terms, and conditions from the applicable rule, rate schedules and Company rules shall continue to apply.
2. For CBRE Mid-Tier Projects and CBRE Large Projects the Subscriber’s bill credit will be equal to the Subscriber’s interest in the availability of the CBRE Facility’s energy output, expressed as a percentage of the Facility’s Contract Capacity multiplied by the Lump Sum Payment specified in the applicable RDG PPA, which shall result in a dollar amount CBRE bill credit per month. Applicants responding to any CBRE RFP shall be required to bid a proposed Lump Sum Payment as required under the applicable RFP in

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order to determine the Lump Sum Payment. A Subscriber's bill credit may be reduced pursuant to the applicable RDG PPA so long as such circumstances are disclosed by the Subscriber Organization in the Disclosure Checklist.

3. The applicable RFP for each island shall determine the CBRE Mid-Tier Project(s) and/or CBRE Large Projects in the Final Award Group. Each Final Award Group Project's bid-specified Lump Sum Payment shall determine the corresponding CBRE bill credit for a Subscriber's interest in such project.
4. The monthly CBRE bill credit will not begin to accrue until commercial operations is achieved. The monthly CBRE bill credit for each Subscriber shall then begin to accrue on the first (1st) day of the month in which Subscriber completes the acquisition of Subscriber's subscription into a CBRE Phase 2 Facility, provided that Subscriber Organization promptly notifies the Administrator of Subscriber's subscription no later than the last calendar day of the month in which Subscriber subscribed into the CBRE Phase 2 Facility. Subscriber's monthly CBRE bill credit shall begin accruing on the first (1st) day of the next month if the ~~notice by the Subscriber Organization~~purchase or transfer of all or any portion of a Subscriber's Allocation is made after the twentieth (20th) day of the month. The amount of the Subscriber's monthly CBRE bill credit shall be equal to the Subscriber's interest in the Facility's contract capacity (measured as a percentage) multiplied by the Facility's Lump Sum Payment.
5. A Subscriber's monthly CBRE bill credit shall be applied to offset eligible charges on the Subscriber's electric bill no earlier than the 15th day of the following month but no later than ~~three~~two billing cycles. Subscribers will see eligible credits on a future bill depending on the day their meter is read. Eligible charges on the Subscriber's electric bill shall be all light and power charges.
6. The Subscriber's electric bill cannot be reduced below the sum of the customer charge, the Green Infrastructure Fee, and any other per-customer charge for the customer's applicable rate schedule or the minimum bill applicable in the underlying tariff, whichever is greater.
7. If the Subscriber's monthly CBRE bill credit exceeds the eligible charges, the value of excess credits shall be carried over to the next billing period(s) within the current 12-month period, as a CBRE bill credit and applied to the Subscriber's electric bill(s) subject to Part II, Sections C.5 and C.6 above. Reconciliation will be made at the end of every 12-month period by applying the Subscriber's remaining CBRE bill credit to the

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Subscriber's remaining eligible charges within the 12-month period. Any CBRE bill credit that remains unused at the end of each 12-month period shall be extinguished.

8. If the Subscriber terminates its CBRE participation prior to the end of any 12-month period, the Company shall reconcile the remaining CBRE bill credit to remaining eligible charges at the end of the monthly billing period when service was terminated, similar to the reconciliation that would have been performed at the end of the normal 12-month period. Any CBRE bill credit that remains unused shall be extinguished.
9. Compensation for Unsubscribed RDG Availability.
 - a. "Unsubscribed RDG" is CBRE Phase 2 Facility Contract Capacity availability that is not associated with any Subscriber subscription and therefore not allocated to a Subscriber. The designated Subscriber Organization under the RDG PPA with the Company shall be compensated for this Unsubscribed RDG as a proportion of the Facility's Lump Sum Payment equal to the percentage of the unallocated portion of the Facility's contract capacity to the total contract capacity multiplied by the Lump Sum Payment, except as specified in sub-part 9.b below.
 - b. The following shall be effective 6 months from the date of initial commercial operations. Compensation for Unsubscribed RDG shall be as follows:

For any Facility with more than 15% Unsubscribed RDG, the compensation for the Unsubscribed RDG availability for that month shall be discounted by the percentage of Unsubscribed RDG.

Unsubscribed capacity shall be calculated at the end of the month and applied retroactively to the CBRE Facility when calculating that month's Unsubscribed RDG payment.

Table 4 below illustrates the effect of this Unsubscribed RDG provision as applies to a CBRE Facility with a contract capacity of 1MW (1000kW), assuming varying levels of unsubscribed capacity.

Table 4: Treatment of Unsubscribed RDG for CBRE Mid-Tier and Large Projects

Example CBRE Facility Characteristics	
Lump Sum Payment (\$)	1000.00
Facility Capacity (kW)	1000

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Billing Month	Subscribed Capacity (kW)	Unsubscribed Capacity (%)	Lump Sum Payment Attributable to SO (\$)	Lump Sum Payment with Unsubscribed RDG % Reduction (\$)
1	250	75%	750	750.00
2	250	75%	750	750.00
3	450	55%	550	550.00
4	650	35%	350	350.00
5	800	20%	200	200.00
6	900	10%	100	100.00
7*	900	10%	100	100.00
8	900	10%	100	100.00
9	800	20%	200	200-20% = 160.00
10	650	35%	350	350-35% = 227.50
11	750	25%	250	250-25% = 187.50
12	850	15%	150	150-0% = 150.00

*Unsubscribed RDG provision becomes applicable

10. A Subscriber Organization shall be required to have a minimum of 4 individual Subscribers per CBRE Facility at all times. For a period of 6 months following initial commercial operations, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum number of Subscribers. Effective after 6 months of commercial operations, the following shall be placed into effect for the remainder of the term of the CBRE Facility:
 - a. For any CBRE Facility which does not have the minimum 4 individual Subscribers for any month during the term of its PPA, the unmet percentage of Subscribers to the minimum number of 4 required Subscribers shall reduce the Subscriber Organization's allocation of Unsubscribed RDG delivered in such month by such percentage. For example, if a CBRE Mid-Tier or CBRE Large Project has only 3 Subscribers for any given month, the unmet number of Subscribers is 1 and the percentage to the 4 minimum Subscribers required will be 25%. The Subscriber Organization's allocation of the Lump Sum Payment for Unsubscribed RDG will be reduced by 25%.

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- b. If the Subscriber Organization's Unsubscribed RDG for that CBRE Facility is also greater than 15% in such month, the Subscriber Organization's allocation of the Lump Sum Payment for Unsubscribed RDG delivered in that month shall be reduced by a percentage equal to the sum of (1) the percentage determined in sub-part a. above and (2) the percentage of Unsubscribed RDG for that month.
- c. If the Subscriber Organization does not have a minimum of 4 individual Subscribers but otherwise has no Unsubscribed RDG, the Subscriber Organization shall be subject to liquidated damages as specified below. Continued failure to meet the 4 individual Subscriber threshold under these circumstances by any Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Maintain Minimum Number of Subscribers. The percentage determined in sub-part a. shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization's failure to maintain the minimum number of Subscribers for any given month.

11. Residential Customer Requirement. In Phase 2, 40% of the total output of a Facility's CBRE capacity shall be reserved for individual subscriptions for residential Customers. For a period of 6 months following initial commercial operations, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum percentage of residential Subscribers. Effective after 6 months of commercial operations, the following shall be placed into effect for the remainder of the term of the CBRE Facility:

- a. For any CBRE Facility which does not have the minimum 40% residential Subscribers for any month during the term of its PPA, the difference in percentage between the project's actual residential Subscriber percentage and the 40% minimum shall reduce the Subscriber Organization's allocation of the Lump Sum Payment allocated to Unsubscribed RDG. The Subscriber Organization's allocation of the Lump Sum Payment delivered shall be reduced by a factor equal to one-fourth (0.25) of such percentage difference. For example, if a project's residential Subscriber percentage is 30%, the difference, 10%, from the 40% minimum requirement, shall be multiplied by 0.25 ($10\% * 0.25 = 2.5\%$). The 2.5% result shall be used to reduce the Subscriber Organization's allocation of the Lump Sum Payment by such percentage.

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- b. For CBRE Mid-Tier Projects and CBRE Large Projects which propose in its bid proposal a higher residential Subscriber goal than the 40% minimum, e.g., 50%, such Subscriber Organization shall be required to meet such goal and will be subject to a reduction in its allocation of the Lump Sum Payment for failing the 40% minimum but at a lower rate. A failure to reach the Subscriber's pledged goal for residential Subscribers above the 40% shall be subject to a reduction in the Subscriber Organization's allocation of the Lump Sum Payment for Unsubscribed RDG delivered in the net month by a factor equal to one-tenth (0.10) of the percentage difference between the Subscriber Organization's pledged percentage greater than the 40% minimum percentage and the actual percentage above the 40% minimum. For example, if a Subscriber Organization pledges a 50% minimum residential Subscriber percentage and, for a given month, only has 45% residential Subscribers, the shortfall from its goal and the actual percentage above 40% is 5%. The Subscriber Organization's resulting payment reduction shall be $0.10 * 5\% = 0.5\%$. If the Subscriber Organization instead had only 20% residential Subscribers, the Subscriber Organization would be subject to a reduced allocation of the sum of $(0.25 * 20\%)$ plus $(0.10 * 10\%) = 5\% + 1\% = 6\%$.
- c. If the Subscriber Organization's Unsubscribed RDG for that CBRE Facility is also greater than 15% in such month, the allocation of the Lump Sum Payment for Unsubscribed RDG in that month shall be reduced by the sum of the percentage payment reduction for the unmet residential Subscriber plus the percentage of Unsubscribed RDG for that month.
- d. If the Subscriber Organization does not have the required minimum percentage of residential Subscribers but does not have any Unsubscribed RDG, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below. Continued failure to meet the Residential Subscriber minimum requirement under these circumstances by any Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule No. 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Maintain Minimum Percentage of Residential Subscribers. The percentage determined in sub-part a. shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization's failure to maintain the required percentage of residential Subscribers for any given month.

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12. Payment reductions from Subscriber Organization's allocation for Unsubscribed RDG under Part II, Sections C.10 and C.11 above shall be cumulative in effect. In any given month after the first 6 months of commercial operations, if the Subscriber Organization fails to meet multiple minimum requirements or exceeds maximum thresholds, the percentage reductions in Subscriber's allocation specified above will be added and the aggregate sum of such percentages shall be used to reduce the Subscriber's allocation for Unsubscribed RDG in any given month.

D. SELECTION PROCESS TO AWARD CBRE PROGRAM CAPACITY FOR PROJECTS GREATER THAN 250KW

1. A Competitive Bidding (RFP) Process developed by Company with oversight by the IO shall be utilized to select eligible Subscriber Organizations to participate in the CBRE Program other than the allocation for CBRE Small Projects (See Part I of this Rule No. 29). The Company shall adhere to the Framework to administer the RFP Process.
2. Price and Non-Price Criteria as designated in the RFP shall be the primary evaluated criteria reviewed by the Company, which criteria shall be more particularly described in the RFP.
3. IO Oversight. The IO will monitor the RFPs to ensure an impartial and fair process. The IO's oversight shall continue through, (1) selection and execution of the Mid-Tier RDG PPA and (2) selection and negotiation of the Large RDG PPA. IO oversight and involvement shall be specified in the RFP but subject always to direction and oversight by the Commission.

E. SUBSCRIBER ORGANIZATION ELIGIBILITY

1. Except where further defined in an individual RFP, eligibility to bid into the RFPs for Phase 2 of the CBRE Program for projects 250kW and greater shall be open to all bidders, including independent power producers, the Companies (except for the CBRE LMI RFPs), and any of their affiliates.
2. For utility self-build projects with name plate capacities up to 5MW on O'ahu and up to 2.5MW on Maui and Hawai'i Island, the Commission will not require the utility to submit an additional application pursuant to General Order No. 7, but the Commission will hold the bidding utility to the terms of its bid, similar to independent power producers.

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3. For affiliate and affiliate-related bids on projects with name plate capacities up to 5MW on O'ahu and up to 2.5MW on Maui and Hawai'i Island, the Commission will not require an additional review pursuant to the Affiliate Transaction Requirements adopted in Docket No. 2018-0065, but the Commission will hold these bidders to the terms of their bids.
 4. All independent power producers, including affiliates and affiliate-related entities shall also meet the eligibility requirements specified in the RFP.
- F. APPROVAL PROCESS FOR PROJECTS SELECTED TO THE CBRE PHASE 2 FINAL AWARD GROUP
1. CBRE Mid-Tier Projects
 - a. Shall be permitted to proceed toward development and construction of its project with no further approval required by the Commission.
 - b. After the technical review has been completed the Subscriber Organization shall be required to execute and deliver the pre-approved CBRE Mid-Tier RDG PPA before proceeding to develop its project ~~and solicit Subscribers.~~
 2. CBRE Large Projects
 - a. Shall negotiate the terms and conditions of the Large RDG PPA that will govern the terms of the project with the Company.
 - b. The Large RDG PPA between the Subscriber Organization and the Company for each CBRE Large Project shall be subject to Commission review and approval before proceeding to develop its project ~~and solicit Subscribers.~~
 3. CBRE LMI Projects
 - a. For CBRE LMI Projects that fall within the CBRE Mid-Tier Project size, the provisions of Part II, Section F.1 shall apply.
 - b. For CBRE LMI Projects that fall within the CBRE Large Project size, the provisions of Part II, Section F.2 shall apply.

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4. Development timeframes, milestones, and potential extensions shall be governed by the applicable RDG PPA and/or this Rule No. 29.

G. CO-LOCATION LIMITATIONS

If more than one Facility is located on a single parcel of land (i.e., Tax Map Key) and sharing a single point of interconnection is being considered for participation in the CBRE Program, they shall be considered as a single Facility for the purpose of determining whether the cumulative size of the facilities fall within the project size limitations set forth in Part II, Section A above. The IO will monitor and review interconnection/ program applications to guard against co-location.

H. COMMUNICATIONS AND CONTROLABILITY

The CBRE Mid-Tier Projects and CBRE Large Projects shall require additional communications and control systems to ensure the appropriate level of company dispatch as specified in the applicable RDG PPA.

I. COMMISSION OVERSIGHT

The Commission shall have ultimate oversight over the CBRE Program. Material disputes regarding the CBRE Program unresolved after consultation with the IO may be presented to the Commission for review and the Commission may issue guidance and/or orders to resolve such disputes consistent with this Rule No. 29. Contractual disputes between Subscribers and Subscriber Organizations and/or between Subscriber Organizations and Company shall be resolved in accordance with the applicable contract between the parties. The IO, pursuant to the Framework, may act as a mediator in any dispute between Subscriber Organizations and the Company.

J. SUBSCRIBER ORGANIZATION AGREEMENTS

1. Subscriber Organizations selected in the Final Award Group for any CBRE RFP that have accepted the Company's offer to proceed with its project shall negotiate the appropriate PPA for its project size as specified in Part II, Section F above. ~~Subscriber Organizations shall not be permitted to announce availability, market, solicit, sign up or~~ Prior to executing the PPA, but only after the Subscriber Organization has been awarded CBRE Phase 2 program capacity, Subscriber Organizations may announce the availability, market, and solicit Subscribers provided that they disclose the project is not yet final. Subscriber Organizations may also accept deposits for interests in such Subscriber

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Organization's CBRE Facility provided that the Subscriber Organization has established an IO-approved escrow account. Subscriber Organizations shall not be permitted to formally complete subscriptions with Subscribers until the Subscriber Organization (a) has executed and delivered to the Company the applicable PPA, (b) for CBRE Large Projects, has obtained approval from the Commission of the Subscriber Organization's project, and (c) has completed all other required documents and agreements with Company necessary for the Subscriber Organization to commence development and construction of its CBRE Facility.

2. The PPA shall remain in effect for the Term set forth therein.
3. Subscriber Organizations shall pay fees as described in the applicable RFP.
4. Subscriber Organizations shall ensure CBRE Mid-Tier Projects and CBRE Large Projects are built and achieve commercial operations within the specific number of months as specified in the applicable PPA.
5. Subscriber Organizations are responsible for interconnection, operation and maintenance of their Facility to ensure the Facility meets agreed performance warranties, pursuant to the terms and conditions set forth in the applicable PPA and, as applicable for CBRE Mid-Tier Project, Rule No. 14H and Part I, Section H.
6. Electric energy delivered to the Subscriber Organization by the Company shall be billed under the Company's applicable rate schedule. Electric energy delivered to the Subscriber Organization by the Company shall be metered separately from the electric energy delivered by the Subscriber Organization to the Company, either by use of multiple meters or a meter capable of separately recording the inflow and outflow of electricity. Electric energy generated by the CBRE Mid-Tier Project or CBRE Large Project shall not be used to offset electric energy needs of the Facility itself so as to maximize the output of the Facility and the corresponding bill credits of the Subscribers to such Facility.
7. Subscriber Organization will calculate and will be responsible for the accuracy of the Subscriber's monthly credit. The Subscriber's monthly credit will be provided by the Subscriber Organization to the Company in dollars, per the requirements of the PPA, no later than ten days after the end of each calendar month.
8. Subscriber Organization's notification of a Subscriber's acquisition of a subscription shall be Subscriber Organization's representation and warranty that the Subscriber

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Organization has executed a Subscriber Agreement with the Subscriber and provided a completed Disclosure Checklist executed by the Subscriber that is attached to the Subscriber Agreement for such Subscriber. The Administrator, IO for the CBRE Program, or the Commission may request copies of all Subscriber Agreements and/or Disclosure Checklists completed by the Subscriber Organization with its Subscribers at any time during the term of the Subscriber Organization's Facility.

9. The Company may, but shall not be required to, confirm that the Subscribers submitted by the Subscriber Organization are qualified pursuant to Part I, Section B above for participation in the CBRE Phase 2 Program. If any Subscribers are not qualified or are not purchasing an interest within the allowed limits set out in Part I, Section B above, then the Subscribers shall not be accepted into Phase 2 of the CBRE Program and the Company shall notify the Subscriber Organization of all disqualified Subscribers and remove them from the roster of that Subscriber Organization's list of Subscribers.

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PART III: Specific LMI Provisions

A. AVAILABILITY AND CAPACITY

Bidding will open for a minimum of one dedicated LMI project (“CBRE LMI Project”) on each island of O‘ahu, Hawai‘i Island, and Maui. CBRE LMI Projects shall be limited to LMI Customers ~~only~~ and, for CBRE LMI Projects only, governmental agencies serving LMI persons or households and IRC Section 501(c)(3) organizations with an explicit primary mission to serve LMI Customers.

CBRE LMI Project capacity shall not be capped and will not count against the 235MW capacity allocated for CBRE Phase 2. There will be no maximum project size for CBRE LMI Projects, and bidders may propose any project size based on market demand and project cost.

The Commission set a minimum threshold of one project per island but may approve additional projects if there are more bids with compelling customer benefits.

If there are no successful competitive bids for a CBRE LMI Project on one island or more, a utility self-build option may be considered by the Commission for that island. Any utility self-build application shall be consistent with Section VI of the Framework.

B. LMI DEFINITION

A LMI Customer is:

1. A member of a household with a household income equal to or less than the income limit established by the U.S. Department of Housing and Urban Development (“HUD”) for a LMI Household. To qualify, a household’s income must be equal to or less than the income limit established by HUD for the customer’s household size in the appropriate county. Refer to the HUD website to obtain the income limits. ~~Such LMI customer shall be referred to as “LMI Customer” or “LMI Subscriber,” as applicable, in this Rule No. 29.; or~~
2. LMI VERIFICATION AT APPLICATION A qualified Low Income Home Energy Assistance Program (LIHEAP) recipient; or
3. A qualified Supplemental Nutrition Assistance Program (SNAP) recipient; or
4. A qualified Housing Choice Voucher Program (Section 8) recipient.

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An LMI Subscriber shall be either (1) a LMI Customer, (2) a governmental agency serving LMI persons or households, or (3) an IRC Section 501(c)(3) organization with an explicit, primary mission to serve LMI persons or households. The Subscriber Organization shall demonstrate via affidavit that at the time they enroll such organization that the specific, identifiable, sufficient, and quantifiable benefits of the subscription will be passed through to LMI households. Organizations qualifying as LMI Subscribers in this fashion shall be referred to as “LMI Anchor Tenants.” LMI Anchor tenant participation shall be limited to participation in CBRE LMI Projects.

C. LMI SUBSCRIBER ELIGIBILITY VERIFICATION AND APPLICATION REQUIREMENTS

1. Subscriber Organizations are required to verify eligibility of the LMI Customers and/or LMI Anchor Tenants at the time the LMI Customer and/or LMI Anchor Tenant applies for CBRE participation by meeting any one of the following, as applicable:
 - a. Utilizing a third-party income verification service to independently verify household income. The Subscriber Organization shall collect a Request for Transcript of Tax Return Form (IRS Form 4506-T) for all household members age 18 and over and send or upload to a third-party income verification service, as identified by the Company. The third-party verification service will return the tax transcript to the Subscriber Organization.
 - b. Verifying income documentation for all household members over the age of 18 by reviewing photocopies of the first two pages of the previous year’s income tax return documents, or IRS confirmation of no prior year’s tax return, or most recent, verified paystubs, in order to confirm that such income meets the HUD LMI qualifications for the appropriate household size. ~~Subscriber Organizations will provide to and obtain from the Subscriber an executed CBRE Program approved affidavit (“LMI Subscriber Affidavit”), attached hereto as Appendix VI, certifying that the Subscriber is eligible to be classified as an LMI Customer under the applicable HUD guidelines referred to in Part III, Section B above. Subscribers shall grant the Subscriber Organization the authority to share such LMI Subscriber Affidavit with the Company and agree to provide other verifying income documents as requested by the Company. Subscriber Organization shall acknowledge the LMI Subscriber Affidavit certifying that it has confirmed Subscriber’s LMI status.~~

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- c. Reviewing and verifying participation with any of the following organizations. Acceptable forms of proof include an award letter or current statement of benefit.
- Low-Income Energy Assistance Program (LIHEAP)
 - Supplemental Nutrition Assistance Program (SNAP)
 - Housing Choice Voucher Program (Section 8)
- d. For verifying methods b. and c. above, Subscriber Organizations will provide to and obtain from the LMI Customer the applicable executed CBRE Program-approved affidavit (“LMI Subscriber Affidavit”), attached hereto as Appendix VI, certifying that the LMI Customer is eligible to be classified as an LMI Subscriber under the applicable HUD guidelines or LIHEAP, SNAP or Section 8 programs referred to in Part III, Section B above.
- e. For prospective LMI Anchor Tenants, Subscriber Organization shall verify the primary LMI mission of the organization and its eligibility to be an LMI Subscriber. The Subscriber Organization shall also provide to and obtain from the LMI Anchor Tenant the applicable executed CBRE Program-approved affidavit and verification to confirm LMI eligibility (also referred to as “LMI Subscriber Affidavit”) attached hereto as Appendix VII, certifying that the LMI Anchor Tenant is eligible to be classified as an LMI Subscriber and certifying that the benefits of the subscription will flow to LMI households. The Subscriber Organization shall confirm that the proposed organization qualifies as a LMI Anchor Tenant, subject to confirmation by the Company; any disqualification of such organization by the Company shall require the concurrence of the IO.
2. In addition to the ~~income and household size~~ verifications in the LMI Subscriber Affidavit, an individual LMI Subscriber shall:
- a. Affirm that they have resided at their current residence for a minimum of 6 months;
 - b. ~~Grant~~Agree to cooperate with the Subscriber Organization ~~the authority to share such LMI Subscriber Affidavit with the~~ and the Company ~~and agrees requested to provide other verifying~~ verify income and/or program participation documents ~~as requested by the Company.~~
3. Subscriber Organization shall acknowledge the LMI Subscriber Affidavit certifying that it has confirmed Subscriber’s LMI status.

