



Model
Power Purchase Agreement
For
Renewable Energy Projects

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This document contains, for information purposes only, the terms and conditions that may be negotiated in a contract for the sale of as-available energy to be executed by HECO. The terms and conditions that may be offered by HECO in an as-available energy power purchase contract 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 contracts, and negotiated terms and conditions.

POWER PURCHASE CONTRACT FOR AS-AVAILABLE ENERGY

THIS CONTRACT ("Contract") is made this ____ day of _____, 20__ (the "Effective Date"), by and between Hawaiian Electric Company, Inc. (hereinafter called the "Company") and _____ (hereinafter called the "Seller").

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

WHEREAS, the Company operates its power system as an independent power grid and must maximize system reliability for its customers by ensuring that sufficient generation is available and that its system (including transmission and distribution) meets the requirements for voltage stability, frequency stability, and reliability standards; and

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

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

WHEREAS, the Seller's Facility will be located at _____, State of Hawaii and is more fully described in Appendix A and Appendix B attached hereto and made a part hereof; and

WHEREAS, the Seller desires to sell to the Company electric energy generated by the Seller's Facility, and the Company agrees to

purchase such energy from the Seller, upon the terms and conditions set forth herein.

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

DEFINITIONS

Acceptance Test: A test conducted by Seller and, at the Company's option, witnessed by the Company, within thirty (30) Days of completion of all Interconnection Facilities and in accordance with criteria determined by the Company, of