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4. Subscriber Organization shall collect and store the LMI Subscriber Affidavit for each new LMI Subscriber acquiring a subscription in that Subscriber Organization's CBRE Project. Subscriber Organization's enrollment of the LMI Subscriber shall be Subscriber Organization's representation that it has collected the LMI Subscriber Affidavit from such LMI Subscriber.
 5. Once ~~aan individual~~ LMI Subscriber eligibility is verified subsequent income changes will not disqualify the LMI Subscriber's eligibility.
 6. As to LMI Anchor Tenants, if the primary mission of the organization changes such that it does not primarily serve or benefit LMI persons or households, the LMI Anchor Tenant may be subject to losing its LMI Subscriber status.
- ~~6.7.~~ LMI Subscribers shall be required to acquire a minimum subscription of 0.5 kW AC.

D. LMI SUBSCRIBER ANNUAL VERIFICATION DURING TERM

1. Annually the Company at its discretion will complete spot checks of up to 10% of ~~LMI Subscriber Affidavits to confirm LMI Subscriber eligibility~~ Subscribers designated as LMI Subscribers, from primarily, but not limited to, new LMI Subscribers admitted within the last 2 years, to confirm the Subscriber Organization has completed the eligibility verification for such LMI Subscriber.
2. Company will select random LMI Subscribers for verification ~~of that the SO completed its~~ LMI status verification process as of enrollment. If the Subscriber Organization is unable to provide ~~income~~ verification documentation within 30 days, the Subscriber Organization will ~~bear the cost of performing complete~~ the eligibility verification of such selected LMI Subscribers using a third-party any of the verification service methods specified in Part C, Section 1 above for ~~a random sample of up to 10% of subscribers such~~ LMI Subscribers that the Subscriber Organization cannot produce verification documentation.
3. If a threshold of 15% or more of the random sample fails verification, the Company at its discretion may perform a second sample test upon Subscriber Organization's request. The Subscriber Organization shall bear ~~the cost~~ all costs of ~~the Company~~ performing ~~the any subsequent~~ verification of a second sample of 10% of all LMI subscribers using ~~a third-party any of the~~ verification service methods specified in Part C, Section 1 above.

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4. If the combined sample concludes that 15% or more of the LMI Subscribers which were tested ~~failed~~reveals that the verification process~~Subscriber Organization did not confirm the LMI Subscriber's status under the requirements of Part III, Section C above,~~ Subscriber Organization's allocation of the Lump Sum Payment for Unsubscribed RDG will be recalculated by designating the percentage of ~~failed~~missing LMI Subscribers verifications from the combined sample shall be added to the percentage of Unsubscribed RDG and will be subject to the payment reductions for Unsubscribed RDG as specified below.
5. For CBRE LMI Projects, ~~the percentage of any~~ unqualified LMI Subscribers, identified through the verification process in Part III, Section D, or otherwise identified, shall be removed as LMI Subscribers and prohibited from re-applying for any CBRE Project for 3 years.

E. PAYMENT REDUCTIONS AND LIQUIDATED DAMAGES

A Subscriber Organization that does not meet the 100% LMI requirement for CBRE LMI Projects shall be subject to applicable payment reductions or liquidated damages after 6 months of commercial operations as specified below.

1. Effective after 6 months of commercial operations for a CBRE LMI Project, the following shall be placed into effect for the six-month period (months 7-12) following initial commercial operations:
 - a. A CBRE LMI Project must have at least 60% of the required 100% LMI Subscriber percentage for any month between month 7 and month 12, inclusive, following initial commercial operations (the "Interim LMI Subscriber Percentage"). The difference in percentage between the project's actual LMI Subscriber percentage and 60% shall be used to potentially reduce the Subscriber Organization's allocation of the Lump Sum Payment allocated to Unsubscribed RDG for the month of such shortfall. For illustrative purposes, if a CBRE LMI Project only has 50% LMI Subscribers, the Subscriber Organization is 10% short of the 60% minimum required during months 7-12 after initial commercial operations. This percentage shall be used to assess potential payment reduction or liquidated damages pursuant to sub-parts b. and sub-part c. immediately below.
 - b. If the sum of the percentage determined in sub-part a. above plus the percentage deemed to be non-LMI under Part III, Section D.4. (the "Interim LMI Shortfall

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Percentage”), is greater than 15% for any month between month 7 and month 12, inclusive, after initial commercial operations, then the Subscriber Organization’s allocation of the Lump Sum Payment for Unsubscribed RDG delivered in that month shall be reduced by such Interim LMI Shortfall Percentage.

- c. If the Interim LMI Shortfall Percentage exceeds 15% for any month between month 7 and month 12, inclusive, after initial commercial operations, but the CBRE LMI Project otherwise has no Unsubscribed RDG, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below.

Damages for Failure to Achieve Interim LMI Subscriber Percentage. The Interim LMI Shortfall Percentage shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization’s failure to maintain the Interim LMI Subscriber Percentage in any month between month 7 and month 12, inclusive, after initial commercial operations of the CBRE LMI Project.

2. Effective after 12 months of commercial operations for a CBRE LMI Project, the following shall be placed into effect for the remainder of the term of the CBRE LMI Project.
 - a. For any CBRE LMI Project which does not have a 100% LMI Subscriber percentage for any month during the term of the LMI RDG PPA, the difference in percentage between the project’s actual LMI Subscriber percentage and 100% shall be used to potentially reduce the Subscriber Organization’s allocation of the Lump Sum Payment allocated to Unsubscribed RDG for the month of such shortfall. For example, if a CBRE LMI Project only had 90% LMI Subscribers, the Subscriber Organization is 10% short of the 100% minimum required during the term of the LMI RDG PPA. This percentage shall be used to assess potential payment reduction or liquidated damages pursuant to sub-parts b. and sub-part c. immediately below.
 - b. If the sum of the percentage determined in sub-part a. above plus the percentage deemed to be non-LMI under Part III, Section D.4. (the “LMI Shortfall Percentage”), is greater than 15% for any month during the term of the LMI RDG PPA, then the Subscriber Organization’s allocation of the Lump Sum Payment for Unsubscribed RDG delivered in that month shall be reduced by such LMI Shortfall Percentage.
 - c. If the LMI Shortfall Percentage exceeds 15% for any month during the term of the LMI RDG PPA but otherwise has no Unsubscribed RDG, the Subscriber Organization

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shall be subject to equivalent liquidated damages as specified below. Continued failure to meet the 100% LMI percentage under these circumstances by the Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Achieve the 100% LMI Subscriber Percentage. The LMI Shortfall Percentage shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization's failure to maintain the 100% LMI Subscriber Percentage in any month during the term of the LMI RDG PPA.

3. A Subscriber Organization that does not meet its committed-to LMI percentage specified in its bid proposal ("Committed LMI Percentage") for any CBRE Mid-Tier Project or CBRE Large Project, shall be subject to the following applicable payment reductions or liquidated damages as specified below.
4. For a period of 6 months following initial commercial operations, the Subscriber Organization shall incur no payment reduction if it should fall below its Committed LMI Percentage. Effective after 6 months of commercial operations, the following shall be placed into effect for the six-month period (months 7 -12) following initial commercial operations:
 - a. If a CBRE Mid-Tier or Large Project fails to maintain at least 60% of its Committed LMI Percentage for its project for any month between month 7 and month 12, inclusive, following initial commercial operations (the "Interim Committed LMI Percentage"). The difference in percentage between the project's actual LMI Subscriber percentage and the Interim Committed LMI Percentage, multiplied by a factor of 0.10, shall be used to potentially reduce the Subscriber Organization's allocation of the Lump Sum Payment allocated to Unsubscribed RDG for the month of such shortfall. For illustrative purposes, if a CBRE Mid-Tier or Large Project has a Committed LMI Percentage of 30%, the Interim Committed LMI Percentage is 60% of 30% or 18%. If the project has only 15% LMI Subscribers in any month between months 7-12 after initial commercial operations, the Subscriber Organization is $3\% * 0.10 = 0.3\%$ short of the Interim Committed LMI Percentage for that month. This percentage (0.3%) shall be used to assess potential payment reduction or liquidated damages pursuant to sub-parts b. and sub-part c. immediately below.

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- b. If the sum of the percentage determined in sub-part a. above plus the percentage deemed to be non-LMI under Part III, Section D.4. (the “Interim Committed LMI Shortfall Percentage”), is greater than 15% for any month between month 7 and month 12, inclusive, after initial commercial operations, then the Subscriber Organization’s allocation of the Lump Sum Payment for Unsubscribed RDG delivered in that month shall be reduced by such Interim Committed LMI Shortfall Percentage.
- c. If the Interim Committed LMI Shortfall Percentage exceeds 15% for any month between month 7 and month 12, inclusive, after initial commercial operations, but the CBRE LMI Project otherwise has no Unsubscribed RDG, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below.

Damages for Failure to Achieve Interim Committed LMI Percentage. The Interim Committed LMI Shortfall Percentage shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization’s failure to maintain the Interim Committed LMI Percentage in any month between month 7 and month 12, inclusive, after initial commercial operations of the CBRE Mid-Tier or Large Project.

- 5. Effective after 12 months of commercial operations for a CBRE Mid-Tier or Large Project with a Committed LMI Percentage, the following shall be placed into effect for the remainder of the term of the project’s applicable RDG PPA.
 - a. If a CBRE Mid-Tier or Large Project has not achieved its Committed LMI Percentage for any month during the term of its RDG PPA, the difference in percentage between the project’s actual LMI Subscriber percentage and the Committed LMI Percentage, multiplied by a factor of 0.10, shall be used to potentially reduce the Subscriber Organization’s allocation of the Lump Sum Payment allocated to Unsubscribed RDG for the month of such shortfall. For example, if a CBRE Mid-Tier or Large Project has a Committed LMI Percentage of 50% but only has 40% LMI Subscribers, the Subscriber Organization is $10\% * 0.10 = 1.0\%$ short of its Committed LMI Percentage for that month. This percentage (1.0%) shall be used to assess potential payment reduction or liquidated damages pursuant to sub-parts b. and sub-part c. immediately below.
 - b. If the sum of the percentage determined in sub-part a. above plus the percentage deemed to be non-LMI under Part III, Section D.4. (the “Committed LMI Shortfall Percentage”), is greater than 15% for any month during the term of the applicable

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RDG PPA, then the Subscriber Organization's allocation of the Lump Sum Payment for Unsubscribed RDG delivered in that month shall be reduced by such Committed LMI Shortfall Percentage.

- c. If the Committed LMI Shortfall Percentage exceeds 15% for any month during the term of the applicable RDG PPA but otherwise has no Unsubscribed RDG, the Subscriber Organization shall be subject to equivalent liquidated damages as specified below. Continued failure to meet the Committed LMI Percentage under these circumstances by any Subscriber Organization for more than one year shall be construed as an intent to disregard the requirements of this Rule 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

Damages for Failure to Achieve the Committed LMI Percentage. The Committed LMI Shortfall Percentage shall be multiplied by the applicable monthly Lump Sum Payment and the resulting dollar amount shall be the liquidated damages for the Subscriber Organization's failure to maintain the Committed LMI Shortfall Percentage in any month during the term of the applicable RDG PPA.

6. Payment reductions from Subscriber Organization's allocation for Unsubscribed RDG under this Part III, Section E above shall be cumulative in effect. In any given month after the first six months of commercial operations, if the Subscriber Organization fails to meet multiple minimum requirements or exceeds maximum thresholds, the percentage reductions in Subscriber's allocation specified above will be added and the aggregate sum of such percentages shall be used to reduce the Subscriber's allocation for Unsubscribed RDG in any given month.

7. Residential LMI Customer Requirement. For CBRE LMI Projects only, Subscriber Organizations shall reserve at least 60% of the total output of a Facility's CBRE capacity to residential LMI Customers and the aggregate percentage of LMI Anchor Tenants to the total output of the Facility shall not exceed 40%.

- a. The CBRE LMI Projects shall remain subject to payment reductions and/or damages specified for CBRE Mid-Tier and CBRE Large Projects under Part II, Sections C.9, C.10 and C.11 and under Part III, Sections E.1 and E.2 above amended only to reflect the revised percentages specified above for CBRE LMI Projects.
- b. If the Subscriber Organization maintains a percentage mix of LMI Subscribers that does not have the required minimum percentage of residential LMI Customers or its

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LMI Anchor Tenant(s) exceed the aggregate 40% limitation and there is no Unsubscribed RDG for more than one year, such continued failure to meet the residential LMI Customer minimum requirement or exceeding the LMI Anchor Tenant percentage ceiling under these circumstances shall be construed as an intent to disregard the requirements of this Rule No. 29 and could result in termination and removal from the CBRE Program in accordance with Part I, Section K.3.

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APPENDIX I

**SUBSCRIBER AGENCY AGREEMENT
AND
CONSENT FORM**

The undersigned ("Subscriber") has a Subscription to the following CBRE Phase 2 Project:

CBRE Project Name:

CBRE Project Address:

Subscriber Organization:

**CBRE Project contact information for Subscriber
questions and complaints:
Address (if different from above):**

Telephone number:

Email address:

Website URL:

Fax:

Subscriber Name:

**Subscriber Service Address where receiving
electrical service from Hawaiian Electric
~~Company~~Companies:**

**Subscriber's Account Number with Hawaiian
Electric ~~Company~~Companies:**

Subscriber Mailing Address (if different from above):

~~Hawaiian Electric Company Contact Information~~

Phone: _____

Email: _____

Fax: _____

HAWAIIAN ELECTRIC COMPANY, INC.

Order No. 37070 filed April 9, 2020, Docket 2015-0389
Transmittal Letter dated September 8, 2020.

By signing this Subscriber Agency Agreement and Consent Form, the Subscriber agrees to all of the following:

1. Assignment of Energy and Capacity, Environmental Credits. The Subscriber agrees that the Subscriber Organization has authority to assign all energy produced and capacity associated with the renewable energy system at the CBRE Project to Hawaiian Electric Company, Maui Electric Company, Limited or Hawai'i Electric Light Company, Inc., as applicable (the "Company"), and the Subscriber agrees that all energy produced, and capacity associated with the Subscriber's share of the renewable energy system at the CBRE Project shall belong to Company. The Subscriber also agrees that the Subscriber Organization has authority to assign all Environmental Credits¹ associated with the renewable energy system at the CBRE Project to Company, and that if the CBRE Project or a person or entity on its behalf has assigned the Environmental Credits to Company, then all Environmental Credits associated with the Subscriber's share of the renewable energy system at the CBRE Project shall belong to Company.
2. Tax Implications. The Subscriber Organization has provided the Subscriber with a statement that Company makes no representations concerning the taxable consequences to the Subscriber with respect to its Bill Credits to the Subscriber or other tax issues relating to participation in the CBRE Project.
3. Subscriber recognizes that not all production risk factors, such as grid-failure events or atypically cloudy weather, are within the Subscriber Organization's control.
4. Information Sharing. Participating in the CBRE Program will require sharing Subscriber's Account Information (name, account number, service address, telephone number, email address, website URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, Subscriber specific Bill Credit(s)) and Subscriber's Energy Usage Data (data collected from the utility Subscriber meters that reflects the quantity, quality, or timing of the Subscriber's electric usage or electricity production for the service address and account number identified for participation in the CBRE Project). The following outlines the type of information that will be shared, and how that information will be used.
 - a. Subscriber's Account Information and Subscriber Energy Usage Data. The Subscriber authorizes Company to provide the Subscriber Organization (and the Subscriber Organization's designated subcontractors and agents) with the Subscriber's Account Information and Subscriber's Energy Usage Data as described in Section 4 above. This information is needed to allow the Subscriber Organization to determine the extent to which the Subscriber is entitled to participate in the CBRE Project, and to validate the amount of the Bill Credits to be provided by Company to the Subscriber. The current data privacy commitments of Company applicable to its CBRE Program provided to the Subscriber by the Subscriber Organization are attached as Exhibit 1 of this Subscriber Agency Agreement and Consent Form. These privacy commitments include definitions of "Subscriber's Account Information" and "Subscriber's Energy Usage Data."
 - b. Subscriber's Subscription Information. The Subscriber authorizes the Subscriber Organization to provide information to Company identifying the Subscriber (with the Subscriber's name, service address, and account number), low-to-moderate income ("LMI") status (if applicable) and detailing the Subscriber's proportional interest in kilowatts for Small Projects or percentage of the Facility's Contract Capacity for Mid-Tier and Large Projects, and to provide additional updates of this information to Company as circumstances

¹ "Environmental Credits" means any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any city, state or federal governmental agency or court, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Subscriber Organization based in whole or in part on the fact that the PV System is a non-fossil fuel facility.

change. This information is needed to allow the Company to properly apply Bill Credits for the energy generated by the CBRE Small Projects or availability for a CBRE Mid-Tier and Large projects. Also, this information is needed to allow Company to send to the Subscriber notices or other correspondence pertaining to their involvement in the CBRE Program.

- c. Aggregated Information. Aggregated information concerning production at the CBRE Project may be publicly disclosed to support regulatory oversight of the CBRE Program. This includes annual reports available to the public related to specific CBRE Projects, including but not limited to production from the CBRE Projects; size, location and the type of CBRE Project subscriber groups including LMI; reporting on known complaints and the resolution of these complaints; lessons learned and any potential changes to the CBRE Program; reporting on Bill Credits earned and paid; and reporting on the application process. Aggregated information will not identify individual Subscribers nor provide Subscriber-Specific Account Information, Subscriber-Specific Energy Usage Data or Subscriber-specific Bill Credits unless a Subscriber provides explicit informed consent. Depending on the nature of the aggregated information, however, it may still be possible to infer the amount of production attributed to individual Subscribers to the CBRE Project. The Subscriber agrees to the inclusion of its production information in the creation of the aggregated information. The policies of the Company related to sharing aggregated information are part of the data privacy commitments contained in the attached Exhibit 1 of this CBRE Subscriber Agency Agreement and Consent Form.
- d. Information Requests from the PUC or CA or other governmental agencies. The Subscriber agrees that the Subscriber Organization and the Company are authorized to provide any information they possess related to the Subscriber or the Subscriber's participation in the CBRE Project to:
- (i) the Hawaii Public Utilities Commission (PUC) or the State of Hawaii Division of Consumer Advocacy (CA), provided that if such disclosure includes personally identifiable information of the Subscriber, such disclosure shall be made under an applicable protective order to maintain the confidentiality of such information (This information is needed to allow proper regulatory oversight of the Company and of the CBRE Program); and
 - (ii) Other governmental agencies under exigent circumstances provided for in the Company privacy policy.
- e. Liability Release. While the Company requires the Subscriber Organization to implement appropriate data security measures, the Company shall not be responsible for monitoring or taking any steps to ensure that the Subscriber Organization maintains the confidentiality of the Subscriber's Account Information, the Subscriber's Energy Usage or the Bill Credits received pertaining to the Subscriber's participation in the CBRE Project. However, the Company shall remain liable for its own inappropriate release of Subscriber's Account Information and Subscriber's Energy Use Data in accordance with existing tariff rules.
- f. Duration of Consent. The Subscriber's consent to this information sharing shall be ongoing for the Term of the Contract between the Subscriber Organization and Company, or until the Subscriber no longer has a Subscription to the CBRE Project and the Subscriber Organization notifies Company of this fact. Provided, however, the Subscriber's consent shall also apply thereafter to all such information of the Subscriber pertaining to that period of time during which the Subscriber had a Subscription to the CBRE Project.
- g. Successor or Assigns. This Subscriber Agency Agreement and Consent Form shall apply fully to and inure to the benefit of Subscriber Organization and all subsequent successors or assigns, and to the Company and all of its subsequent successors or assigns, without the need for Subscriber's consent.
- h. Modification. The above provisions addressing data privacy and in Exhibit 1 shall remain in place until and unless other requirements are adopted by the Company and/or the PUC. Company shall file necessary revisions to its tariffs and contracts within a reasonable time after such Order.

5. Subscriber Disclosures.

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- a. Customer data can provide insight into activities within the premise receiving utility service. Company may not disclose customer data except (1) if you authorize the disclosure, (2) to contracted agents that perform services on behalf of the utility, or (3) as otherwise permitted or required by regulations. Any such permitted disclosure shall be in accordance with policies relating to the sharing of customer data which may be found in the Company's privacy policy.
- b. Not authorizing disclosure will not affect utility service but will impact a proposed Subscriber's ability to participate in the CBRE program.
- c. Subscribers may access their standard customer data from Company without any additional charge.
- d. Company will have no control over the data disclosed pursuant to this consent and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you. Please be advised that you may not be able to control the use or misuse of your data once it has been released.
- e. In addition to the Subscriber data described above, the data recipient may also receive the following from Company: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Company will not provide any other information, including information such as LMI designation, your Social Security Number or any financial account number to the data recipient through this consent form.
- f. For additional information, including the Company privacy policy that applies to Company, visit: www.hawaiianelectric.com.

The Subscriber, by executing below, hereby agrees to the terms of this Subscriber Agency Agreement and Consent Form as of the date filled in below.

Subscriber's Name: _____

Subscriber's Signature: _____

Print or Type name and
Title of signatory if
Subscriber is a corporation
or unit of government: _____

Date: _____

HAWAIIAN ELECTRIC COMPANY, INC.

EXHIBIT 1

TO

SUBSCRIBER AGENCY AGREEMENT AND CONSENT FORM

**Data Privacy Commitments of Hawaiian Electric Companies Pertaining to
the CBRE Program**

The following data privacy commitments of the Hawaiian Electric Companies pertaining to the CBRE Program are as follows and may be changed from time to time by the Company:

Definitions

Unless indicated otherwise, the same definition and meaning of terms in this document are the same as contained in the Standard Form Contract for CBRE “Small Projects” or the RDG PPA for “Mid-Tier” and “Large Projects”. For ease of reference, here are some of the specific definitions:

“CBRE Project” means, individually and/or collectively, CBRE Phase 2 Small Projects, Mid-Tier Projects and/or Large Projects.

"Company" or “Hawaiian Electric Companies” means, individually or collectively, as applicable, Hawaiian Electric Company, Maui Electric Company, Ltd., Hawaii Electric Light Corporation, Inc., each a Hawaii corporation, and its affiliates and agents.

“Large Project” means any project greater than or equal to 5MW AC on Oahu; or greater than or equal to 2.5MW on all Maui, Hawai’i Island, Moloka’i or Lāna’i.

“Mid-Tier Project” means any project greater than 250 kW, and less than 5 MW on Oahu; or less than 2.5 MW on Maui, Hawai’i Island, Moloka’i or Lāna’i.

“Small Project” means any project under 250 kW AC in output capacity.

"Subscribed Energy" means electricity generated by the CBRE Phase 2 Small Project attributable to the Subscribers' Subscriptions and delivered to the Company at the Production Meter on or after the Commercial Operations Date.

“Subscribed RDG” means the CBRE Phase 2 Mid-Tier or Large Project Facility Contract Capacity availability that is associated with a Subscriber’s Subscription and is allocated to the Subscriber.

"Subscriber" means a retail customer of the Company who owns a Subscription of a CBRE Project interconnected with the Company.

“Subscriber Organization” means the organization whose purpose is to operate or otherwise manage the CBRE Project for its Subscribers.

"Subscriber's Account Information" consists of the Subscriber's name, account number, service address, telephone number, email address, website URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, and Subscriber specific Bill Credit(s).

"Subscriber's Energy Usage Data" means data collected from the utility Subscriber meters that reflects the quantity, quality, or timing of the Subscriber's electric usage or electricity production for the service address and account number identified for participation in the CBRE Project.

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Order No. 37070 filed April 9, 2020, Docket 2015-0389
Transmittal Letter dated September 8, 2020.

Overview

This section addresses how Subscriber's Account Information and Subscriber's Energy Usage Data will be collected, used and shared as part of participation in the CBRE Program.

1. How Subscriber's Account Information and Energy Usage Data Will Be Exchanged

a. Subscriber Specific Information

Once a Subscriber has executed a Subscriber Agency Agreement and Consent Form, an ongoing data exchange will occur between the Company and a Subscriber Organization (and their designated subcontractors and agents):

- (i) The Company will disclose the following Subscriber-specific information to the Subscriber Organization:
 - Subscriber's Account Information
 - Subscriber's Energy Usage Data
 - Bill credits
- (ii) The Subscriber Organization will disclose to the Company the following Subscriber-specific information:
 - Subscriber's Account Information
 - Subscriber Allocation for each Subscriber's Subscription stated in kW or percentage of the name plate capacity of the Small Project; or percentage of Facility Contract Capacity for Mid-Tier or Large Projects.
 - Production data related to the PV System
 - Monthly Subscription Information

b. Aggregated and Anonymized Subscriber Information

Aggregated Subscriber information will be reported as part of Permitted Public Reporting, outlined in Section 2(b) below.

To be considered "aggregated" the reported information must include information attributable to all Subscribers participating in a specific CBRE Project, which based on program requirements will contain a minimum of five Subscribers. Depending on the nature of the aggregated information, however, from this information alone or in combination with other publicly available information it may still be possible to infer the amount of production attributed to individual Subscribers to the CBRE Project.

Company may also disclose anonymized data relating to the CBRE Program as specified in the Company privacy policy.

2. How Subscriber's Information Will Be Used

The following outlines how the Subscriber's Account Information and Subscriber Energy Usage Data will be used as part of the CBRE Program.

a. Program Management

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As part of administering the CBRE program, the Subscriber Organization or the Company may provide information related to the Subscriber and/or the CBRE Project to:

- the PUC
- the State of Hawaii Division of Consumer Advocacy (“CA”)
- Other governmental or private entities as required by law or regulation

Additionally, as part of administering the CBRE Program, the Company may share Subscriber's Account Information and Subscriber's Energy Usage Data to service providers, agents, or contracted agents who support the program on its behalf. The Company prohibits these service providers from using or disclosing the Subscriber's information except as necessary to perform these specific services or to comply with legal requirements. More information about the Company's general privacy practices is explained in its Privacy Policy available on www.hawaiianelectric.com.

b. Permitted Public Reporting

The Subscriber's Energy Usage Data of each participating Subscriber to a CBRE Project will be combined and may be reported in the aggregate by the Subscriber Organization to the PUC or CA as may be requested or in the Biannual Status Report required under the CBRE Framework. The identity of specific Subscribers, the specific Subscriber's Account Information, Subscriber's Energy Usage Data and Subscriber-specific Bill Credit will not be listed in any public report unless the Subscriber has provided the Subscriber Organization with prior written consent.

Per the requirements of the PUC, the Company will provide to the PUC reports, including the Biannual Status Report, which will include information or data requested by the PUC, including the following:

- Total nameplate capacity (kW DC) and the total output capacity (kW AC) of CBRE facilities installed within the electric utility's territory;
- Total kWh for each of the CBRE facilities on an hourly and monthly basis;
- Type and costs for any grid infrastructure upgrades;
- All Administrator costs pertaining to the CBRE Program (operating and capital expenses);
- CBRE facility design details (e.g. project location, equipment list, interconnection requirements);
- Subscription and Subscriber information (e.g. fees, subscription size, rates, terms, customer class, annual usage, average bill, household income or LMI designation, estimated annual bill savings or additional costs, subscriber turnover statistics);
- Participation data from the Administrators;
- Marketing materials and techniques employed to encourage participation by LMI and other customers; and
- Any other information requested by the PUC

c. Prohibited Reporting or Sharing

Except as otherwise provided in this document or the Company privacy policy, the Company will not disclose the Subscriber's Account Information, Subscriber's Energy Usage Data or Subscriber-specific Bill Credits to a third party without first obtaining the Subscriber's written consent.

Any requests by the Subscriber Organization to the Company for information about a Subscriber that is not Subscriber's Account Information or Subscriber's Energy Usage Data will require execution of a separate written consent by the Subscriber. Notwithstanding the previous statement, the Company will not provide the Subscriber Organization with the

Subscriber's Social Security Number unless directed to do so by the PUC or compelled by law or regulation or under exigent circumstances provided for in the Company privacy policy.

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3. **Subscriber Data Access and Correction**

The following outlines what information is available to the Subscriber from the Company and the Subscriber Organization, and methods of correcting any inaccuracies.

a. Information Available from the Company

Subscribers may access the CBRE Portal or contact the Company's call center to obtain information pertaining to their specific Bill Credit attributable to their participation in CBRE Program. The correction of any allocation of previously-applied Bill Credits among Subscribers or payments to the Subscriber Organization for Unsubscribed Energy or Unsubscribed RDG, pertaining to a particular month due to any inaccuracy reflected in such Monthly Subscription Information with regard to a Subscriber's Subscription in the CBRE Project and the beneficial Subscription of energy or Subscribed RDG produced by the CBRE Project, or the portion of Unsubscribed Energy or Unsubscribed RDG, shall be the full responsibility of the Subscriber Organization, unless such inaccuracies are caused by the Company .

Subscribers may also obtain from the Company the following information related to the CBRE Program without obtaining written consent from the Subscriber Organization:

- CBRE Project Address
- Operator name
- Nameplate capacity
- Production data related to the CBRE Project
- Bill Credit Rate and total amount of Bill Credits applied to the CBRE Project
- Any other information pertaining to the Subscriber's Subscription

Other information regarding the Subscriber Organization known to the Company will not be disclosed to Subscriber unless the Subscriber obtains prior explicit informed consent from the Subscriber Organization or unless directed to do so by the PUC or compelled by law or regulation.

b. Information Available from the Subscriber Organization

Subscribers and prospective subscribers can contact the Subscriber Organization to obtain the following information:

- Future costs and benefits of the Subscription, including:
 - i. All nonrecurring (i.e., one-time) charges;
 - ii. All recurring charges;
 - iii. Terms and conditions of service;
 - iv. Whether any charges may increase during the course of service, and if so, how much advance notice is provided to the Subscriber;
 - v. Whether the Subscriber may be required to sign a term contract;
 - vi. Terms and conditions for early termination;
 - vii. Any penalties that the CBRE Project may charge to the Subscriber;
 - viii. The process for unsubscribing and any associated costs;

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- ix. An explanation of the Subscriber data the Subscriber Organization will share with the Company and that Company will share with the Subscriber Organization;
 - x. The data privacy policies of the Company and of the Subscriber Organization;
 - xi. The method of providing notice to Subscribers when the CBRE Project is out of service, including notice of estimated length and loss of production;
 - xii. Assurance that all installations, upgrades and repairs will be under direct supervision of a NABCEP-certified solar professional and that maintenance will be performed according to industry standards, including the recommendations of the manufacturers of solar panels and other operational components;
 - xiii. Allocation of unsubscribed production; and
 - xiv. A statement that the Subscriber Organization is solely responsible for resolving any disputes with Company or the Subscriber about the accuracy of the CBRE Project production and that the Company is solely responsible for resolving any disputes with the Subscriber about the applicable Credit Rate used to determine the amount of the Bill Credit.
- Copy of the contract with Company for the CBRE Program
 - Copy of the solar panel warranty
 - Description of the compensation to be paid for any underperformance
 - Proof of insurance
 - Proof of a long-term maintenance plan
 - Current production projections and a description of the methodology used to develop production projections
 - Subscriber Organization contact information for questions and complaints
 - Demonstration to the Subscriber by the Subscriber Organization that it has sufficient funds to operate and maintain the CBRE Program

The Subscriber Organization is solely responsible for the accuracy of the Subscriber's portion of the CBRE Project production or availability information forwarded to the Company and should resolve with the Subscriber any dispute regarding the accuracy of such information.

Subscribers can submit comments to the Company on the accuracy and completeness of its biannual report by contacting the Company.

4. **Data Retention**

The Company will retain the Subscriber's Account Information, Subscriber's Energy Usage Data and information on Bill Credits for as long as required under applicable agreements with Subscriber or Subscriber Organization or under applicable law. Such data may thereafter be deleted in accordance with such agreements, applicable law or Company data retention or other applicable policies.

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Order No. 37070 filed April 9, 2020, Docket 2015-0389
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APPENDIX III
COMMUNITY-BASED RENEWABLE ENERGY PROGRAM
INTERCONNECTION AGREEMENT

(Less than 250 kW)

This Community-Based Renewable Energy Program Interconnection Agreement (less than 250 kW) (“Agreement”) is made by [Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., Hawai‘i Electric Light Company, Inc.], a Hawai‘i corporation (hereafter called "Company"), and _____ (“Subscriber Organization”), and is made, effective and binding as of _____ (“Effective Date”). Company and Subscriber Organization may be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Company is an operating electric public utility subject to the Hawai‘i Public Utilities Law, Hawaii Revised Statutes, Chapter 269, and the rules and regulations of the Hawai‘i Public Utilities Commission (“Commission”); and

WHEREAS, Subscriber Organization is an “approved Subscriber Organization,” as defined in the Company’s Community-Based Renewable Energy (“CBRE”) Program Phase 2 Tariff (“CBRE Tariff”), intends to construct a CBRE Facility (as defined in Section 4 below), that qualifies for the Company’s CBRE program (“CBRE Program”), and desires to interconnect and operate the CBRE Facility in parallel with the Company’s electric system;

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

1. **Notice and Disclaimer Regarding Future Rate and Tariff Modifications.** This Agreement shall, at all times, be subject to modification by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction. Without limiting the foregoing, Subscriber Organization expressly acknowledges the following:
 - (a) The CBRE Tariff is subject to modification by the Hawai‘i Public Utilities Commission (“Commission”).
 - (b) **Your Agreement and CBRE Facility shall be subject to any future modifications ordered by the Commission. You agree to pay for any costs related to such Commission-ordered modifications.**

BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE ABOVE NOTICE AND DISCLAIMER.

2. **Effectiveness of Agreement.** This Agreement shall not be effective until approved and executed by each Party, i.e. upon the Effective Date. Subscriber Organization shall not interconnect and operate the CBRE Facility in parallel with the Company’s system prior to approval and execution of this Agreement by the Company. Until this Agreement is effective, no Party shall have any legal obligations arising hereunder, express or implied, and any actions taken by a Party in reliance on the terms of this Agreement prior to the Effective Date shall be at that Party’s own risk.
3. **Term and Termination.** This Agreement shall become effective as of the date when both the Subscriber Organization and the Company have signed this Agreement. This Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:
 - (a) The Parties agree in writing to terminate the Agreement; or
 - (b) The Subscriber Organization may terminate this Agreement at any time, by written notice to the Company, prior to completion of the final acceptance testing of the CBRE Facility by the Company.

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Once the CBRE Facility is operational, then 3(c) applies. Upon receipt of a cancellation notice, the Company shall take reasonable steps to minimize additional costs to the Subscriber Organization, where reasonably possible; or

- (c) Once the CBRE Facility is operational, the Subscriber Organization may terminate this Agreement after 30 days written notice to the Company, provided, however, that any termination by Subscriber Organization under 3(b) or 3(c) shall be accompanied by a corresponding termination of the SFC (as defined in Section 6 below); or
- (d) Company may terminate this Agreement after 30 days written notice to the Subscriber Organization if:
 - (i) The Subscriber Organization fails to interconnect and operate the CBRE Facility pursuant to the terms of this Agreement; or
 - (ii) The Subscriber Organization fails to take all corrective actions specified by the Company's written notice that the CBRE Facility is out of compliance with the terms of this Agreement, within the timeframe set forth in such notice;
 - (iii) There is a default by the Subscriber Organization under the SFC which entitles Company to terminate the SFC;

provided, that the Company has satisfied all notice and other requirements for such termination by the Company, as provided in Section I.3-aK.1 of the CBRE Tariff, provided, further, that any termination by Company under this 3(d) shall be accompanied by a corresponding termination of the SFC.

- 4. **CBRE Facility Description.** For the purposes of this Agreement, the "CBRE Facility" is defined as the equipment and devices, and associated appurtenances, owned by the Subscriber Organization, which produce electric energy for use by the Subscriber Organization and are to be interconnected and operated in parallel with the Company's system. The CBRE Facility is identified in Exhibit A (Description of CBRE Facility). **[DRAFTING NOTE: This Agreement is drafted to include a battery energy storage system ("**BESS**") as part of the CBRE Facility. References to the BESS and/or storage appear in bold text and brackets and will need to be revised to conform to specifics of each CBRE Project.]**
- 5. **Scope of Agreement.** The Parties understand and agree that this Agreement applies only to the operation of the CBRE Facility described in Exhibit A.
- 6. **Parallel Operation.** For Generating Facilities less than 250 kW, Company shall allow Subscriber Organization to interconnect and operate the CBRE Facility in parallel with the Company's distribution system in accordance with the terms and conditions of this Agreement, the Standard Form Contract for Hawai'i Community Based Renewable Energy – Phase Two between Subscriber Organization and Company ("SFC"), and Company Rule 14, Paragraph H (Interconnection of Distributed Generating Facilities Operating in Parallel With The Company's Electric System) ("Rule 14H") provided that the Company determines that all applicable requirements and conditions of this Agreement, the SFC, the CBRE Tariff and Rule 14H have been satisfied. Additional provisions to Rule 14H in this Agreement shall also apply. To the extent this Agreement conflicts with Rule 14H the provisions of this Agreement shall apply.
 - a. **Voltage Ride-Through.** Voltage Ride-Through. Whenever the utility Distribution System voltage at the Point of Interconnection varies from and remains outside the normal operating high and normal operating low region voltage for the predetermined parameters set forth in Table 1. The Facility's protective functions shall cause the Facility's Advanced Inverter(s) to Cease to Energize the utility Distribution System. Unless provided alternate settings by the

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Company, the Facility must comply with the voltage ride-through and trip settings specified in Table 1:

1. The Facility shall stay connected to the utility Distribution System while the grid remains within the “Ride-Through Until” voltage-time range and must operate in accordance with the “Operating Mode” specified for each “Operating Region”.
2. In the Continuous Operation region, the Facility’s Advanced Inverter shall reduce power output as a function of voltage, in accordance with section (iv) Volt-Watt of Rule 14H.
3. Different settings than those specified in Table 1 may be specified by the Company

Table 1: Voltage Ride-Through Table

Operating Region	Voltage at Point of Interconnection (% of Nominal Voltage)	Operating Mode	Ride-Through Until (s)	Default Maximum Trip Time (s)
OV2	$V > 120$	Cease to Energize	N/A	0.16 ⁽¹⁾
OV1	$120 \geq V > 110$	Mandatory Operation	0.92	1
CO	$110 \geq V > 100$	Continuous Operation (Volt-Watt)	N/A	N/A
CO	$100 > V \geq 88$	Continuous Operation	N/A	N/A
UV1	$88 > V \geq 70$	Mandatory Operation	20	21
UV2	$70 > V \geq 50$	Mandatory Operation	10-20	11-21 ⁽²⁾
UV3	$50 > V$	Momentary Cessation	N/A	2

⁽¹⁾Must trip time under steady state condition. Inverters will also be required to meet the Company’s Transient Overvoltage criterion (TrOV-2). Ride-Through shall not inhibit TrOV-2 requirements.

⁽²⁾May be adjusted within these ranges at manufacturer's discretion.

- (b) Frequency-Watt. A Facility’s inverters shall be certified to meet the frequency-droop requirement stated in IEEE 1547-2018, “IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power System Interfaces.” For certification purposes, range of allowable settings in Table 2 shall be used as an exception to the 1547-2018 values. In this mode, the Advanced Inverter shall modulate active power when the frequency at the Point of Interconnection is outside the Frequency-Watt deadband dbOF and dbUF as specified by the default settings in Table 2.

Table 2 Frequency-Watt Settings

Parameter	Default Value	Range of allowable settings ⁽¹⁾

dbOF, dbUF (Hz)	0.036	0.017 -1.0
kOF, kUF	0.04	0.02 - 0.07
Tresponse (small-signal) (s)	0.5	0.2-10

⁽¹⁾For the single-sided deadband values (dbOF, dbUF) ranges, both the lower value and the upper value is a minimum requirement (wider settings shall be allowed). For the frequency droop values (kOF, kUF) ranges, the lower value is a limiting requirement (the setting shall not be set to lower values) and the upper value is a minimum requirement (the setting may be set to greater values). For the open-loop response time, Tresponse (small-signal), the upper value is a limiting requirement (the setting shall not be set to greater values) and the lower value is a minimum requirement (the setting may be set to lower values).

(c) Unintended Islanding. A Facility’s inverters shall be certified to meet the unintentional islanding requirement stated in IEEE 1547-2018 (or latest version), “IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power System Interfaces.” Ride through requirements specified herein shall not inhibit the islanding detection performance where a valid unintentional islanding condition exists.

7. **Permits and Licenses**. Subscriber Organization shall be responsible for the design, installation, operation, and maintenance of the CBRE Facility and shall obtain at its expense, and maintain any required governmental authorizations and/or permits for the construction and operation of the CBRE Facility.

8. **Installation**.

(a) Design, installation, operation and maintenance of the CBRE Facility shall include control and protection equipment as specified by the Company, including but not limited to an automatic load-break device such as a circuit breaker or inverter and a manual disconnect that has a visible break or breaker with rack-out capability to isolate the CBRE Facility from the Company’s system. The manual disconnect device must be accessible by the Company and be capable of being locked by the Company in the open position, to establish working clearance for maintenance and repair work in accordance with the Company’s safety rules and practices. The disconnect devices shall be furnished and installed by the Subscriber Organization and are to be connected between the CBRE Facility and the Company’s electric system. The disconnect devices shall be located in the immediate vicinity of the electric meter serving the Subscriber Organization. The manual disconnect device shall be, at a minimum, clearly labeled “Subscriber Organization System Disconnect”. With permission of the Company, the disconnect devices may be located at an alternate location which is readily and safely accessible to the Company on a 24-hour basis. Such alternate location shall be clearly identified with signage placed in the immediate vicinity of the electric meter serving the Subscriber Organization.

(b) The Subscriber Organization grants access to the Company to utilize the disconnect device, if needed. Company may enter premises where the CBRE Facility is located, as permitted by law or tariff, for the following purposes: (1) to inspect CBRE Facility’s protective devices and read or test meter(s); and (2) to disconnect the CBRE Facility and/or service to Subscriber Organization, whenever in Company’s sole opinion, a hazardous condition exists and such immediate action is necessary to protect persons, Company’s facilities, or property of others from damage or interference caused by the CBRE Facility, or the absence or failure of properly operating protective device.

(c) Under no circumstances shall a Subscriber Organization interconnect and operate the CBRE Facility in parallel with the Company’s electric system without prior written approval by the Company.

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- (d) Once the CBRE Facility is interconnected to the Company's system, the Company reserves the right to require the installation of, or modifications to, equipment determined by the utility to be necessary to facilitate the delivery of reliable electric service to its customers, subject to the requirement that such installation or modification be consistent with applicable interconnection standards (e.g., Rule 14H). The Company shall provide a written explanation of the need for such installation or modification. Such installation or modification shall be made by mutual agreement of the Company and the Subscriber Organization. Any disputes related to this provision shall be resolved according to the dispute resolution process set forth below.
- (e) If the CBRE Facility is a facility interconnecting at the Distribution Level, the CBRE Facility shall follow the applicable Rule 14H interconnection process at the time of interconnection.
- (f) The CBRE Facility must comply with the communications and controllability requirements set forth in Part I, Section FG of the CBRE Tariff.

9. **Interconnection Facilities.**

- (a) Subscriber Organization-Owned Interconnection Facilities.
 - (1) The Subscriber Organization shall furnish, install, operate and maintain, at its cost, the interconnection facilities (such as circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes) identified in Exhibit B (Subscriber Organization-Owned CBRE Facility and Interconnection Facilities).
 - (2) The point of interconnection is shown on the single-line diagram and three-line diagram (provided by the Subscriber Organization and reviewed by the Company) which are attached to Exhibit B (Subscriber Organization-Owned CBRE Facility and Interconnection Facilities). Pursuant to Company Rule 14H, Appendix I (Distributed Generating Facility Interconnection Standards Technical Requirements), Section 6.c (Review of Design Drawings), the Company must review and approve Subscriber Organization's single-line and three-line diagrams prior to Subscriber Organization constructing of the CBRE Facility interconnection.
 - (3) The Subscriber Organization agrees to test the CBRE Facility, to maintain operating records, and to follow such operating procedures, as may be specified by the Company to protect the Company's system from damages resulting from the parallel operation of the CBRE Facility, including such testing, records and operating procedures as more fully described in Exhibit C attached hereto.
 - (4) The Company may inspect the CBRE Facility and Subscriber Organization's interconnection facilities.
- (b) Company-Owned Interconnection Facilities.
 - (1) The Company agrees to furnish, install, operate and maintain such interconnection facilities on its side of the point of interconnection with the CBRE Facility as required for the parallel operation with the CBRE Facility and more fully described in Exhibit C (Company-Owned Interconnection Facilities) attached hereto and made apart hereof ("Company Interconnection Facilities"). All Company Interconnection Facilities shall be the property of the Company. Where portions of the Company Interconnection Facilities are located on the Subscriber Organization's premises, the Subscriber Organization shall provide, at no expense to the Company, a suitable location for and access to all such equipment. If a 120/240 Volt power

source or sources are required, the Subscriber Organization shall provide these at no expense to the Company.

- (2) The Subscriber Organization agrees to pay to the Company a non-refundable contribution for the Company's investment in the Company Interconnection Facilities described in Exhibit C (Company-Owned Interconnection Facilities), subject to the terms and conditions included in Exhibit C and to pay for other interconnection costs. The interconnection costs will not include the cost of an initial technical screening of the impact of the CBRE Facility on the Company's system.
- (3) The Subscriber Organization shall provide an irrevocable standby letter of credit with no documentation requirement (i) in an amount not less than twenty-five percent (25%) of the total estimated costs for the Company Interconnection Facilities; and (ii) substantially in the form attached to this Agreement as Exhibit D (Form of Letter of Credit) from a bank or other financial institution chartered in the United States with a credit rating of "A-" or better. Such letter of credit shall remain in effect through the earlier of forty-five (45) days after the Commercial Operations Date, as such term is defined in the SFC, or seventy-five (75) days after the termination of this Agreement and true-up of any costs owed to Company. Subscriber Organization shall replenish the security amount to the level required under this Agreement (the "Security") within fifteen (15) business days after any draw on the Security by Company or any reduction in the value of Security below the required level for any other reason. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement, the SFC and/or any other obligation of Subscriber Organization to Company under the Company's applicable electric service tariff, the CBRE Tariff or any other applicable law, regulation, rule ordinance or regulatory order. Any failure to draw upon the Security or other security for any amounts due Company shall not prejudice Company's rights to recover such amounts in any other manner.

If the letter of credit is not renewed or extended at least thirty (30) days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and right (but not the obligation) to place the proceeds of such draw (the "L/C Proceeds"), at Subscriber Organization's cost, in an escrow account until and unless Subscriber Organization provides a satisfactory substitute letter of credit. If it so chooses, the Company will place the L/C Proceeds in an escrow account with a reputable escrow agent acceptable to Company ("Escrow Agent"). Thereafter, the Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed. Company shall have the sole authority to draw from the account and Subscriber Organization shall have no rights to the L/C Proceeds. Upon full satisfaction of Subscriber Organization's obligations under this Contract, including recovery by Company of amounts owed to it, Company shall instruct the Escrow Agent to remit to the bank that issued the letter of credit that was the source of the L/C Proceeds the remaining balance (if any) of the L/C Proceeds. Any failure to draw upon the L/C Proceeds for any amounts due Company shall not prejudice Company's rights to recover such amounts in any other manner.

Promptly following the Commercial Operations Date, and the complete performance of all of Subscriber Organization's obligations under this Agreement and the SFC, including but not limited to the obligation to pay any and all amounts owed by Subscriber Organization to Company, Company shall release the Security (including any accumulated interest, if applicable) to Subscriber Organization.

10. **Dispute Resolution:** Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably

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and in a good faith manner. In the event a dispute arises under this Agreement, and if it cannot be resolved by the Parties within thirty (30) days after written notice of the dispute to the other Party, the Parties agree to submit the dispute to the Independent Observer for the CBRE Tariff. Pursuant to Section I.6M. of the CBRE Tariff, material disputes unresolved after consultation with the Independent Observer may be presented to the Commission for review and the Commission may issue guidance and/or orders to resolve such disputes consistent with the CBRE Tariff.

11. **Continuity of Service.**

- (a) The Company may require the Seller to temporarily curtail, interrupt or reduce deliveries of energy when necessary in order for the Company to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or any part of the Company System including, but not limited to, accommodating the installation and/or testing of non-utility owned facilities to the Company system; or if the Company determines that such curtailment, interruption or reduction is necessary because of a system emergency, forced outage, operating conditions on its system; or the inability to accept deliveries of energy due to excess energy conditions; or if either the CBRE Facility does not operate in compliance with good engineering and operating practices or acceptance of energy from the Seller by the Company would require the Company to operate the Company system outside of good engineering and operating practices which in this case shall include, but not be limited to, excessive system frequency fluctuations or excessive voltage deviations, and any situation that the Company system operator determines, at his or her sole discretion, could place in jeopardy system reliability.
- (b) When the Company determines that curtailment of energy becomes necessary for excess energy (“Curtailment Event”), curtailments shall be made in reverse chronological order in accordance with Section 2.A.2 of the Standard Form Contract. When Company determines that curtailment of energy becomes necessary for engineering and/or operating reasons that are directly attributable to the CBRE Facility, or system conditions exist that require reduction of the CBRE Facility for reliability and stability reasons, the above curtailment order will not apply.
- (c) The CBRE Facility will be included in a group of solar projects designated as Phase 2 of the CBRE Program established by the Commission’s Decision and Order No. 37070 in Docket No. 2015-0389 that Company will, to the extent possible, treat as a single “block” (designated for convenience of reference as “CBRE Phase 2 Curtailment Block”) for purposes of implementing excess energy curtailment. When the Company is implementing excess energy curtailments, facilities included in the CBRE Phase 2 Curtailment Block shall be curtailed in reverse chronological order in accordance with the Standard Form Contract Section A.2 and Section ~~D(3)2~~ of Attachment B to the Standard Form Contract. Projects (such as photovoltaic net energy metering projects, feed-in tariff projects, etc.) that are allowed to be installed without remote curtailment controls and projects for which remote control is otherwise unavailable or inoperable will not be curtailed before the CBRE Facility for excess energy.
- (d) If the telemetry and control interface is unavailable, due to loss of communication link, remote terminal unit failure, or other event resulting in the loss of the remote control by Company, provision must be made for Subscriber Organization to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company system operator, such raising and lowering of the curtailment limits as directed by the Company system operator. Due to timing considerations, this local instruction may not correlate to the remaining CBRE “block” controls.
- (e) If all local and remote curtailment controls become unavailable or fail, the CBRE Facility shall, without intentional delay, disconnect from the Company’s system.
- (f) If direct transfer trip is determined to be required, but is unavailable due to any reason, including loss of

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communication or equipment problems, provision must be made for the Subscriber Organization to trip the main circuit breaker.

- (g) In the event that the Company initiates a curtailment event pursuant to this Agreement, Company shall not be obligated to accept any electric energy from the CBRE Facility except for such electric energy that Company notifies the Subscriber Organization that it is able to take during the duration of a curtailment. The Company shall not be liable to the Subscriber Organization for any curtailments that are not a Curtailment Event. The Subscriber Organization shall not override Company's curtailment.
12. **Personnel and System Safety.** If at any time the Company determines, in its sole discretion, that the continued operation of the CBRE Facility may endanger any person or property, the Company's electric system, or have an adverse effect on the safety or power quality of other customers, the Company shall have the right to curtail or disconnect the CBRE Facility from the Company's electric system remotely or otherwise. The CBRE Facility shall remain curtailed or disconnected until such time as the Company is satisfied that the endangering or power quality condition(s) has been corrected, and the Company shall not be obligated to accept any energy from the CBRE Facility during such period. The Company shall not be liable, directly or indirectly, for permitting or continuing to allow an attachment of the CBRE Facility for the acts or omissions of the Subscriber Organization that cause loss or injury, including death, to any third party.
13. **Prevention of Interference.** The Subscriber Organization shall not operate equipment that superimposes a voltage or current upon the Company's system that interferes with the Company's operations, service to the Company's customers, or the Company's communication facilities. Such interference shall include, but not be limited to, overcurrent, voltage imbalance, and abnormal waveforms. If such interference occurs, the Subscriber Organization must diligently pursue and take corrective action at its own expense after being given notice and reasonable time to do so by the Company. If the Subscriber Organization does not take timely corrective action, or continues to operate the equipment causing interference without restriction or limit, the Company may, without liability, disconnect the Subscriber Organization's equipment from the Company's system.
14. **Limitation of Liability.**
- (a) Each Party shall at all times indemnify, defend and save the other Party harmless from any and all damages, losses, claims, including claims and actions relating to injury or death of any person or damage to property, costs and expenses, reasonable attorneys' fees and court costs, arising out of or resulting from the Party's performance of its obligations under this Agreement, except to the extent that such damages, losses or claims were caused by the negligence or intentional acts of the other Party.
- ~~(b)~~ Each Party's liability to the other Party for failure to perform its obligations under this Agreement, shall be limited to the amount of direct damage actually ~~incur~~
- ~~(e)~~~~(b)~~ ~~ed~~incurred. In no event shall either Party be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.
- ~~(d)~~~~(c)~~ Notwithstanding any other provision in this Agreement, with respect to the Company's provision of electric service to any customer including the Subscriber Organization, the Company's liability to such customer shall be limited as set forth in the Company's tariffs and terms and conditions for electric service, and shall not be affected by the terms of this Agreement.
15. **Subscriber Organization and CBRE Facility Information.** By signing this Agreement, the Subscriber

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Organization expressly agrees and authorizes the Company to: (a) request and obtain from Subscriber Organization and its contractors, vendors, subcontractors, installers, suppliers or agents (collectively "Subscriber Organization Agents"), at no cost to Company, information related to the CBRE Facility, including but not limited to Watts, Vars, Watt Hours, current and voltage, status of the CBRE Facility, inverter settings, any and all recorded event or alarm logs recorded, (collectively "CBRE Facility Data") that Company reasonably determines are needed to ensure the safe and reliable operation of the CBRE Facility or the Company's system; or (b) make such modifications to the Subscriber Organization's system, at no cost to the Company, that Company determines, in its reasonable discretion, are needed to ensure the safe and reliable operation of the CBRE Facility or the Company's system. Subscriber Organization expressly agrees and irrevocably authorizes Subscriber Organization Agents to disclose such Subscriber Organization Data to Company and to make such modifications to the Subscriber Organization's CBRE Facility upon request by Company.

16. **Additional Information.** The Company reserves the right to request additional information from Subscriber Organization relating to the CBRE Facility, where reasonably necessary, to serve the Subscriber Organization under this Agreement or to ensure reliability, safety of operation, and power quality of the Company's system.
17. **No Material Changes to CBRE Facility.** The Subscriber Organization agrees that no material changes or additions to the CBRE Facility shall be made without having obtained prior written consent from the Company, which consent shall not be unreasonably withheld. Total Rated Capacity of the CBRE Facility must be less than 250kW and in no event may exceed such Total Rated Capacity. If the CBRE Facility changes ownership, the Company may require the new Subscriber Organization to complete and execute an amended Agreement or new Agreement, as may be applicable.
18. **Certification by Licensed Electrical Contractor.** Generating and interconnection systems must comply with all applicable safety and performance standards of the National Electrical Code (NEC), Institute of Electrical and Electronic Engineers (IEEE), and accredited testing laboratories such as the Underwriters Laboratories (UL), and where applicable, the rules of the Commission, or other applicable governmental laws and regulations, and the Company's interconnection requirements, in effect at the time of signing this agreement. This requirement shall include, but not be limited to, the interconnection standards and procedures of the Company's Rule 14H, as well as any other requirements as may be specified in this Agreement, its exhibits, and/or in the SFC, all as authorized by the Commission. Upon request by Company, Subscriber Organization shall cause a Licensed Electrical Contractor, as agent for Subscriber Organization, to certify that once approved by the Company, the proposed CBRE Facility will be installed to meet all preceding requirement(s).
19. **Good Engineering Practice.**
 - (a) Each Party agrees to install, operate and maintain its respective equipment and facilities and to perform all obligations required to be performed by such Party under this Agreement in accordance with good engineering practice in the electric industry and with applicable laws, rules, orders and tariffs.
 - (b) Wherever in this Agreement and the attached Exhibits the Company has the right to give specifications, determinations or approvals, such specifications, determinations and/or approvals shall be given in accordance with the Company's standard practices, policies and procedures, which may include the Company's Electric Service Installation Manual, the Company's Engineering Standard Practice Manual and the IEEE Guides and Standards for Protective Relaying Systems.
20. **Insurance.** The following insurance provisions are only applicable to Generating Facilities with a Total Rated Capacity greater than 10 kW but less than 250 kW:
 - (a) The Subscriber Organization shall, at its own expense and during the term of the Agreement and any other time that the CBRE Facility is interconnected with the Company's system, maintain in effect with

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a responsible insurance company authorized to do insurance business in Hawaii and with a rating by A.M. Best Company, Inc. of “A-VII” or better, the following insurance or its equivalent at Company’s discretion that will protect the Subscriber Organization and the Company with respect to the CBRE Facility, the CBRE Facility’s operations, and the CBRE Facility’s interconnection with the Company’s system:

- (b) A Commercial General Liability policy covering bodily injury and property damage with a combined single limit of liability of at least the following amounts based on the Total Rated Capacity of the generator (for solar systems—Total Rated Capacity of the generator or inverter, whichever is lower, can be used with appropriate technical documentation on inverter, if not higher Total Rated Capacity will be used), for any occurrence. The limits below may be satisfied through the use of umbrella or excess liability insurance sufficient to meet these requirements:

Commercial General Liability Coverage Amount	Total Rated Capacity of the CBRE Facility
\$1,000,000	Greater than 30 kW and less than 250 kW
\$500,000	Greater than 10 kW and less than or equal to 30 kW

- (c) Solely with respect to the insurance policies required for Generating Facilities with a Total Rated Capacity greater than 30 kW, said insurance by endorsement to the policy or policies shall: name the Company, its directors, officers, agents, and employees as additional insured; include contractual liability coverage for written Agreements; include provisions stating that the insurance will respond to claims or suits by additional insureds against the Subscriber Organization or any other insured thereunder; provide that the insurance is primary with respect to the Subscriber Organization and the Company; and provide that the insurance company waives all rights of subrogation which Subscriber Organization or the insurance company may have against Company, its directors, officers, agents, and employees. Any insurance carried by Company will be excess only and not contribute with this insurance.
- (d) Said insurance by endorsement to the policy or policies shall provide written notice within 30 days to the Company should the required insurance be cancelled, limited in scope, or not renewed upon expiration. “Claims made” policies are not acceptable, unless the Subscriber Organization agrees to maintain coverage in full effect at all times during the term of this Agreement and for THREE (3) years thereafter. The adequacy of the coverage afforded by the required insurance shall be subject to review by the Company from time to time, and if it appears in such review that risk exposures require an increase in the coverages and/or limits of this insurance, the Subscriber Organization shall make such increase to that extent and any increased costs shall be borne by the Subscriber Organization. The Subscriber Organization has the responsibility to determine if higher limits are desired and purchased. The Subscriber Organization shall provide certificates of insurance to the Company prior to executing the Agreement and any parallel interconnection. Receipt of any certificate showing less coverage than required shall not operate as a waiver by the Company of the Subscriber Organization’s obligation to fulfill the applicable requirements of this Section 20. The Subscriber Organization’s indemnity and other obligations shall not be limited by the foregoing insurance requirements. Any deductible shall be the responsibility of the Subscriber Organization.
- (e) Alternatively, where the Subscriber Organization is a governmental entity, Subscriber Organization may elect to be self-insured for the amounts set forth above in lieu of obtaining insurance coverage to those

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levels from an insurance company.

21. **Miscellaneous.**

- (a) **Disconnection and Survival of Obligations.** Upon termination of this Agreement, the CBRE Facility shall be disconnected from the Company's system. The termination of this Agreement shall not relieve the Parties of their respective liabilities and obligations, owed or continuing at the time of termination.
- (b) **Governing Law and Regulatory Authority.** This Agreement was executed in the State of Hawaii and must in all respects be interpreted, governed, and construed under the laws of the State of Hawaii. This Agreement is subject to, and the Parties' obligations hereunder include, operating in full compliance with all valid, applicable federal, state, and local laws or ordinances, and all applicable rules, regulations, orders of, and tariffs approved by, duly constituted regulatory authorities having jurisdiction.
- (c) **Amendment, Modifications, or Waiver.** This Agreement may not be altered or modified by either of the Parties, except by an instrument in writing executed by each of them. None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.
- (d) **Termination of Existing Agreement.** This Agreement shall supersede any existing agreement, if any, under which Subscriber Organization is currently operating the CBRE Facility and any such agreement shall be deemed terminated as of the date this Agreement becomes effective.
- (e) **Notices.**
All notices, consents and waivers under this Agreement shall be in writing and will be deemed to have been duly given when (i) delivered by hand, (ii) sent by electronic mail ("E-mail") (provided receipt thereof is confirmed via E-mail or in writing by recipient), (iii) sent by certified mail, return receipt requested, or (iv) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and E-mail Addresses set forth below (or to such other addresses and E-mail addresses as a Party may designate by notice to the other Party):

Company:

By Mail:

Delivered By Hand or Overnight Delivery:

HAWAIIAN ELECTRIC COMPANY, INC.

By E-mail:

With a copy to:

By Mail:

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

By E-mail:

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

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

Notice sent by mail shall be deemed to have been given on the date of actual delivery or at the expiration of the fifth Day after the date of mailing, whichever is earlier. Any Party hereto may change its address for written notice by giving written notice of such change to the other Party hereto.

Any notice delivered by E-mail shall request a receipt thereof confirmed by E-mail or in writing by the recipient and followed by personal or mail delivery of such correspondence any attachments as may be requested by the recipient, and the effective date of such notice shall be the date of receipt, provided such receipt has been confirmed by the recipient.

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The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.

- (f) **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. In the event of an assignment for financing, to the extent necessary, Company shall, if requested by Subscriber Organization and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Subscriber Organization, execute such Hawai'i-law-governed documents as may be reasonably requested by a lender in connection with CBRE Facility debt and reasonably acceptable to Company, to acknowledge an assignment of such debt and/or pledge/mortgage.
- (g) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.
- (h) **Relationship of Parties.** Nothing in this Agreement shall be deemed to constitute any Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties.
- (i) **Limitations.** Nothing in this Agreement shall limit the Company's ability to exercise its rights or expand or diminish its liability with respect to the provision of electrical service pursuant to the Company's tariffs as filed with the Commission, or the Commission's Standards for Electric Utility Service in the State of Hawai'i, which currently are included in the Commission's General Order Number 7, as either may be amended from time to time.
- (j) **Force Majeure.** For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected Party; (b) that is not the direct or indirect result of the fault or negligence of that Party; (c) in whole or in part delays or prevents a Party's performance under this Agreement, and (d) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will, within five (5) Days, notify the other Party in writing, and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible.
- (k) **Non-Warranty.** Neither by inspection, if any, or non-rejection, nor in any other way, does the Company give any warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Subscriber Organization or leased by the Subscriber Organization from third parties, including without limitation the CBRE Facility and any structures, equipment, wires, appliances or devices appurtenant thereto.
- (l) **Confidential Information.** Except as otherwise agreed or provided herein, each Party shall hold in

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confidence and shall not disclose confidential information to any person (except employees, officers, representatives and agents, who agree to be bound by this section). Confidential information shall be clearly marked as such on each page or otherwise affirmatively identified. If a court, government agency or entity with the right, power, and authority to do so, requests or requires either Party, by subpoena, oral disposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose confidential information, that Party shall provide the other Party with prompt notice of such request(s) or requirements(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. In the absence of a protective order or waiver the Party shall disclose only such confidential information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any confidential information so furnished.

- (m) **Execution of Agreement: Multiple Counterparts.** The parties agree that this Agreement, including amendments, may be executed and delivered by exchange of electronic signatures, which may be transmitted by facsimile, E-mail, or other acceptable means. A party's electronic signature shall be considered an "original" signature which is binding and effective for all purposes. 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

22. **Generator/Equipment Certification**

Generating Facilities that utilize inverter technology must be compliant with *Institute of Electrical and Electronics Engineers IEEE Std 1547* and *Underwriters Laboratories UL 1703* and *UL 1741* in effect at the time this Agreement is executed as well as the Company's Rule 14H ~~and any additional requirements in Exhibit E attached hereto that apply to Generating Facilities greater than 1 MW.~~ Generating Facilities that use a rotating machine must be compliant with applicable National Electrical Code, Underwriters Laboratories, and Institute of Electrical and Electronics Engineers standards and rules and orders of the Public Utilities Commission of the State of Hawaii in effect at the time this Agreement is executed. By signing below, the Applicant certifies that the installed generating equipment will meet the appropriate preceding requirement(s) and can supply documentation that confirms compliance, including a certification of the same from the Installing Electrical Contractor upon request by the Company.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives. This Contract is effective as of the Effective Date set forth above.

[Subscriber Organization]

[Hawaiian Electric Company, Inc.
Hawai'i Electric Light Company, Inc.
Maui Electric Company, Limited], a Hawai'i corporation

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

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EXHIBIT A
DESCRIPTION OF CBRE FACILITY

1. Subscriber Organization Information

Name (print): _____

Property Address: _____

City: _____ State: _____ Zip: _____

Meter # (if applicable): _____ TMK: _____

Phone: _____ Cell: _____ Email: _____

Mailing Address is the same as the Property Address

Mailing Address: _____

City: _____ State: _____ Zip: _____

Name of Person Authorized to Sign on behalf of Subscriber Organization: _____

Hawaii Gross Excise Tax License Number of Subscriber Organization: _____

2. Electrical Contractor

Electrical Contractor: _____ Hawai'i License #: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Cell: _____ Email: _____

Supply certification that the generating system will be installed and inspected in compliance with the local Building/Electrical code of the County of: Honolulu Maui Hawai'i

Generating System Building Permit # (to be filled out by the Company upon the Company's approval and execution of Agreement): _____ To be filled out by the Company

Interconnection Date (to be filled out by the Company upon the Company's approval and execution of the Agreement): _____ To be filled out by the Company

3. Insurance

Not Applicable (less than 10 kW)

Insurance Carrier: _____

4. General Technical Information (Attached)

Single Line Diagram **Three Line Diagram** **Relay List and Trip Scheme (if applicable)**

5. Generator Qualifications

Generator Type:

- Photovoltaic with DC Inverter Non-Photovoltaic DC Generator
-

Does this design include an Energy Storage System?

- No Yes (include Exhibit A-1)

What is the system's Maximum Export capability?

Technical System Size: _____ kW Maximum Export: _____ kW

6. Interconnecting Equipment Technical Data

Manufacturer: _____ Catalog #: _____

Type: _____ Rated Amps: _____ Rated Volts: _____

- Fused *or* Non-Fused | Single Phase *or* Three Phase | Uses multiple disconnects

Mounting Location: _____

Will an interposing transformer be used between the generator and the point of interconnection?

- No Yes

7. Generator Facility Technical Information

System Information:

Micro Inverter	Central/ String Inverter	Energy Storage (Inverter)	Inverter Manufacturer	Model	Qty.	Peak AC Output Rating (kW)*	Quantity x Peak AC Output Rating (kW)
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1					
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2					
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3					
<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4					
<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5					
Total Inverter Capacity (kW):							

Micro Inverter	Central/String Inverter	Module Manufacturer	Model	Qty.	STC Rating (kW)*	Quantity x STC Rating (kW)
<input type="checkbox"/> 1	<input type="checkbox"/> 1					
<input type="checkbox"/> 2	<input type="checkbox"/> 2					
<input type="checkbox"/> 3	<input type="checkbox"/> 3					
<input type="checkbox"/> 4	<input type="checkbox"/> 4					
<input type="checkbox"/> 5	<input type="checkbox"/> 5					
Total Module Capacity (kW):						
Total Capacity of Inverter #:		1:	2:	3:	4:	5:
Total Program Size (kW):						
Total System Capacity is the combined sums of the lesser of the AC or DC capacities per inverter.						

*All equipment ratings must match those listed on their manufacturer's specification sheets.

8. Reserved Not Applicable

9. Interconnecting Equipment Technical Data Not Applicable

Transformer Data

A copy of transformer Nameplate and Manufacturer's Test Report may be substituted

Transformer Primary (Volts): _____ Transformer Secondary (Volts): _____

Delta Wye Wye Grounded Delta Wye Wye Grounded

Size: _____ KVA Transformer Impedance: _____ % on _____ KVA Base

Transformer Fuse Data Not Applicable

Attach fuse manufacturer's Minimum Melt & Total Clearing Time-Current Curves

At Primary Voltage At Secondary Voltage

Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Transformer Protection (if not fuse) Not Applicable

Please describe: _____

Generator Main Circuit Breaker Not Applicable

A copy of circuit breaker's Nameplate and Specification Sheet may be substituted

Manufacturer: _____ Type: _____

Continuous Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Feeder Circuit Breaker Not Applicable

Attach copy of any proposed Time-Overcurrent Coordination Curves

Manufacturer	Type	Style/Catalog No.	Proposed Setting

Current Transformer Data Not Applicable

Attach copy of Manufacturer's Excitation & Ratio Correction Curves

Manufacturer	Type	Accuracy Class	Proposed Ration Connection
			/5
			/5
			/5
			/5
			/5

EXHIBIT A-1

DESCRIPTION OF CBRE FACILITY – ADDITIONAL INFORMATION

[ADDITIONAL INFORMATION FOR CBRE FACILITIES THAT: (1) INCLUDE AN ENERGY STORAGE SYSTEM; (2) INCLUDE NON-PHOTOVOLTAIC GENERATORS; OR (3) HAVE A TOTAL SYSTEM CAPACITY GREATER THAN 30 KW OR THREE-PHASE ELECTRICAL SERVICE]

1. Energy Storage System Information

Not Applicable

Specification sheets must be provided for all equipment listed in the section below

Description of Energy Storage System Operations:

Manufacturer: _____ Model: _____

Size kW: _____ Max Capacity kWh: _____

Rated kW discharge: _____ Rated kW charge: _____

Will the energy storage system be used only as an Emergency Backup System?

No Yes

Describe mode(s) of operation (e.g. charge and discharge timing; does the system match the load with PV and battery?)

Will the distribution grid be used to charge the storage device?

No Yes, charging periods: _____

Will power be exported to the grid?

No Yes, maximum export to the grid: _____

2. Wind Generator System Information

Not Applicable

Specification sheets must be provided for all equipment listed in the section below

DC Generator Manufacturer	Model	Qty.	Rating (kW)	Quantity x Rating (kW)
Total DC Generator Capacity (kW):				
Inverter Manufacturer	Model	Qty.	Rating (kW)	Quantity x Rating (kW)
Total Inverter Capacity (kW):				
Total System Capacity (kW):				
Fault Current Contribution of Generator (Amps):				

3. Technical Information for Synchronous and Induction Generators

Not Applicable

Specification sheets must be provided for all equipment referenced in the section below

Number of starts per day: _____ Maximum Starting kVA: _____ Generator Operating Power Factor: _____

Effectively Grounded Resonant Grounded Low-Inductance Grounded Low-Resistance Grounded High-Resistance Grounded Ungrounded

Generator Characteristic Data*:

* Not needed if Generator Nameplate and Manufacturer's Specification Sheet are provided.

Direct Axis Synchronous Reactance, X_d : _____ P.U. Direct Axis Transient Reactance, X'_d : _____ P.U.
 Direct Axis Subtransient Reactance, X''_d : _____ P.U. Inertia Constant, H: _____ P.U. Excitation Response Ratio: _____
 Direct Axis Open-Circuit Transient Time Constant, X_d : _____ Seconds Direct Axis Open-Circuit Subtransient Time Constant, T''_do : _____ Seconds

4. Interconnecting Equipment Technical Data

Transformer Data Not Applicable

A copy of transformer Nameplate and Manufacturer's Test Report may be substituted

Transformer Primary (Volts): _____ Transformer Secondary (Volts): _____
 Delta Wye Wye Grounded Delta Wye Wye Grounded
 Size: _____ KVA Transformer Impedance: _____ % on _____ KVA Base

Transformer Fuse Data Not Applicable

Attach fuse manufacturer's Minimum Melt & Total Clearing Time-Current Curves

At Primary Voltage At Secondary Voltage
 Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Transformer Protection (if not fuse) Not Applicable

Please describe: _____

Generator Main Circuit Breaker Not Applicable

A copy of circuit breaker's Nameplate and Specification Sheet may be substituted

Manufacturer: _____ Type: _____
 Continuous Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Feeder Circuit Breaker Not Applicable

Attach copy of any proposed Time-Overcurrent Coordination Curves

Manufacturer	Type	Style/Catalog No.	Proposed Setting

Current Transformer Data Not Applicable

Attach copy of Manufacturer's Excitation & Ratio Correction Curves

Manufacturer	Type	Accuracy Class	Proposed Ration Connection
			/5
			/5
			/5
			/5
			/5

EXHIBIT B

**SUBSCRIBER ORGANIZATION-OWNED CBRE FACILITY AND
INTERCONNECTION FACILITIES**

1. CBRE Facility

- a. Compliance with laws and standards.
- (i) The CBRE Facility, CBRE Facility design, and CBRE Facility drawings shall meet all applicable national, state, and local laws, rules, regulations, orders, construction and safety codes, and shall satisfy the terms of the Interconnection Agreement, the SFC, and the Company's Distributed CBRE Facility Interconnection Standards, Technical Requirements ("Interconnection Standards"), as set forth in Rule 14, Paragraph H.1 of the Company's tariff.
 - (ii) This Agreement incorporates by reference the standards and requirements of Company Rule 14H; however, in the event of any conflict between this Agreement and Company Rule 14H, the provisions of this Agreement shall control.
- b. Avoidance of adverse system conditions. The CBRE Facility shall be designed, installed, operated and maintained so as to prevent or protect against adverse conditions on the Company's system that can cause electric service degradation, equipment damage, or harm to persons, such as:
- (i) Unintended islanding.
 - (ii) Inadvertent and unwanted re-energization of a Company dead line or bus.
 - (iii) Interconnection while out of synchronization.
 - (iv) Overcurrent.
 - (v) Voltage imbalance.
 - (vi) Ground faults.
 - (vii) Generated alternating current frequency outside of permitted safe limits.
 - (viii) Voltage outside permitted limits.
 - (ix) Poor power factor or reactive power outside permitted limits.
 - (x) Abnormal waveforms.
- c. Specification of protection, synchronizing and control requirements. The Subscriber Organization shall provide the design drawings, operating manuals, manufacturer's brochures/instruction manual and technical specifications, manufacturer's test reports, bill of material, protection and synchronizing relays and settings, and protection, synchronizing, and control schemes for the CBRE Facility to the Company for its review, and the Company shall have the right to specify the protection and synchronizing relays and settings, and protection, synchronizing and control schemes that affect the reliability and safety of operation and power quality of the Company's system with which the CBRE Facility is interconnected ("Facility Protection Devices/Schemes").
- d. Maximum Export. The net instantaneous MW output from the CBRE Facility may not exceed the Maximum Export capability, as set forth in Section 5 of this Agreement. The Company may take appropriate action to limit such net instantaneous MW output, pursuant to Company's Rule 14H, this Agreement and/or the SFC.

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- e. CBRE Facility protection and maintenance.
- (i) The Subscriber Organization is solely responsible for securing and providing adequate protection for the CBRE Facility. The Subscriber Organization shall also perform vegetation management and other routine maintenance in accordance with manufacturer recommendations and intervals for purposes of maintaining the CBRE Facility in good working order. Subscriber Organization shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
 - (ii) By the first day of each calendar quarter following the Commercial Operations Date, Subscriber Organization shall provide the Company in writing a projection of maintenance outages for the next calendar quarter. If, during the term of this Agreement, the CBRE Facility or any of the individual components of the CBRE Facility should be damaged or destroyed, or taken out of service for unscheduled maintenance, the Subscriber Organization shall provide the Company as soon as reasonably practicable following or in anticipation of such event, and promptly repair or replace the damaged or destroyed equipment at the Subscriber Organization's sole expense. If the time period for repair or replacement is reasonably anticipated to exceed one hundred eighty (180) days, the Company shall have the right to request to terminate this Agreement by written notice.
- f. Information Security Requirements.
- (i) Safety and Security Procedures. The Subscriber Organization shall maintain and enforce safety and security procedures to safeguard: all data provided by Company to Subscriber Organization pursuant to this Agreement or in any way connected with the CBRE Program and the administration of the CBRE Program including but not limited to Subscriber names, Subscriber account numbers and information on such accounts, Subscriber addresses, Subscriber rate schedules and Subscriber CBRE bill credit information ("Company CBRE Data"); and all information regarding Company's customers, customer lists, any of the data and testing results produced under this Agreement and any information identified by Company as confidential ("Company Customer Data" and together with Company CBRE Data, collectively referred to as "Company Confidential Information"); all generation and telemetry data provided by the Subscriber Organization to the Company ("SO Data"); in Subscriber Organization's possession, including Company Confidential Information that Subscriber Organization provides to any contractors, consultants, and other third parties retained by Subscriber Organization to assist Subscriber Organization to perform under this Agreement in the course of Subscriber Organization's performance pursuant to this Agreement. Subscriber Organization warrants that it shall (A) use the National Institute of Standards and Technology ("NIST") industry best practices for physical and systems security measures to prevent destruction, loss, alteration or unauthorized access to, use of, or tampering with, the CBRE Facility, Subscriber Organization software, and Company Confidential Information, including to protect the confidentiality and integrity of any of Company Confidential Information, operation of Company's systems, and to prevent viruses and similar destructive code from being placed in any software or data provided to Company, on Subscriber Organization's or Company's website, or in Subscriber Organization's or Company's programming; and (B) use NIST industry best practices physical security and precautionary measures to prevent unauthorized access or damage to the CBRE Facility, including to protect the

confidentiality and integrity of any of Company's Confidential Information as well as the operation of Company's systems. Subscriber Organization shall, at a minimum, protect Company's Confidential Information and provide the standard of care required by NIST cybersecurity requirements, and the same measures it uses to protect its own confidential information.

- (ii) Exception to Certain NIST Requirements. Company, at its sole and absolute discretion, may waive the requirements concerning NIST industry best practices as set forth in subsection (i)(A) and (B) above provided that Subscriber Organization implements alternate measures that Company deems acceptable and not inconsistent with Company's standards with respect to (A) physical and systems security measures to prevent destruction, loss, alteration or unauthorized access to, use of, or tampering with, the CBRE Facility, software and Company's Confidential Information, including to protect the confidentiality and integrity of any of Company's Confidential Information, operation of Company's systems, and to prevent viruses and similar destructive code from being placed in any software provided to Company, on Subscriber Organization's or Company's website, or in Subscriber Organization's or Company's programming; and (B) physical security and precautionary measures to prevent unauthorized access or damage to the CBRE Facility, including to protect the confidentiality and integrity of any of Company's Confidential Information as well as the operation of Company's systems.
- (iii) Security Breach. In the event that Subscriber Organization discovers or is notified of a breach, potential breach of security, or security incident at the CBRE Facility or of Subscriber Organization's systems (a "Security Breach"), Subscriber Organization shall immediately (i) notify Company of such Security Breach, whether or not such breach has compromised any of Company Confidential information, (ii) investigate and remediate the effects of the Security Breach, (iii) cooperate with Company with respect to any such Security Breach and provide necessary information on the Security Breach as requested by Company; and (iv) comply with all applicable privacy and data protection laws, including any notification obligations. Any remediation of any Security Breach will be at Subscriber Organization's sole expense.
- (iv) "Subscriber" means a retail customer of the Company who owns a subscription of Subscriber Organization's CBRE project interconnected with the Company.

g. Subscriber Organization Interconnection Facilities.

- (i) The Subscriber Organization shall furnish, install, operate and maintain interconnection facilities (such as circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes) designated by or acceptable to the Company as suitable for parallel operation of the CBRE Facility with the Company's system ("Subscriber Organization Interconnection Facilities"). Such facilities shall be accessible at all times to authorized Company personnel.
- (ii) The Subscriber Organization shall comply with the Company's Interconnection Standards.
- (iii) 1) Single-line diagram of the CBRE Facility, 2) relay list, trip scheme and settings of the CBRE Facility, 3) CBRE Facility Equipment List, and 4) three-line diagram, which identify the circuit breakers, relays, switches, synchronizing equipment, monitoring equipment, and control and protective devices and schemes, shall, after having

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obtained prior written consent from the Company, be attached to Exhibit A and made a part hereof at the time the Agreement is signed. The single-line diagram shall include pertinent information regarding operation, protection, synchronizing, control, monitoring, and alarm requirements. The single-line diagram and three-line diagram shall expressly identify the point of interconnection of the CBRE Facility to the Company's system. The relay list, trip scheme and settings shall include all protection, synchronizing and auxiliary relays that are required to operate the CBRE Facility in a safe and reliable manner. The three-line diagram shall show potential transformer and current transformer ratios, and details of the CBRE Facility's configuration, including relays, meters, and test switches.

- (iv) Subscriber Organization shall provide final as-built drawings of the Subscriber Organization Interconnection Facilities within thirty (30) days of the successful completion of the initial verification test. Within thirty (30) days of Company's receipt of the proposed as-built drawings, Company shall provide Subscriber Organization with either (A) its comments on the proposed as-built drawings or (B) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Subscriber Organization shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) days of Subscriber Organization's receipt of Company's comments.
- h. Approval of Design Drawings. The single-line diagram, relay list, trip scheme and settings of the CBRE Facility, and three-line diagram shall be approved by a Professional Electrical Engineer registered in the State of Hawaii prior to being submitted to the Company. Such approval shall be indicated by the engineer's professional seal on all drawings and documents.
- i. [Reserved]
- j. Schedule. The Company and the Subscriber Organization have agreed upon on a schedule for the progression of the CBRE Facility's construction (e.g., construction start date, Commercial Operations Date, etc.) and each Party has a copy of such schedule and agrees to use commercially reasonable efforts to adhere to such schedule.

2. Verification Testing.

- a. Upon initial parallel operation of the CBRE Facility, or any time either (i) interface hardware or software is changed, or (ii) the Company observes that the Subscriber Organization is not in compliance with the operational and performance requirements specified in the Company's Rule 14H, this Agreement and/or the SFC, a verification test shall be performed. Such verification test shall include testing of the telemetry and control interface which allows the Company to remotely measure, monitor, evaluate and verify technical compliance, CBRE Facility performance, and power quality and, if necessary, control the CBRE Facility. A licensed professional engineer or otherwise qualified individual shall perform verification testing in accordance with the manufacturer's published test procedure. Qualified individuals include professional engineers, factory trained and certified technicians, and licensed electricians with experience in testing protective equipment. The Company reserves the right to witness verification testing or require written certification that the testing was performed.
- b. Verification testing shall also be performed every four years. The Company reserves the right to perform, at its expense, additional verification testing. All verification tests prescribed by the manufacturer shall be performed. If wires must be removed to perform certain tests, each wire

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and each terminal shall be clearly and permanently marked. The Subscriber Organization shall maintain verification test reports for inspection by the Company.

- c. Inverters shall be verified once per year as follows: once per year the Subscriber Organization shall operate the Subscriber Organization system disconnect switch and verify the CBRE Facility automatically shuts down and does not reconnect with the Company's system until the Company's system continuous normal voltage and frequency have been maintained for a minimum of 5 minutes. The Subscriber Organization shall maintain a log of these operations for inspection by the Company.
- d. Any system that depends upon a battery for trip power shall be checked once per month for proper voltage. Once every four (4) years the battery shall either be replaced or have a discharge test performed. The Subscriber Organization shall maintain a log of these operations for inspection by the Company.
- e. Tests and battery replacements as specified in this section 2 of Exhibit B shall be at the Subscriber Organization's expense.
- f. The CBRE Facilities may also be subject to an acceptance test and a control system acceptance test prior to initial parallel operation. The procedures for such tests will be provided to Subscriber Organization by the Company prior to executing this Agreement.

3. Inspection of the CBRE Facility.

- a. The Company may, in its discretion and upon reasonable notice not to be less than 24 hours (unless otherwise agreed to by the Company and the Subscriber Organization), observe the construction of the CBRE Facility (including but not limited to relay settings and trip schemes) and the equipment to be installed therein.
- b. Within fourteen days after receiving a written request from the Subscriber Organization to begin producing electric energy in parallel with the Company's system, the Company may inspect the CBRE Facility (including but not limited to relay settings and trip schemes) and observe the performance of the verification testing. The Company may accept or reject the request to begin producing electric energy based upon the inspection or verification test results.
- c. If the Company does not perform an inspection of the CBRE Facility (including but not limited to relay settings and trip schemes) and observe the performance of verification testing within the fourteen-day period, the Subscriber Organization may begin to produce energy after certifying to the Company that the CBRE Facility has been tested in accordance with the verification testing requirements and has successfully completed such tests. After receiving the certification, the Company may conduct an inspection of the CBRE Facility (including but not limited to relay settings and trip schemes) and make reasonable inquiries of the Subscriber Organization, but only for purposes of determining whether the verification tests were properly performed. The Subscriber Organization shall not be required to perform the verification tests a second time, unless irregularities appear in the verification test report or there are other objective indications that the tests were not properly performed in the first instance.
- d. The Company may, in its discretion and upon reasonable notice not to be less than 24 hours (unless an apparent safety or emergency situation exists which requires immediate inspection to resolve a known or suspected problem), inspect the CBRE Facility (including but not limited to relay settings and trip schemes) and its operations (including but not limited to the operation of control, synchronizing, and protection schemes) after the CBRE Facility commences

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operations.

4. Operating Records and Procedures.

- a. The Company may require periodic reviews of the maintenance records, and available operating procedures and policies of the CBRE Facility.
- b. The Subscriber Organization must separate the CBRE Facility from the Company's system whenever requested to do so by the Company's System Operator pursuant to this Agreement. It is understood and agreed that at times it may not be possible for the Company to accept electric energy due to temporary operating conditions on the Company's system, and these periods shall be specified by the Company's System Operator. Notice shall be given in advance when these are scheduled operating conditions.
- c. Logs shall be kept by the Subscriber Organization for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. The Company shall have the right to review these logs, especially in analyzing system disturbance. Subscriber Organization shall maintain such records for a period of not less than six (6) years.

5. Changes to the CBRE Facility, Operating Records, and Operating Procedures.

- a. The Subscriber Organization agrees that no material changes or additions to the CBRE Facility as reflected in the single-line diagram, relay list, trip scheme and settings of the CBRE Facility, CBRE Facility Equipment List, and three-line diagram shall be made without having obtained prior written consent from the Company, which consent shall not be unreasonably withheld.
- b. As a result of the observations and inspections of the CBRE Facility (including but not limited to relay list, trip scheme and settings) and the performance of the verification tests, if any changes in or additions to the CBRE Facility, operating records, and operating procedures and policies are required by the Company, the Company shall specify such changes or additions to the Subscriber Organization in writing, and the Subscriber Organization shall, as soon as practicable, but in no event later than thirty (30) days after receipt of such changes or additions, respond in writing, either noting agreement and action to be taken or reasons for disagreement. If the Subscriber Organization disagrees with the Company, it shall note alternatives it will take to accomplish the same intent, or provide the Company with a reasonable explanation as to why no action is required by good engineering practice.

6. CBRE Facility Equipment List.

The CBRE Facility shall include the following equipment:

[Specific items to be attached as necessary. The CBRE Facility Equipment List, together with the single-line diagram, relay list and trip scheme, and three-line diagram, should be attached to this Exhibit B.]

EXHIBIT C
COMPANY-OWNED INTERCONNECTION FACILITIES

(To be filled out by Company)

1. Description of Company Interconnection Facilities

The Company will purchase, construct, own, operate and maintain all interconnection facilities required to interconnect the Company’s system with the CBRE Facility at _____ volts, up to the point of interconnection.

The Company Interconnection Facilities, for which the Subscriber Organization agrees to pay, include:

[Need to specify the interconnection facilities. If no interconnection facilities, state “None”.]

2. Subscriber Organization Payment to Company for Company Interconnection Facilities, Review of CBRE Facility, and Review of Verification Testing

The Subscriber Organization shall pay to the Company the total estimated interconnection cost to be incurred by the Company (Total Estimated Interconnection Cost), which is comprised of (i) the estimated cost of the Company Interconnection Facilities, (ii) the estimated engineering costs associated with a) developing the Company Interconnection Facilities and b) reviewing and specifying those portions of the CBRE Facility which allow interconnected operation, and iii) witnessing and reviewing the verification testing, which shall include testing of the telemetry and control interface which allows the Company to remotely measure, monitor, evaluate and verify technical compliance, CBRE Facility performance, and power quality and, if necessary, control the CBRE Facility. The following summarizes the Total Estimated Interconnection Cost:

Description	Estimated Cost (\$) [If no cost, state “None”.]
Total Estimated Interconnection Cost (\$):	

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The Total Estimated Interconnection Cost, which, except as otherwise provided herein, is non-refundable, shall be paid by the Subscriber Organization fourteen (14) days after receipt of an invoice from the Company, which shall be provided not less than thirty (30) days prior to start of procurement of the Company Interconnection Facilities.

Within thirty (30) days of receipt of an invoice, which shall be provided within fourteen (14) days of the final accounting, which shall take place within sixty (60) days of completion of construction of the Company Interconnection Facilities, the Subscriber Organization shall remit to the Company the difference between the Total Estimated Interconnection Cost paid to date and the total actual interconnection cost (Total Actual Interconnection Cost). The latter is comprised of (i) the total costs of the Company Interconnection Facilities, and (ii) the total engineering costs associated with a) developing the Company Interconnection Facilities and b) reviewing and specifying those portions of the CBRE Facility which allow interconnected operations as such are described in Exhibit A, and iii) reviewing the verification testing. If in fact the Total Actual Interconnection Cost is less than the payments received by the Company as the Total Estimated Interconnection Cost, the Company shall repay the difference to the Subscriber Organization within thirty (30) days of the final accounting.

If the Agreement is terminated prior to the Subscriber Organization's payment for the Total Actual Interconnection Cost (or the portion of this cost which has been incurred) or prior to the Company's repayment of the over collected amount of the Total Estimated Interconnection Cost (or the portion of this cost which has been paid), such payments shall be made by the Subscriber Organization or Company, as appropriate. If payment is due to the Company, the Subscriber Organization shall pay within thirty (30) days of receipt of an invoice, which shall be provided within fourteen (14) days of the final accounting, which shall take place within sixty (60) days of the date the Agreement is terminated. If payment is due to the Subscriber Organization, the Company shall pay within thirty (30) days of the final accounting.

All Company Interconnection Facilities shall be the property of the Company.

3. Operation, Maintenance and Testing Costs

The Company will bill the Subscriber Organization monthly and the Subscriber Organization will, within 30 days after the billing date, reimburse the Company for any costs incurred in operating, maintaining or testing the Company Interconnection Facilities. The Company's costs will be determined on the basis of outside service costs, direct labor costs, material costs, transportation costs, applicable overheads at time incurred and applicable taxes. Applicable overheads will include such costs as vacation, payroll taxes, non-productive wages, supervision, tools expense, employee benefits, engineering administration, corporate administration, and materials handling. Applicable taxes will include the Public Service Company Tax, and Public Utility Fee.

EXHIBIT D
FORM OF LETTER OF CREDIT

[Bank Letterhead]

[Date]

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

[Bank's Name]
[Bank's Address]

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

Ladies and Gentlemen:

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

Subject to the terms and conditions hereof, this Letter of Credit secures **[Project Entity Name]**'s certain obligations to Beneficiary under the Community-Based Renewable Energy Program Interconnection Agreement dated as of _____ between **[Project Entity Name]** and Beneficiary.

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

This Letter of Credit may be drawn upon under the terms and conditions set forth herein.

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

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company **[HELCO or MECO, as appropriate]**, and [(ii) the amount of the draft accompanying this certification is due and owing to Hawaiian Electric Company **[or HELCO or MECO, as appropriate]** under the terms of the Interconnection Agreement dated as of _____, between _____, and Hawaiian Electric Company **[or HELCO or MECO, as appropriate]**] [(ii) the amount of the draft accompanying this certification is due and owing to Hawaiian Electric Company **[or HELCO or MECO, as appropriate]** under the terms of the Standard Form Contract dated as of _____, between _____, and Hawaiian Electric Company **[or HELCO or MECO, as appropriate]**] [(ii) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under Section ___ of the Interconnection Agreement*].

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

* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Standard Form Contract.

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

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

Manager, ~~DER Operations~~CER Programs - CBRE
Hawaiian Electric Company, Inc.
220 South King Street, ~~21st~~12th Floor
Honolulu, Hawai'i 96813

and to

SVP & Chief Financial Officer
Hawaiian Electric Company, Inc.
900 Richards Street, 4th Floor
Honolulu, Hawai'i 96813

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **[Bank's Name]** and **[Bank's Address]** if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by **[Bank]** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **[Bank]** receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of Hawai'i are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce publication no. 590 ("ISP98").

[Bank's Name]:

By: _____
[Authorized Signature]

HAWAIIAN ELECTRIC COMPANY, INC.

APPENDIX IV

**STANDARD FORM CONTRACT FOR
HAWAI'I COMMUNITY BASED RENEWABLE ENERGY – PHASE TWO**

THIS STANDARD FORM CONTRACT FOR HAWAI'I COMMUNITY BASED RENEWABLE ENERGY – PHASE TWO (“Contract”) is entered into as of _____, 20__ (the “Effective Date”), by [Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., Hawai'i Electric Light Company, Inc.], a Hawai'i corporation (hereafter called "Company") and _____ (hereafter called "Subscriber Organization"). Together, the Company and Subscriber Organization are the “Parties” and may singularly each be referred to as a “Party.”

RECITALS

WHEREAS, Company is an operating electric public utility engaged in the generation, transmission, distribution, [**storage,**] regulation, or physical control of electricity (“Company System”) on the Island of [Hawai'i, Maui, Oahu], subject to the Hawai'i Public Utilities Law (Hawai'i Revised Statutes, Chapter 269) and the rules and regulations of the Hawai'i Public Utilities Commission (hereinafter called the "PUC" or the “Commission”); and [**DRAFTING NOTE: This SFC is drafted to include a battery energy storage system ("BESS") as part of the CBRE Facility. References to the BESS and/or storage appear in bold text and brackets and will need to be revised to conform to specifics of each CBRE Project.**]

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

WHEREAS, Subscriber Organization is an “approved Subscriber Organization,” as defined in the Company's Community-Based Renewable Energy (“CBRE”) Program Phase 2 Tariff (“CBRE Tariff”), and desires to ~~construct and~~ operate a renewable energy generation system (“RE System”) that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute (codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95) and qualifies for the CBRE Program [**together with a safe, reliable and operationally flexible battery energy storage system (“BESS”)**] so as to provide the Company System with those benefits and services associated with renewable energy generation [**and energy storage services**], as defined herein; and

WHEREAS, this Contract applies to RE Systems providing less than 250 kW and is entered into in accordance with the terms and conditions contained herein, the CBRE Tariff, the Interconnection Agreement (attached as Appendix III to the CBRE Tariff) and Company Rule 14, Paragraph H (Interconnection of Distributed Generating Facilities Operating in Parallel With The Company's Electric System) (“Rule 14H”); and

WHEREAS, concurrent with this Contract the Parties have executed the Interconnection Agreement which allows Subscriber Organization to interconnect and operate the CBRE Facility in parallel with the Company System so long as all applicable requirements and conditions of this Contract, the Interconnection Agreement, the CBRE Tariff and Rule 14H have been satisfied; and

WHEREAS, the RE System to be developed by the Subscriber Organization will be an established or planned electrical energy generation system with a nameplate capacity of _____ kilowatts of alternating current (AC) and

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[WHEREAS, the BESS to be installed by the Subscriber Organization will be an electrical energy battery storage system with a nameplate capacity in kilowatt-hours [kWh] of _____; and] **[DRAFTING NOTE: REMOVE THIS RECITAL IF PROJECT DOES NOT INCLUDE BESS]**

WHEREAS, the RE System [**and BESS**] (hereinafter the “CBRE Facility”) will be constructed and operated on property located at _____, Island of _____, State of Hawai‘i (“CBRE Project”) and more fully described in Exhibit A (Description of Generating Facility) [**and Exhibit A-1 (Additional Information for Generating Facilities that include an Energy Storage System) to the Interconnection Agreement**]; and

WHEREAS, Subscriber Organization desires to sell to Company, and Company agrees to purchase, subject to the terms and conditions set forth herein, the renewable energy produced by the CBRE Facility and exported to Company at the Point of Interconnection; and

WHEREAS, Subscriber Organization agrees that it and its subscribers shall be compensated by Company for renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection in accordance with the terms and conditions set forth in this Contract.

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

AGREEMENT

1. **DEFINITIONS.** When the capitalized terms set forth in the Schedule of Defined Terms in Attachment A are used in this Contract, such terms shall have the meanings set forth in such Schedule.
2. **SALE AND PAYMENT FOR RENEWABLE ENERGY.**

A. Sale of Renewable Energy Produced by CBRE Facility

1. Effective upon the Commercial Operations Date, Subscriber Organization agrees to sell to Company, and Company agrees to purchase from Subscriber Organization, all of the renewable energy produced by the CBRE Facility and delivered to the Point of Interconnection, subject to and in accordance with the terms and conditions of this Contract.
2. Company may require Subscriber Organization to temporarily curtail, interrupt or reduce deliveries of renewable energy produced by the CBRE Facility as a result of circumstances described in and in accordance with Attachment B (Curtailment Block) to this Contract. A Curtailment Event will reduce the amount of renewable electrical energy the CBRE Facility is permitted to deliver to the Company.
3. Subscriber Organization shall not sell the renewable energy produced, stored or associated with the CBRE Facility, to any person or entity other than the Company during the Term of this Contract.
4. The Company will buy (through Bill Credits to the Subscribers) all Subscribed Energy generated by the CBRE Project and delivered to the Company during a particular Production Month at the current applicable “Credit Rate,” as determined by the Phase 2 CBRE Tariff (hereinafter “Bill

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Credit Rate”).¹ Each Subscriber to the CBRE Program will receive a Bill Credit at the Bill Credit Rate for electricity generated attributable to the Subscriber's Subscription as detailed below.

5. The Company will buy (through payment to the Subscriber Organization) all Unsubscribed Energy generated by the CBRE Project and delivered to the Company during a particular Production Month at the Bill Credit Rate, subject to adjustment as detailed in Section 2(D) of this Contract.

B. Updating Monthly Subscription Information During Production Month; Invoicing Following Close of Production Month.

1. No later than the last Day of each Production Month, the Subscriber Organization shall provide to the Company any and all changes to the Monthly Subscription Information to be used for such Production Month by entering new or updating previously-entered data through the CBRE Online Portal. Such data to be entered or changed by the Subscriber Organization pursuant to this paragraph shall include additions, deletions or changes to the listing of Subscribers holding Subscriptions in the CBRE Facility, including any changes occurring by said last Day of such Production Month to the Subscriber's account number and service address attributable to each Subscription and the Subscriber Allocation for each Subscriber's Subscription.
2. For each Production Month, the purchase or transfer of all or any portion of a Subscriber's Allocation occurring on or before the 20th Day of such Production Month of which the Company is notified, as provided for in the preceding paragraph, shall have retroactive effect as of the first Day of such Production Month; the purchase or transfer of all or any portion of a Subscriber's Allocation occurring on or after the 21st Day of such Production Month, but prior to the first Day of the following Production Month, shall have effect as of the first Day of such following Production Month. Unsubscribed Energy of the CBRE Facility shall be recalculated as of the last Day of each Production Month to account for the effectiveness of such purchases and transfers as aforesaid.
3. By the fifth (5th) Business Day following each Production Month, Company shall provide the following information to Subscriber Organization for its use in computing the amount to be paid for the renewable energy purchased by Company during such Production Month:
 - a. Production Meter data pertaining to renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection during such Production Month; and
 - b. If applicable, amounts reasonably incurred by Company, and reimbursable by Subscriber Organization to Company under Section 7(D) of this Contract, during such Production Month for the maintenance, operation, and testing of the Production Meter and related infrastructure, and any other amounts due to Company under said Section 7(D).
4. By the tenth (10th) Business Day following each Production Month, Subscriber Organization shall submit to Company its monthly invoice for such Production Month detailing:
 - a. A computation, based on the updated Monthly Subscriber Information for such Production Month as provided pursuant to Sections 2(B)1 and 2(B)2 of this Contract, of the Bill Credits

¹ Such Bill Credit Rate shall be either the Credit Rate specified in the Phase 2 CBRE Framework or as determined by Company in accordance with the “competitive credit rate procurement” or “CCRP” mechanism outlined in the Phase 1 CBRE Framework.

to which each Subscriber is entitled based on such Subscriber's Subscriber Allocation for such Production Month, to be applied to each Subscriber's retail electric bill; and

- b. The dollar amount owing to Subscriber Organization for Unsubscribed Energy.
- c. The dollar amount owing Company for the \$25.00 (monthly) Production Meter Administration Fee and any other applicable Subscriber Organization Fees as set forth in Section 7(D) of this Contract. Amounts owed to Company shall appear on the monthly invoice as a credit against the amount owed to Subscriber Organization for Unsubscribed Energy.

C. Payment Procedures.

1. Payment for Unsubscribed Energy. By the twentieth (20th) Business Day of the calendar month during which the invoice in question was received as provided in Section 2(B)4 of this Contract (but no later than the last Business Day of such calendar month if there are less than twenty Business Days in such month), Company shall pay Subscriber Organization the amount owing for the Unsubscribed Energy for the Production Month covered by such invoice as shown on such invoice, or provide to Subscriber Organization an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount.
2. Late Payments. Notwithstanding all or any portion of such invoice in dispute, any payment for the Unsubscribed Energy not made to Subscriber Organization by the payment deadline established in the preceding paragraph shall accrue simple interest at the Prime Rate for the period from that payment deadline until the outstanding interest and invoiced Unsubscribed Energy amount (or amount due to Subscriber Organization if determined to be less than the invoiced Unsubscribed Energy amount) are paid in full. Partial payments for Unsubscribed Energy shall be applied first to outstanding interest and then to outstanding invoice amount for the Unsubscribed Energy.
3. Payment for Subscribed Energy. The sole means of payment for each Subscriber's Subscriber Allocation during the Production Month covered by the invoice, shall be by a Bill Credit on such Subscriber's retail electric bill for all undisputed amounts. Because not all of Company's customers have the same billing cycle, the timing of the appearance of the Bill Credit will vary with the Subscriber's billing cycle, but Company shall cause the Bill Credit to appear on each Subscriber's retail electric bill no later than two (2) billing cycles for such Subscriber following the date Company makes payment to Subscriber Organization for Unsubscribed Energy on the corresponding invoice. The Production Month upon which the Bill Credit is based shall not necessarily match the billing period for the retail electric service bill in which the Bill Credit is applied.
4. For purposes of applying the Bill Credit to each Subscriber's retail electric bill, the Company shall be entitled to rely exclusively on the Monthly Subscription Information as timely entered by the Subscriber Organization via the CBRE Online Portal as set forth in Sections 2(B)1 and 2(B)2 of this Contract.
5. Error In Allocation. If there is a breach, error or changed circumstances resulting in some production from the CBRE Facility being assigned in excess of a Subscriber's allowable Subscriber Allocation under the CBRE Tariff, then the Company may treat this excess as Unsubscribed Energy and not provide a Bill Credit to any Subscriber for any such excess production. Payment to the Subscriber Organization for such Unsubscribed Energy shall only

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occur if no corresponding Bill Credit is made to a Subscriber, or if already allocated, if such allocation is corrected and withdrawn from such Subscriber, the intent of the parties herein is to ensure that no production from the CBRE Facility is double-counted to any Subscriber and/or Subscriber Organization.

D. Adjusting Bill Credit Rate for Unsubscribed Energy.

1. The amount the Company shall pay for the Unsubscribed Energy produced and exported by the CBRE Facility during a particular Production Month shall be determined as follows:
 - a. For the first six (6) Production Months from and including the Commercial Operations Date, Company shall pay Subscriber Organization for Unsubscribed Energy at the Bill Credit Rate.
 - b. Beginning with the seventh Production Month following the Commercial Operations Date, the price to be paid to Subscriber Organization for Unsubscribed Energy shall be recalculated as follows:
 - i. If the Unsubscribed Energy as of the last Day of such Production Month, as recalculated to account for purchases and transfers as set forth in Section 2(B)2 of this Contract, does not exceed 15% of the total of the renewable energy accepted by Company during such Production Month in accordance with this Contract, Company shall pay Subscriber Organization the Bill Credit Rate for the Unsubscribed Energy accepted by Company during such Production Month.
 - ii. However, if the Unsubscribed Energy as of the last Day of such Production Month, as recalculated to account for purchases and transfers as set forth in Section 2(B)2 of this Contract, exceeds 15% of the total of the renewable energy accepted by Company during such Production Month in accordance with this Contract, the price Company shall pay Subscriber Organization for the Unsubscribed Energy accepted by Company during such Production Month shall be discounted by the percentage of Unsubscribed Energy. For example, if the Unsubscribed Energy is 40%, the Bill Credit Rate shall be discounted by 40% for Unsubscribed Energy accepted by the Company during such Production Month.
2. The CBRE Facility shall be required to have a minimum of four (4) individual Subscribers at all times. For a period of six (6) Production Months following the Commercial Operations Date, the Subscriber Organization shall incur no payment reduction for Unsubscribed Energy if the CBRE Facility should fall below this minimum number of Subscribers. Effective after six (6) Production Months, the following shall be placed into effect for the remainder of the term of the CBRE Facility:
 - a. If the CBRE Facility does not have the minimum 4 individual Subscribers for any Production Month, the unmet percentage of Subscribers to the minimum number of four (4) required Subscribers shall reduce the Subscriber Organization's Bill Credit Rate used for compensation for Unsubscribed Energy delivered shall be reduced by such percentage. For example, if the CBRE Facility has only 3 Subscribers for any given month, the unmet number of Subscribers is 1 and the percentage to the 4 minimum Subscribers required will be 25% and the Subscriber Organization's Credit Rate for the next month will be reduced by 25%.
 - b. If the Subscriber Organization's Unsubscribed Energy for the CBRE Facility is also greater than 15% in such month, the Bill Credit Rate for compensation for Unsubscribed Energy

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delivered in the next month shall be reduced by the sum of the percentage determined from sub-part D.2.a. above plus the percentage of Unsubscribed Energy for that month.

- c. If the Subscriber Organization does not have a minimum of four (4) individual Subscribers but does not have any Unsubscribed Energy, the CBRE Facility shall be subject to equivalent liquidated damages as specified below. Continued failure to achieve the minimum 4 Subscribers for over one year could result in termination and removal from the CBRE Program in accordance with the CBRE Tariff.

Method to Determine Payment Reduction for Failure to Maintain Minimum Number of Subscribers. The percentage determined in sub-part D.2.a. above shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part D.2.a. percentage * the applicable Bill Credit Rate) to equal a dollar amount liquidated damages for the Subscriber Organization's failure to maintain the requisite number of Subscribers for any given month.

3. Residential Customer Requirement. 40% of the Contract Capacity of the CBRE Facility shall be reserved for individual subscriptions for residential Subscribers (as defined in the CBRE Tariff). For a period of six (6) Production Months following the Commercial Operations Date, the Subscriber Organization shall incur no payment reduction if it should fall below this minimum percentage of residential Subscribers. Effective after six (6) Production Months, the following shall be placed into effect for the remainder of the term of the CBRE Facility

- a. If the CBRE Facility does not have the minimum 40% residential Subscribers for any month, the difference in percentage between the CBRE Facility's actual residential Subscriber percentage and the 40% minimum shall reduce the Subscriber Organization's Bill Credit Rate for compensation for Unsubscribed Energy delivered by a factor equal to one-fourth (0.25) of such percentage difference. For example, if the CBRE Facility's residential Subscriber percentage is 30%, the difference, 10%, from the 40% minimum requirement, shall be multiplied by 0.25 ($10\% * 0.25 = 2.5\%$). The 2.5% result shall reduce the Bill Credit Rate for Unsubscribed Energy for that month by such percentage.
- b. If the Subscriber Organization's Unsubscribed Energy for the CBRE Facility is also greater than 15% in such month, the compensation for Unsubscribed Energy delivered in that month shall be reduced by the sum of the percentage payment reduction for the unmet residential Subscriber percentage plus the percentage of Unsubscribed Energy for that month.
- c. If the Subscriber Organization does not have the required minimum percentage of residential Subscribers but does not have any Unsubscribed Energy, the CBRE Facility shall be subject to an equivalent penalty as specified below. Continued failure to achieve this minimum percentage of residential Subscribers for more than one year could result in termination and removal from the CBRE Program in accordance with the CBRE Tariff.

Method to Determine Payment Reduction for Failure to Maintain Minimum Residential Subscribers. The percentage determined in sub-part D.3.a. above shall be multiplied by the applicable kWh delivered in such month and such amount shall be multiplied by the applicable Credit Rate (the sub-part D.3.a. percentage * the applicable Bill Credit Rate) to equal a dollar amount liquidated damages for the Subscriber Organization's failure to maintain the requisite percentage of residential Subscribers for any given month.

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- E. Company's Obligation to Provide Curtailed Energy Data.** By the fifth (5th) Business Day of each calendar month, Company shall provide Subscriber Organization, with a written report as set forth in Attachment C to this Contract (the "Curtailment Report") identifying each Curtailment Event during the preceding calendar month. The Curtailment Report will include the start and end time of each Curtailment Event and the reason for curtailment. The Curtailment Report shall not include curtailment instituted by Subscriber Organization or curtailment for scheduled maintenance.
- F. Limitations Period.** All Subscriber Organization claims for adjustments shall be submitted to the Company within three years of the end of the calendar month covered by the invoice on which the adjustment amount in question was invoiced or should have been invoiced. Claims not submitted to the Company by the end of such three-year period shall be deemed to have been waived.
- G. Company's Billing Records.** Subscriber Organization, after giving reasonable advance written notice to Company, shall have the right during Company's normal working hours on Business Days to review all billing, metering and related records necessary to verify the accuracy of the data provided by Company regarding payments and credits for the exported energy produced by the CBRE Facility. Company shall maintain such records for a period of not less than thirty-six (36) months.
- H. Subscriber Organization Responsibility for Billing Inaccuracies.** The correction of any allocation of previously-applied Bill Credits among Subscribers or payments to the Subscriber Organization for Unsubscribed Energy, pertaining to a particular month due to any inaccuracy reflected in such Monthly Subscription Information with regard to a Subscriber's Subscription in the CBRE Facility and the beneficial share of renewable energy exported by the CBRE Facility, or the share of Unsubscribed Energy, shall be the full responsibility of the Subscriber Organization, unless such inaccuracies are caused by the Company.

3. HOUSE POWER.

The Company will sell House Power to the CBRE Facility under the rate schedule in force for the class of customer to which the Subscriber Organization belongs. A separate meter to record energy delivered to the CBRE Facility may be installed by the Company. The Subscriber Organization shall be solely responsible for arranging retail electric service exclusively from the Company in accordance with the Company's Electric Rate Book. The Subscriber Organization shall obtain House Power solely through separately metered retail service and shall not obtain House Power through any other means and waives any regulatory or other legal claim or right to the contrary. Because the Subscriber Organization must make all energy produced by the CBRE Facility available to the Company, the CBRE Facility may not use the energy it generates to be consumed by it. It may not net-out or use energy it generates for House Power. The Parties acknowledge and agree that the performance of their respective obligations with respect to House Power shall be separate from this Contract and shall be interpreted independently of the Parties' respective obligations under this Contract. Notwithstanding any other provision in this Contract, nothing with respect to the arrangements for House Power shall alter or modify the Subscriber Organization's or the Company's rights, duties and obligations under this Contract. This Contract shall not be construed to create any rights between the Subscriber Organization and the Company with respect to the arrangements for House Power.

4. METERING REQUIREMENTS, CHARGES AND TESTING.

- A.** Company shall install, operate and maintain for the benefit of the CBRE Facility a revenue metering package suitable for measuring the export of renewable energy (AC) produced by the CBRE Facility in kilowatts and kilowatt-hours on a time-of-day basis and reactive power flow in kilovars and true root mean square kilovar-hours (the "Production Meter"). The metering point for the

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Production Meter shall be as close as possible to the Point of Interconnection as allowed by Company.

Subscriber Organization, subject to Company review and approval, shall purchase, install, and maintain the infrastructure and other related equipment (“Meter Infrastructure”) including meter housing, socket replacement and rewiring as required to install the Production Meter and any additional service meter(s), including such meters for measuring House Power. Subscriber Organization shall install the Meter Infrastructure in adherence with requirements set forth in the latest edition of the Company's Electric Service Installation Manual (ESIM). Company shall test the Production Meter prior to installation and at the request and expense of the Subscriber Organization.

Subscriber Organization shall reimburse Company for the costs reasonably incurred for the purchase and installation of the Production Meter. Subscriber Organization shall be responsible for the ongoing costs incurred by Company to operate, maintain (including maintenance replacements) and test the Production Meter during the Term.

- B. Metering Charge per Month: \$25.00.** Subscriber Organization shall be charged each month during the Term an administrative metering fee of a \$25.00 for the Production Meter. The administrative metering fee is addition to the costs associated with the purchase, installation, maintenance and testing of the Production Meter and Meter Infrastructure.
- C. Meter Testing.** Company shall provide at least twenty-four (24) hours' notice to Subscriber Organization prior to any test it may perform on the Production Meter or metering equipment. Subscriber Organization may request tests in addition to the every fifth-year test and Subscriber Organization shall pay the cost of such tests. Company may perform tests in addition to the fifth-year test and Company shall pay the cost of such tests. If any of the meters or metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section, Company shall promptly cause such equipment to be made accurate, and the period of inaccuracy, as well as an estimate for correct meter readings, shall be determined as provided in Company's Tariff Rule No.11[Billing Error, Meter Tests and Adjustment for Meter Errors].

5. [RESERVED]

- 6. INTERCONNECTION AGREEMENT; REQUIREMENTS.** The Subscriber Organization must sign the Company's Interconnection Agreement and comply with all of the terms and conditions of that Interconnection Agreement except as otherwise specified in this Contract. In the event of any inconsistency or conflict between the terms and provisions of this Contract and the Interconnection Agreement, the terms and provisions of the Interconnection Agreement shall control.

7. CBRE TARIFF REQUIREMENTS.

- A.** The Subscriber Organization shall comply with and assure that the requirements of the CBRE Framework and CBRE Tariff applicable to the CBRE Facility are met.
- B.** Subscriber Organization shall require all prospective Subscribers to execute a Subscription Agreement as a precondition to enrollment as a Subscriber in the CBRE Facility. The Subscription Agreement must satisfy the requirements of the CBRE Tariff, CBRE Framework, this Contract and any additional guidance from the PUC. Prior to executing the Subscription Agreement, the Subscriber Organization shall make to the Subscriber the disclosures required under the Disclosure

Checklist (Appendix II to the CBRE Tariff). A copy of the Disclosure Checklist signed by both the Subscriber Organization and the Subscriber shall be attached to the executed Subscription Agreement. The Subscriber Organization shall also disclose to the Subscriber that a failure to pay such Subscriber's monthly retail electric bill that results in Company issuance of a disconnection notice will result in forfeiture of Bill Credits for the duration of such disconnection. For each Subscriber, there must be a completed and fully executed Subscriber Agency Agreement and Consent Form (Appendix I to the CBRE Tariff), which is delivered to the Company prior to the Commercial Operations Date, or prior to adding each Subscriber.

C. Funds Received From Subscribers Prior to the Commercial Operations Date. Any payments made to Subscriber Organization by Subscribers prior to the Commercial Operations Date shall be deposited into an escrow account ("Pre-COD Escrow") and may not be withdrawn from the Pre-COD Escrow by the Subscriber Organization until the Commercial Operations Date. The Pre-COD Escrow must conform to the CBRE Tariff, CBRE Framework, applicable Laws and any additional guidance from the PUC.

D. Subscriber Organization Fees. Subscriber Organization shall pay to Company the following fees:

- \$250 Application Fee
- All applicable late fees for failure to meet Commercial Operations Date
- All applicable interconnection costs, fees and expenses, including costs associated with acquisition and installation of the Production Meter
- All applicable costs for the operation, maintenance and testing of the Production Meter
- \$5/kW AC Program Administration Fee (annually), from the Commercial Operations Date
- \$25.00 (monthly) Production Meter Administration Fee
- Such other fees as the PUC may establish for the CBRE Program

If Company does not set off the amount of these fees against Company payments to Subscriber Organization for Unsubscribed Energy, Company shall invoice Subscriber Organization for payment to Company of the foregoing fees. Subscriber Organization shall make payment to Company within 15 Days of Subscriber Organization's receipt of such invoice.

E. Compliance. The Subscriber Organization shall be responsible for ensuring that the equipment installed at the CBRE Facility meets all applicable codes, standards, and regulatory requirements at the time of installation and throughout its operation.

Subscriber Organization shall comply with all of the rules stated in the Company's applicable electric tariff rules related to the CBRE Program, as the same may be revised from time to time, and this Contract, as may be amended from time to time, as allowed by an amendment to this Contract approved, or deemed approved, by the PUC. In the event of any conflict between the terms of this Contract and Company's electric tariff rules related to the CBRE Program, the provisions of the tariff shall control.

F. Project Completion.

1. The Subscriber Organization shall achieve the Commercial Operations Date for the CBRE Facility within eighteen (18) months from the execution date of this Contract, as the same may be extended as provided herein or in the CBRE Tariff (the “Commercial Operations Date Deadline”). The Commercial Operations Date Deadline shall be extended day-for-day for a CBRE Facility that, in the Company's determination, has suffered a Force Majeure event (as set forth Section 21(j) of the Interconnection Agreement) prior to the Commercial Operations Date, or for any delay caused by Company.
2. Notwithstanding the foregoing, a local-government moratorium to issuing a permit may extend the 18-month Project Completion period for no more than an additional 6 months. Failure to seek a permit, delay in seeking a permit, or permit-processing time not subject to a moratorium is not included in this 6-month extension.
3. If Substantial Progress has been achieved, but the Commercial Operations Date has not been achieved by the Commercial Operations Date Deadline, and Subscriber Organization still intends to complete its CBRE Facility, then the Subscriber Organization shall pay a “late fee” to Company of \$200/day/MW nameplate capacity of the RE System until the CBRE Facility achieves the Commercial Operations Date. For example, if a RE System has a nameplate capacity of 100 kW, and it achieves the Commercial Operations Date 30 Days late, the “late fee” would be \$600. The “late fee” shall be paid to Company before the Commercial Operations Date. However, if Company fails to collect in full such amount by this date, such unpaid amount may be included as part of the actual costs of interconnection under the Interconnection Agreement. All “late fee” payments received by Company will be credited back to offset the costs to the Company ratepayers for the CBRE Program. A prerequisite to showing that Substantial Progress has been achieved in a timely manner is that before the Commercial Operations Date Deadline the Subscriber Organization must submit a signed letter to Company attesting to the fact that Substantial Progress as defined in this Contract has been made, and attach photographs to that letter demonstrating this.
4. If: (1) Substantial Progress has not been achieved by the Commercial Operations Date Deadline, or (2) Subscriber Organization does not wish to complete its CBRE Facility upon the Commercial Operations Date Deadline, or (3) the Commercial Operations Date that is extended due to a permit issuance moratorium is not achieved within six (6) months from the originally required Commercial Operations Date Deadline, then the application for the CBRE Facility and this Contract will be terminated and canceled and the corresponding Interconnection Agreement will be terminated by Company without further notice. No additional concurrence from the CBRE IO shall be necessary for such termination. The Application Fee and any other deposits paid by the Subscriber Organization shall be forfeited.
5. After termination, the Subscriber Organization, if it still intends to proceed with the CBRE Facility, must submit a new application and pay any applicable deposit and/or fees which will be subject to the then current CBRE Tariff, Bill Credit Rate and other applicable CBRE requirements for new projects, including CBRE Program capacity availability.

G. Financial Compliance.

1. If Company reasonably believes the provisions of this Section 7.G apply to the CBRE Facility, Company shall notify Subscriber Organization in writing and Subscriber Organization shall provide or cause to be provided to Company on a timely basis, all information, including but not limited to information that may be obtained in any audit referred to below (the "Financial Compliance Information"), reasonably requested by Company for purposes of permitting Company and its parent company, Hawaiian Electric Industries, Inc. ("HEI") to comply with the requirements (initial and on-going) of (i) the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification 810, Consolidation ("FASB ASC 810"), (ii) FASB ASC 842 Leases ("FASB ASC 842"), (iii) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and (iv) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, FASB ASC 842, and SOX 404 issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other Governmental Authorities. In addition, if required by Company in order to meet its compliance obligations, Subscriber Organization shall allow Company or its independent auditor to audit, to the extent reasonably required, Subscriber Organization's financial records, including its system of internal controls over financial reporting; provided, however, that Company shall be responsible for all costs associated with the foregoing, including but not limited to Subscriber Organization's reasonable internal costs. Company shall limit access to such Financial Compliance Information to Company and HEI personnel involved with such compliance matters and restrict any Company or HEI personnel involved in Company's monitoring, dispatch or scheduling of the Subscriber Organization and/or the CBRE Facility, the administration of this Contract, or in developing potential CBRE projects, from having access to such Financial Compliance Information (unless approved in writing in advance by Subscriber Organization).
2. Confidentiality. As a condition to obtaining the Financial Compliance Information, Company shall, and shall cause HEI to, maintain the confidentiality of said Financial Compliance Information pursuant to a mutually agreed to confidentiality and non-disclosure agreement to be executed among Company, HEI and Subscriber Organization.
3. Consolidation. Company does not want to be subject to consolidation as set forth in FASB ASC 810, as issued and amended from time to time by FASB. Company represents that, as of the Effective Date, it is not required to consolidate Subscriber Organization into its financial statements in accordance with FASB ASC 810. If for any reason, at any time during the Term, Company determines, in its sole but good faith discretion, that it is required to consolidate Subscriber Organization into its financial statements in accordance with FASB ASC 810, then Subscriber Organization shall immediately provide audited financial statements (including footnotes) in accordance with U.S. generally accepted accounting principles (and as of the reporting periods Company is required to report thereafter) in order for Company to consolidate and file its financial statements within the reporting deadlines of the Securities and Exchange Commission. Notwithstanding the foregoing requirement that Subscriber Organization provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Contract to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties.

- H. Audits.** The Company reserves the right to inspect the CBRE Facility as necessary to assure the safety and reliability of the system at any time during the Term, and for an additional period of one (1) year thereafter.
- I. Capacity Limit.** The CBRE Facility must have a nameplate capacity of less than 250 kilowatts of alternating current (AC) .
- J. No Relocation.** The RE System [and BESS] shall be located at the CBRE Facility as shown in its application at all times during the Term.
- K. Disclosure of Production Information.** The Subscriber Organization acknowledges and agrees that, in order for the Company to carry out its responsibilities in applying Bill Credits to each Subscriber's retail electric bills, the Company may be required and shall be permitted to provide access or otherwise disclose and release to any Subscriber any and all production data related to the RE System [and BESS] in its possession and information regarding the total Bill Credits applied by the Company with respect to the CBRE Facility and any information pertaining to a Subscriber's Subscription. Any additional detailed information requested by a Subscriber shall be provided only upon the Subscriber Organization's consent in writing or email to the Company, or unless the Public Utilities Commission or the CBRE IO requests that the Company provide such information to the Subscriber, or as otherwise required by law.
- L. Disclosure of CBRE Facility Information.** The Subscriber Organization acknowledges and agrees that the Company may publicly disclose the CBRE Facility location, Subscriber Organization, nameplate capacity and production data of the CBRE Facility. Additionally, the Company will periodically provide a bill message to Subscribers clarifying that questions or concerns related to their Subscription should be directed to the Subscriber Organization, including a statement that the Subscriber Organization is solely responsible for resolving any disputes with the Company or the Subscriber about the accuracy of the CBRE Facility data and that the Company is solely responsible for resolving any disputes with the Subscriber about the applicable rate used to determine the amount of the Bill Credit.
- M. Certain Tax and Securities Law Issues.** The Company makes no warranty or representation concerning the taxable consequences, if any, to Subscriber Organization or its Subscribers with respect to its Bill Credits to the Subscribers for participation in the CBRE Facility. Additionally, the Company makes no warranty or representation concerning the implication of any federal or state securities laws on how Subscriptions to the CBRE Facility are handled.
- N. Full Cooperation with the PUC.** The Parties agree to fully cooperate with any request for information from the PUC or the CBRE IO pertaining in any way to the CBRE Facility and will provide such information upon request in a timely manner. To the extent to which any request calls for producing a specific Subscriber's Confidential Account Information, Subscriber Energy Usage Data or Bill Credits, such information shall be provided and marked as Confidential Information.
- O. New Energy Generating Systems.** The RE System must not be built or previously interconnected at the time of application to the CBRE Program.
- P. Fair Disclosure; Disclosure Checklist.** Prior to the time when any person or entity becomes a Subscriber, the Subscriber Organization will fairly disclose the future costs and benefits of the Subscription and all other matters specified in the Disclosure Checklist and provide to the potential Subscriber a copy of this Contract. The Subscriber Organization shall comply with all other requirements of the PUC and applicable Laws with respect to communications with Subscribers.

8. REQUIREMENTS APPLICABLE TO SUBSCRIBER ORGANIZATION'S RELATIONSHIP WITH ITS SUBSCRIBERS.

The Subscriber Organization must comply with all of the following:

A. Subscriber Information. The Subscriber Organization shall issue Subscriptions in the CBRE Facility only to eligible retail electric service customers of the Company and provide to the Company the name, account number and service address attributable to each Subscription and the Subscriber Allocation for each Subscriber's Subscription. The Subscriber Organization shall take care to preserve the privacy expectations of the Subscribers, such as not publicly providing a Subscriber's Confidential Account Information, Subscriber Energy Usage Data, or Bill Credits. The Subscriber Organization will not disclose or share such information except as permitted by the Subscriber Agency Agreement and Consent Form executed by Subscriber in connection with Subscriber's acquisition of its Subscription in the CBRE Facility or otherwise unless the Subscriber has provided explicit informed consent or if such disclosure is compelled by Law.

B. Subscriber Transfer or Exit.

The transfer, cancellation, termination and/or exit of a Subscriber's interest in the CBRE Facility shall be completed in full accordance with all applicable CBRE Program rules, in addition to any other terms, conditions or requirements imposed by the Subscriber Organization in the Subscriber Agreement, which Subscriber Organization shall ensure is also consistent with and in compliance with applicable CBRE Program rules. The CBRE Rule 29 Tariff requirements shall take precedence over any inconsistent or conflicting provisions found in the Subscriber Agreement.

~~1. If the CBRE Facility uses a Pay As You Go model for Subscriber interests, a Subscriber may not transfer their interest to another Customer. If a Subscriber wishes to terminate their interest in the CBRE Facility, the Subscriber shall either cancel or terminate their subscription with the Subscriber Organization in accordance with the provisions of the Subscriber Agreement.~~

~~2. If the CBRE Facility uses a Pay Up Front model for Subscriber interests:~~

~~a. If a Subscriber requests to transfer their interest to another Customer, the Subscriber Organization shall confirm that Customer's eligibility as set forth herein. Any payment for the transfer shall be in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.~~

~~i. There shall be no transfer charge/fee if the meter associated with the account remains unchanged.~~

~~ii. A transfer shall be for no less than all (100%) of the selling Subscriber's interest.~~

~~iii. Any transfer will not be effective until the Subscriber Organization notifies the Administrator of the transfer. For any notice of transfer on or prior to the twentieth (20th) day of any month, such transfer will be effective as of the first (1st) day of that month. For any notice of transfer after the twentieth (20th) day of a month, the transfer will be effective as of the first (1st) day of the next month.~~

~~iv. Eligibility Requirements for Transferees. The transferee(s) of such Subscriber Allocation must satisfy the requirements under the CBRE Tariff to be a Subscriber under the CBRE Program.~~

~~v. Limitations on Size of Subscriber Allocation. Following completion of such transfer, the aggregate Subscriber Allocation to be held by such transferee(s) (including both the transferred Subscriber Allocation and any pre-existing Subscriber Allocation) must comply with the size limitations set forth in the CBRE Tariff.~~

~~vi. Eligibility Determination. Subscriber Organization shall determine the eligibility and permitted size of any such transfer by inquiry to the Company, manually through Company personnel in Phase 2 and electronically through the CBRE Online Portal once such software tool is available. b. If Subscriber requests to sell all or any portion of their Subscription back to the Subscriber Organization, Subscriber Organization shall buy back the interest in accordance with the preset repurchase/resale price schedule outlined in the Subscriber Agreement.~~

~~i. Subscriber Organization shall complete the buy-back of the Subscriber's interest within thirty (30) days of the Subscriber's request.~~

~~ii. Upon completion of a subscription buy-back, the Subscriber Organization shall notify the Company by the last day of the month the transaction was completed. The Company shall confirm such buy-back in the Subscriber database and cease CBRE bill credits effective as communicated by the Subscriber Organization on the first day of the month of notification if such transaction was completed on or prior to the twentieth (20th) day of the month. Transactions completed after the twentieth (20th) day of the month will be effective as of the first (1st) day of the next month.~~

~~3. A Subscriber may change the premises to which the CBRE Facility's renewable energy generation shall be attributed. So long as the premises is on the same island and meets eligibility requirements set forth in the CBRE Tariff, neither the Subscriber Organization nor Company shall charge a transfer fee. For example, when a Subscriber sells the premises to which the Subscription is attributed and inhabits new premises on the same island, this provision is intended to permit a Subscriber to transfer the Subscription to the new premises. **DC. Updating Subscriber Information.** The Subscriber Organization shall provide to the Company the Monthly Subscriber Information together with any and all updates to the Monthly Subscription Information as provided in Sections 2.(B)1 and 2.(B)2 of this ContractRule 29 Part I: Sections B.10.b.iii and B.11.a.iii.~~

ED. Responsibility for Verification. The Subscriber Organization shall verify that each Subscriber is eligible to be a Subscriber in the CBRE Facility and that the CBRE Tariff requirements are met.

9. **EVENTS OF DEFAULT BY SUBSCRIBER ORGANIZATION.** The occurrence of any of the following shall constitute an "Event of Default" by Subscriber Organization:

A. If at any time during the Term, Subscriber Organization delivers or attempts to deliver to the Point of Interconnection for sale under this Contract renewable energy that was not produced by the CBRE Facility and Subscriber Organization fails to cease such delivery or attempt to deliver such renewable energy within ten (10) Days after Company's written notice of such delivery or attempt.

B. If any representation or warranty made to Company by Subscriber Organization herein is false and misleading in any material respect when made.

C. If at any time subsequent to the Commercial Operations Date, Subscriber Organization fails to provide renewable energy to Company for a period of three hundred sixty-five (365) or more consecutive Days, unless such failure is caused by the inability of Company to accept such renewable energy.

- D.** Subscriber Organization becomes insolvent, or makes an assignment for the benefit of creditors; or shall have an order for relief in an involuntary case under the bankruptcy Laws as now or hereafter constituted entered against it, or shall commence a voluntary case under the bankruptcy Laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future Law; or seeks or consents to or acquiesces in the appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or takes action looking to its dissolution or liquidation, and Subscriber Organization is unable to remedy such actions within one hundred eighty (180) Days of the occurrence of such breach or default.
- E.** Other than the events of default specified in Sections 9.(A), (B) and (C) above, Subscriber Organization, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Contract, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from Company; provided, however, that if it is objectively impossible to cure such breach or default within said thirty (30) Day period, then, for so long as Subscriber Organization is making the same effort to cure such breach or default as would be expected of an experienced independent power producer willing and able to exert commercially reasonable efforts to achieve such cure, Subscriber Organization shall have a cure period equal to three hundred sixty five (365) Days beginning on the date of Company's written notice of such breach or default.
- F.** Subscriber Organization fails to comply with the terms and conditions or fails to assure compliance with the terms and conditions of the (1) Interconnection Agreement or (2) CBRE Tariff, if such breach or default is not cured within thirty (30) Days after written notice of such breach or default from Company.
- G.** Company provides written notice to Subscriber Organization to terminate the Interconnection Agreement upon the conditions stated therein.

10. REMEDIES FOR BREACH.

- A.** In the event of any Event of Default by the Subscriber Organization, then the Company shall have available to it any other remedy provided for in this Contract and any or all of the following remedies which can be used either singularly or cumulatively.
- B.** For any Event of Default by the Subscriber Organization:

 - (1) Company shall provide written notice to the Subscriber Organization to remedy the Event of Default within the applicable cure period specified for such Event of Default, if any.
 - (2) If after the cure period, if any, provided for in the Company's notice the Subscriber Organization is still not in compliance with this Contract, then the Company shall have the right to request to terminate the Contract via a Notice of Intent to Terminate and Request for IO Concurrence to the IO (the "Notice to IO").
 - (3) If the CBRE IO concurs with the Company's request to terminate the Contract, the Company shall provide written notice to Subscriber Organization and Subscriber Organization shall have five (5) Business Days to provide proof that Company's and CBRE IO's determination to terminate the Contract is in error.

(4) If the Subscriber Organization fails to provide such proof or if the Company and the CBRE IO reasonably determine that such proof is insufficient to reverse the Company's decision to terminate, Company may proceed to terminate the Contract by providing a written notice of termination to Subscriber Organization. A copy of such notice shall be provided to all Subscribers of the CBRE Facility, the CBRE IO and the PUC.

(5) The termination date in the notice of termination shall not be earlier than thirty (30) Days from the date of such notice.

- C. In the event of an Event of Default by the Subscriber Organization for which the Company sends a written notice pursuant to this Section 10, Company shall also send a copy of the notice as soon as practicable to any financing party for the CBRE Facility whose contact information has been provided to the Company. Any such financing party shall have the right to cure the alleged breach within the cure period provided in Section 9 and Company agrees to accept any such cure as if made by the Subscriber Organization. The Company shall be under no obligation to provide any such financing party with any information contrary to the Data Privacy Commitments set forth in Exhibit 1 to the Subscriber Agency Agreement and Consent Form. The Company shall be under no obligation to provide any such financing party with any information it may have which is confidential to the Subscriber Organization unless the Subscriber Organization has provided written consent to the Company permitting the release to the financing party of such confidential information.
- D. Subscriber Organization acknowledges that Company is a public utility and is relying upon Subscriber Organization's performance of its obligations under this Contract, and that Company and/or its customers may suffer irreparable injury as a result of the failure of Subscriber Organization to perform any of such obligations, whether or not such failure constitutes an Event of Default or otherwise gives rise to one or more of the remedies set forth in this Section 10. Accordingly, the remedies set forth in this Section 10 shall not limit or otherwise affect Company's right to seek specific performance injunctions or other available equitable remedies for Subscriber Organization's failure to perform any of its obligations under this Contract, irrespective of whether such failure constitutes an Event of Default.
- E. In the event of any breach of this Contract by Company, the Subscriber Organization shall provide Company with a written notice of the breach. Company shall have up to thirty (30) Days to cure the breach. If the breach is not cured within the thirty (30) Days, the Subscriber Organization may utilize the procedures set forth in Section 12. If the breach results in Bill Credits not being issued to one or more individual Subscribers, in the absence of a cure by Company within the allowed time following the notice, the applicable Subscriber(s) may also seek a remedy for any past due Bill Credits from the PUC pursuant to the CBRE Tariff.

11. LIMITATION OF LIABILITY

- A. Each Party shall at all times indemnify, defend, and save the other Party harmless from any and all damages, losses, claims, including claims and actions relating to injury or death of any person or damage to property, costs and expenses, reasonable attorneys' fees and court costs, arising out of or resulting from the Party's performance of its obligations under this Contract, except to the extent that such damages, losses or claims were caused by the negligence or intentional acts of the other Party.
- B. Each Party's liability to the other Party for failure to perform its obligations under this Contract shall be limited to the amount of direct damage actually incurred. In no event shall either Party be

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liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.

- C. Notwithstanding any other provision of the Contract or this Section 11. with respect to the Company's duties or performance or lack of performance under this Contract, the Company's liability to the Subscriber Organization shall be limited as set forth in the Company's rate book and terms and conditions for electric service, which shall not be affected by the terms of this Contract. There are no third-party beneficiaries of any Company duty under this Contract other than the Company's duty to Subscribers to issue Bill Credits as set forth in this Contract, and the duty to a financing party under Section 10.C. of this Contract.
- D. **Indemnification of Company Against Third Party Claims.** Subscriber Organization shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) the Subscriber Agreement between Subscriber Organization and its Subscribers or (ii) Subscriber Organization's development, permitting, construction, ownership, operation and/or maintenance of the CBRE Facility.

12. DISPUTE RESOLUTION.

- A. Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.
- B. If a dispute arises under this Contract between the Parties which cannot be resolved by the Parties within thirty (30) Days after written notice of the dispute to the other Party, then the Parties shall mediate the dispute with the CBRE IO for resolution, which shall be non-binding upon the Parties.
- C. If the Parties still cannot resolve the dispute even after mediation with the CBRE IO, either Party may refer the dispute for resolution to the PUC, which shall maintain continuing jurisdiction over this Contract.

- 13. **ENVIRONMENTAL CREDITS.** Included in the purchase and sale of renewable energy are all of the Environmental Credits associated with the renewable energy. Company will not reimburse Subscriber Organization for any taxes or fees imposed on Subscriber Organization including, but not limited to, State of Hawai'i general excise tax. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the renewable energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line." Subscriber Organization shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.

14. REPRESENTATIONS AND WARRANTIES.

- A. Company and Subscriber Organization represent and warrant, respectively, that:

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Order No. 37070 filed April 9, 2020, Docket 2015-0389
Transmittal Letter dated September 8, 2020.

- (1) Each respective Party has all necessary right, power and authority to execute, deliver and perform this Contract.
- (2) The execution, delivery and performance of this Contract by each respective Party will not result in a violation of any Laws, or conflict with, or result in a breach of, or cause a default under, any agreement or instrument to which such Party is also a party or by which it is bound. No consent of any person or entity not a Party to this Contract, other than governmental agencies whose approval is necessary for construction of the CBRE Facility and interconnection facilities, is required for such execution, delivery and performance by either Party.

B. Subscriber Organization represents, warrants and covenants that:

- (1) Subscriber Organization has obtained all Land Rights necessary for the construction, ownership, operation and maintenance of the CBRE Facility during the Term, and Subscriber Organization shall maintain such Land Rights in effect throughout the Term.
- (2) As of the commencement of construction, Subscriber Organization shall have obtained all permits or approvals from any applicable governmental agency necessary for the construction, ownership, operation and maintenance of the CBRE Facility and all interconnection facilities.
- (3) Subscriber Organization warrants that the CBRE Facility complies with all applicable federal and state Laws, including but not limited to (a) all applicable securities Laws and shall continue to be in compliance for the duration of the Term; (b) complies with all applicable Laws concerning the dissemination of personally identifiable information, and shall continue to be in compliance for the longer of (i) the Term and (ii) for as long as Subscriber Organization continues to hold or otherwise have access to any personally identifiable information of Subscribers or customers of Company; (c) complies with all applicable Laws concerning consumer protection, and shall continue to be in compliance for the duration of the Term; (d) complies with all applicable Laws and regulations concerning renewable energy grid interconnections, and shall continue to be in compliance for the duration of the Term.

15. MISCELLANEOUS. The "Miscellaneous" provisions set forth in Section 21 of the Interconnection Agreement between the Parties addressing the following issues are incorporated into this Contract and are fully applicable to this Contract as if set forth in full herein. Where the Interconnection Agreement in the "Miscellaneous" section uses the term "Agreement," this shall mean this Contract for purposes of the Contract.

- Governing Law and Regulatory Authority.
- Amendment; Modification or Waiver.
- Notices.
- Assignment.
- Binding Effect
- Relationship of Parties

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- Force Majeure
- Non-Warranty
- Confidential Information
- Execution of Agreement; Multiple Counterparts

16. TERM and TERMINATION. The Term shall be the same as for the Interconnection Agreement applicable to the CBRE Facility, and each shall begin when signed by the Parties and end twenty (20) years after the Commercial Operations Date unless otherwise provided for in this Contract. In the event of termination, or early termination of this Contract, applicable provisions shall continue in effect after termination to the extent necessary to enforce and complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Contract. The Parties acknowledge that this Contract and the Interconnection Agreement are interdependent agreements and one cannot continue if the other is terminated. Provisions in this Contract permit Company to terminate this Contract and provisions in the Interconnection Agreement permit Company and/or Subscriber Organization to terminate the Interconnection Agreement. Accordingly, if either agreement is terminated pursuant to its terms, the other agreement will likewise be terminated, subject to the provisions, terms and conditions of such agreement, including, by way of example, the first sentence of this section.

17. SIGNATURES

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives. This Contract is effective as of the Effective Date set forth above.

[Subscriber Organization]

[Hawaiian Electric Company, Inc.

Hawai'i Electric Light Company, Inc.

Maui Electric Company, Limited], a Hawai'i corporation

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

HAWAIIAN ELECTRIC COMPANY, INC.

ATTACHMENT A

Schedule of Defined Terms

"Base Load Unit" means a generating unit that is normally on-line twenty-four (24) hours a Day. This includes any unit that is scheduled to be on-line continuously for a given Day because a unit which is normally a Base Load Unit is on maintenance or otherwise temporarily out of service.

"BESS" means the battery energy storage system that is a portion of the CBRE Facility used to facilitate the storing of renewable energy and the charging of renewable energy from RE System, and the discharging of renewable energy to, the Company System, as described in Attachment A to the Interconnection Agreement. **[DRAFTING NOTE: REMOVE IF PROJECT DOES NOT INCLUDE BESS]**

"Bill Credit" shall mean the dollar amount credited by the Company to each Subscriber on the Subscriber's retail electric service bill, which represents the Subscriber's beneficial share of renewable energy produced by the CBRE Facility and exported to the Company, and offsetting Subscriber's current renewable energy usage on such service bill.

"Bill Credit Rate" shall mean the then current applicable "Credit Rate" as determined by the CBRE Tariff. The CBRE Tariff prescribes a specific Credit Rate in the event that CBRE Small Project Phase 2 Capacity (as defined in the CBRE Tariff) is not filled for any island and a competitive credit rate procurement ("CCRP") mechanism to set the Credit Rate if there are more applications for CBRE Small Project Phase 2 Capacity than is available for any island.

"Business Day" means any Day that is not a Saturday, a Sunday, or a federal or Hawai'i state holiday.

"CBRE Facility" shall mean the facility that produces the renewable energy that is the subject of this Contract and includes all equipment, improvements, infrastructure and other tangible assets necessary to connect to the Production Meter and all contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the RE System **[and BESS]** for the Term.

"CBRE Framework" means the Phase 1 CBRE Framework, as amended and supplemented by the Phase 2 CBRE Framework.

"CBRE IO" means the Independent Observer contracted with the Company but answering to the PUC to carry out the responsibilities assigned to the Independent Observer under the Phase 2 CBRE Framework.

"CBRE Online Portal" is the interactive, internet website-based interface maintained by or on behalf of the Company through which the Subscriber Organization may establish qualifications, provide information and complete documents necessary for acceptance in the CBRE Program, and may enter or change the Monthly Subscription Information reflecting updated information for each Subscriber, including any changes to any Subscriber's name, account number, address, and Subscriber Allocation. For Phase One of the CBRE Program, the CBRE Online Portal will be a manually administered application form-based process managed by Company until the CBRE Online Portal is online and ready for commercial operation. The CBRE Online Portal should be completed in time for the commencement of Phase Two of the CBRE Program.

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"CBRE Tariff" means the Hawai'i Community-Based Renewable Energy tariff approved by the PUC as Tariff Rule 29, on _____, based on the PUC's Phase 2 CBRE Framework.

"Commercial Operations": The CBRE Facility shall be considered to have achieved Commercial Operations on the first Day of the calendar month following the date on which all of the following conditions have been satisfied: (a) Subscriber Organization has completed construction of the CBRE Facility in accordance with the requirements set forth in the Interconnection Agreement; (b) Company testing of the RE System **[and BESS]** has taken place and the Company has determined the RE System **[and BESS]** to be fully operational, and (c) Subscriber Organization has provided Company with written notice that (i) it has enrolled at least four (4) individual Subscribers in the Subscriber Organization's CBRE Program and (ii) Subscriber Organization is ready to declare the Commercial Operations Date.

"Commercial Operations Date" shall mean the date on which the CBRE Facility first achieves Commercial Operations.

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

"Company System Operator": Authorized representative of Company responsible for Company dispatch and curtailment of renewable energy generation interconnected to the Company System.

"Curtailed Energy": An estimate of possible CBRE Facility production during periods that output is restricted due to a Curtailment Event.

"Curtailment Event" means the temporary curtailment, interruption or reduction of deliveries of electric energy from the Facility initiated by Company as a result of circumstances described in Sections 1.A and 1.C of Attachment B (Curtailment Block) of this Contract. A Curtailment Event shall commence at the time the Facility receives the curtailment signal from the Company System Operator and shall end at the time the Facility receives the curtailment control signal from the Company System Operator to end the curtailment.

"Curtailment Report" means the monthly report of Curtailed Energy in the form of Attachment C to this Contract.

"Day" means a calendar day.

"Disclosure Checklist" means the Disclosure Checklist required to be completed by Subscriber Organization with all Subscribers, the form of which is included in the CBRE Tariff.

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

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

"Forced Outage" means an unplanned unit shutdown caused by factors such as automatic or programmed protective trips and operator-initiated trips due to equipment malfunction.

"Good Engineering and Operating Practices" shall have the meaning and meet all requirements set forth in Section 19 of the Interconnection Agreement.

"House Power" shall mean the electricity needed to assist in the operation of the CBRE Facility including system performance monitoring and associated communications, except for energy directly required for the local control and safe operation of the RE System **[and BESS]**. It also means other electricity used by the CBRE Facility, such as for perimeter lighting, a visitor's center or any other structures or facilities at the CBRE Facility site.

"Interconnection Agreement" shall mean the Interconnection Agreement required to be executed by the Subscriber Organization concurrently with this Contract.

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

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

Monthly Subscription Information" shall mean the information stored within the CBRE Online Portal, as timely entered or changed by the Subscriber Organization via the CBRE Online Portal, setting forth the name, account number and service address each Subscriber holding Subscriptions in the CBRE Facility, and the Subscriber Allocation applicable to each such Subscriber's Subscription, reflecting each Subscriber's allocable portion of renewable energy produced by the CBRE Facility during a particular Production Month.

"Pay-As-You-Go" refers to any lease or subscription interest in a CBRE project or its energy output in which a Subscriber does not make any up-front payment (except for fixed administrative or other costs not based on the level of Subscriber's interest) to the Subscriber Organization for Subscriber's interest and instead makes periodic, e.g., monthly, payments to the Subscriber Organization for Subscriber's interest, with such payment to be commensurate with the extent of the Subscriber's interest in the CBRE project. The payment for the Subscriber's interest in the Pay-As-You-Go model does not include other payments that may be necessary from a Subscriber to the Subscriber Organization, such as operations and maintenance, insurance and other cost items that may be specified in the Subscriber Agreement between Subscriber and Subscriber Organization for a particular CBRE project

"Pay-Up-Front" refers to any asset-type interest in a CBRE project or its energy output where the Subscriber is required to make an up-front payment to the Subscriber Organization for Subscriber's interest and thereafter is not required to make further periodic payments to the Subscriber Organization for Subscriber's interest in the CBRE project. The payment for the Subscriber's interest in the Pay-Up-Front model does not include other payments that may be necessary from a Subscriber to the Subscriber Organization, such as operations and maintenance, insurance and other cost items that may be specified in the Subscriber Agreement between Subscriber and Subscriber Organization for a particular CBRE project.

"Phase 1 CBRE Framework" means that certain "Community-Based Renewable Energy – A Program Framework" issued by the PUC and attached as Attachment A to that certain Decision and Order No. 35137, filed December 22, 2017, in Docket No. 2015-0389, portions of which are applicable to Phase 2 of the CBRE Program as specified in the CBRE Tariff.

"Phase 2 CBRE Framework" means that certain Order No. 37070, filed April 9, 2020, in Docket No. 2015-0389. The Phase 2 CBRE Framework provides the basis and framework for Phase 2 of the CBRE Program and is implemented by the CBRE Tariff.

"Point of Interconnection" shall be the point of interconnection as shown on the Single Line Diagram attached as Exhibit A to the Interconnection Agreement.

"Prime Rate" shall mean the current "U.S. 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. The Prime Rate shall change without notice with each change in the U.S. Prime Rate reported by The Wall Street Journal, as of the date such change is reported.

"Production Meter" shall mean the meter which will record the renewable energy produced by the CBRE Facility and exported to the Company at the Point of Interconnection and which will be reported on the Subscriber Organization's monthly invoice to the Company.

"Production Month" shall mean the calendar month during which electrical energy is produced by the CBRE Facility and exported to the Company at the Production Meter.

"RE System" shall mean the electrical energy generating portion of the CBRE Facility to be located at the CBRE Facility, together with all materials, equipment systems, structures, features and improvements.

"Subscribed Energy" means renewable energy produced by CBRE Facility that is attributable to the Subscribers' Subscriptions and exported to the Company at the Point of Interconnection on or after the Commercial Operations Date.

"Subscriber" means a retail customer of the Company who owns one or more Subscriptions of a CBRE Facility interconnected with the Company.

"Subscriber Agency Agreement and Consent Form" means the agreement between Subscriber Organization and Subscriber, the form of which is included in the CBRE Tariff.

"Subscriber Allocation" shall mean, for each Subscriber, such Subscriber's percentage interest in the total nameplate capacity of the RE System, reflecting each Subscriber's allocable portion of renewable energy exported by the CBRE Facility in a particular Production Month.

"Subscriber's Confidential Account Information" consists of the Subscriber's name, account number, service address, telephone number, email address, web site URL, information on Subscriber participation in other distributed generation serving the premises of the Subscriber, and Subscriber specific Bill Credit(s).

"Subscriber Organization" is identified above and shall mean the organization whose purpose is to operate or otherwise manage the CBRE Facility for its Subscribers.

"Subscriber's Energy Usage Data" refers to data collected from the utility Subscriber meters that reflects the quantity, quality, or timing of electric usage or renewable energy production attributable to the Subscriber for the service address and account number identified for participation in the CBRE Facility.

"Subscription" or "Subscription Agreement" means the contract between a Subscriber and the Subscriber Organization.

"Substantial Progress" means that on or before the last Day of the 18-month period (including day-for-day extensions) to achieve the Commercial Operations Date, the Subscriber Organization has achieved all of the following: (1) Installed one-hundred percent (100%) of the RE System foundation (including pier, helical screw, ballasts, or similar) to enable mounting of the nameplate capacity as collectively set forth in Interconnection Agreement for the CBRE Facility site; (2) Built, or otherwise has in place, a permanent drivable (road) surface on the parcel or parcels of land associated with the CBRE Facility so that Company on a 24 hour a day, seven days a week, basis can access its equipment, including but not limited to lines, poles, transformers, billing meters, underground facilities and other facilities, but excluding production meters. The drivable road surface needs to be reasonably sufficient to support operation and maintenance vehicles; and (3) Built, or otherwise has in place, a permanent fence surrounding the entirety of the CBRE Facility location.

"Term" means the term of this Contract which shall be the same as the Interconnection Agreement applicable to the CBRE Facility, and shall begin when this Contract is signed by the Parties and end twenty (20) years after the Commercial Operations Date unless otherwise provided for in this Contract.

"Unsubscribed Energy" means the renewable energy produced by the CBRE Facility and exported to the Company at Point of Interconnection that is not associated with any Subscriber Subscription and therefore not allocated to a Subscriber.

ATTACHMENT B
CURTAILMENT BLOCK

1. Curtailment.

- A. General. Company may require the Subscriber Organization to temporarily curtail, interrupt or reduce deliveries of electric energy when necessary in order for Company to construct, install, maintain, repair, replace, remove, investigate, test or inspect any of its equipment or any part of the Company System including, but not limited to, accommodating the installation and/or acceptance test of non-utility owned facilities to Company System; or if Company determines that such curtailment, interruption or reduction is necessary because of a system emergency, Forced Outage, operating conditions on the Company System; or the inability to accept deliveries of electric energy due to Excess Energy Conditions; or if either the CBRE Facility does not operate in compliance with Good Engineering and Operating Practices or acceptance of electric energy from the Subscriber Organization by Company would require Company to operate the Company System outside of Good Engineering and Operating Practices, which in this case shall include, but not be limited to, excessive system frequency fluctuations or excessive voltage deviations, and any situation that the Company System Operator determines, at his or her sole discretion using Good Engineering and Operating Practices, could place in jeopardy the reliability of the Company System. In the event that Company initiates a Curtailment Event pursuant to this Section 1.A (General), Company shall not be obligated to accept or pay for any electric energy from the Subscriber Organization except for such electric energy that Company notifies the Subscriber Organization that it is able to take during the duration of a Curtailment Event.
- B. Reasonable Steps. Company shall take all reasonable steps (such as reducing the output of Base Load Units, including its own Base Load Units, during light loading conditions, taking into consideration factors such as the need to maintain the reliability and stability of the Company System under changing system conditions, forecasted variability of weather conditions and configurations, the need for downward regulating reserves, the terms and conditions of power purchase agreements for firm capacity Base Load Units or scheduled electric energy, and the normal minimum loading levels of such units) to minimize the number and duration of curtailments, interruptions or reductions, subject to and in accordance with Section 2 (Curtailment Methodology) and Section 3 (Curtailment Responsibilities) below.
- C. Personnel and System Safety. Notwithstanding any other provisions of this Contract, if at any time Company reasonably determines that the CBRE Facility may endanger Company's personnel, and/or the continued operation of the CBRE Facility may endanger the integrity of the Company System or have an adverse effect on Company's other customers' electric service, Company shall have the right to curtail or disconnect the CBRE Facility from the Company System, as determined in the sole discretion of the Company System Operator. The CBRE Facility shall immediately comply with the dispatch

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instruction, which may be initiated through remote control, and shall remain curtailed or disconnected, as the case may be, until such time as Company is satisfied that the condition(s) referred to above have been corrected, and Company shall not be obligated to accept or pay for any electric energy from the Subscriber Organization except for such electric energy as is accepted by Company from the Subscriber Organization during such period. If Company curtails or disconnects the CBRE Facility from the Company System for personnel or system safety reasons, it shall as soon as practicable notify the Subscriber Organization by telephone, and thereafter confirm in writing, the reasons for the curtailment or disconnection.

2. Curtailment Methodology.

- A. Pursuant to Sections 1.A (General) and 1.C (Personnel and System Safety) of this Attachment B (Curtailment Block), Company may at times have limited ability to integrate energy produced by the Subscriber Organization into the Company System for engineering and/or operating reasons and may be required to curtail energy deliveries by the Subscriber Organization. When a curtailment control signal is received by the CBRE Facility the corresponding action (e.g., decrease in the CBRE Facility's output) shall be initiated without delay. As conditions warrant, Company System Operator shall end or reduce the curtailment when Company reasonably determines that the reason for the curtailment is no longer in existence.
- B. When Company determines that curtailment of energy becomes necessary for reasons other than those directly attributable to the CBRE Facility, curtailments shall be made to the extent possible in reverse chronological order of the chronological seniority dates determined by Company for the power purchase agreements, with deliveries under the power purchase agreements with the most recent chronological seniority date being the first curtailed, and deliveries under the power purchase agreement with the earliest chronological seniority date being the last curtailed. Small generation projects (such as photovoltaic net energy metering projects, feed-in tariff projects, etc.) that are allowed to be installed without curtailment controls will not be curtailed before the CBRE Facility. When Company determines that curtailment of energy becomes necessary for engineering and/or operating reasons that are directly attributable to the CBRE Facility, reverse chronological curtailment order may not apply.
- C. The chronological seniority date of the CBRE Facility shall be determined as follows:
- (1) Curtailment Block: Eligibility and Inclusion Criteria. The CBRE Facility shall be included in a group of renewable as-available energy projects that Company will, to the extent possible, treat as a single "block" (designated for convenience of reference as "Curtailment Block") for purposes of implementing curtailment in reverse chronological order. All of the renewable energy projects that achieve Commercial Operations and that satisfy the criteria for "small projects" for Phase 2 of the CBRE Program under Order No. 37070 filed on April 9, 2020 in Docket No. 2015-0389 ("Block Eligible Projects") shall be included in the Curtailment Block.

- (2) Lead Project and Determination of Curtailment Block Chronological Seniority Date. The Lead Project shall be the first of the aforementioned Block Eligible Projects that achieves "commercial operations" under the its Standard Form Contract. The chronological seniority date for the Curtailment Block shall be the "commercial operations date" under the Standard Form Contract for the Lead Project. If the CBRE Facility is the Lead Project, the terms "commercial operations" and "commercial operations date" when used in this Section 2.C(2) (Lead Project and Determination of Curtailment Block Chronological Seniority Date) shall mean respectively, Commercial Operations and the Commercial Operations Date as defined in this Contract.
- D. When curtailments are being implemented in reverse chronological order, the Company may implement curtailment of Block Eligible Projects in increments (i.e., some Block Eligible Projects may be curtailed while others are not) in order to manage the impact on the Company System. In such case, the size of such increment, and which Block Eligible Projects to include in such increment, shall be determined by the Company System Operator. Company System Operator shall, to the extent possible, rotate the Block Eligible Projects sequentially after each Curtailment Event with the objective of treating equitably each Block Eligible Project in terms of curtailment.
- E. If the CBRE Facility is unable to receive the curtailment signal from the Company System Operator, provision must be made for Subscriber Organization to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such raising and lowering of curtailment limits as directed by the Company System Operator.
- F. If the direct transfer trip is unavailable, due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Subscriber Organization to trip the main circuit breaker.
3. Curtailment Responsibilities. In the event that Company initiates a Curtailment Event pursuant to this Contract, Company shall not be obligated to accept any electric energy from Subscriber Organization except for such electric energy that Company notifies Subscriber Organization that it is able to take during the duration of a Curtailment Event. Company shall not be liable to Subscriber Organization for any curtailments unless such curtailment was in violation of this Contract. Subscriber Organization shall not override Company's curtailment.

ATTACHMENT C
MONTHLY CURTAILMENT REPORT

NAME OF CBRE FACILITY / SUBSCRIBER ORGANIZATION: [Facility Name / SO]

REPORT PERIOD: [MM/DD/YEAR] to [MM/DD/YEAR]

Event Date	Start Time	End Time	Reason for Curtailment

APPENDIX 6VI

**HAWAIIAN ELECTRIC COMPANIES¹
CBRE PROGRAM PHASE 2**

**AFFIDAVIT and VERIFICATION
TO CONFIRM
LOW-TO-MODERATE INCOME STATUS**

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

I, _____, being first duly sworn on oath, hereby deposes and says:

1. I make this affidavit from my personal knowledge and information to confirm my eligibility to qualify as a Low-to-Moderate Income (“LMI”) customer eligible to participate in the Community Based Renewable Energy (“CBRE”) projects for LMI customers.

2. I am a customer of the Hawaiian Electric Companies with an account for electric service for at least six months. My account number is _____.

3. My place of residence is _____ and my account is associated with this address.

4. ~~The following table identifies the household members living at the above address based on the Department of Housing and Urban Development’s household member definition that I~~

¹ “Hawaiian Electric Companies” means, individually or collectively, as applicable, Hawaiian Electric Company, Maui Electric Company, Ltd., Hawaii Electric Light Corporation, Inc., each a Hawaii corporation, and its affiliates and agents.

~~have reviewed or had explained to me.~~ I choose to verify my LMI eligibility by: [CHOOSE ONE]

Income and household verification under U.S. Housing and Urban Development (HUD) guidelines [Complete chart in item 6 below]

Qualified recipient of Supplemental Nutrition Assistance Program (SNAP) benefits

Qualified recipient of Low Income Home Energy Assistance Program (LIHEAP) benefits

Qualified recipient of Housing Choice Voucher Program (Section 8) benefits

5. I have provided verification of my participation in the program checked above to the Subscriber Organization.

~~5.~~ 6. ~~The table also~~ [COMPLETE ONLY IF CHECKING THE HUD BOX IN ITEM 4] The following table, which I have completed, identifies the household members living at the above address based on the HUD household member definition that I have reviewed or had explained to me. The table lists all household members with income and specifies their weekly, monthly or annual gross income used for income tax purposes.

~~6.~~ 6. ~~The income amounts listed include all sources of income and amounts for all household members at or above the age of 18, including income from employment, AFDC/TANF, VA, Social Security, SSI, SSID, Unemployment, Worker's Compensation, Child Support, etc.~~

Household Size: _____

Household Member Name	Income Source	Amount (\$)	Frequency - Per	
			Week	Month
			Year	

			Week Year Month
			Week Year Month
			Week Year Month
			Week Year Month
			Week Year Month
			Week Year Month
			Week Year Month
			Week Year Month

7. I understand that this information will be used to confirm my eligibility to qualify as an LMI customer and participate in CBRE program projects with subscriptions available for LMI customers. If I do not qualify as an LMI customer, I understand that I may still participate in other CBRE program projects that are not reserved for LMI customers.

8. I understand that I may be asked to confirm my statements made in this affidavit to ~~the Subscriber Organization of the CBRE project that I wish to subscribe to and to the appropriate Hawaiian Electric utility servicing my account to~~ verify my LMI customer status and that I may be further requested to provide, for inspection and review only, copies of relevant household status and

income confirming documents to confirm my LMI customer status. I agree to cooperate with the Subscriber Organization and the Hawaiian Electric Companies in this regard.

9. I have made these statements and provided the household and income amounts to the best of my ability and understand them to be true and correct.

Further, Affiant sayeth naught.

By: _____

Print Name: _____

Date: _____

Subscriber Organization Verification

The undersigned, for and on behalf of the Subscriber Organization identified below, hereby certifies to the Hawaiian Electric Companies that he/she has reviewed, as applicable, either of the following: (1) the household size and income amounts stated by the above Hawaiian Electric Companies customer and examined documents verifying the same; or (2) qualification documents for the applicable program checked in item 4 above. Based on this review and confirmation, the above Hawaiian Electric Companies customer is an eligible LMI customer within the meaning of CBRE Tariff Rule 29 and eligible to participate in CBRE program projects reserved for LMI customers.

Subscriber Organization

By: _____

Print Name: _____

Title: _____

Date: _____

Form: CBRE LMI Household
And Income Affidavit/Verification
Ver. 09082020

HAWAIIAN ELECTRIC COMPANY, INC.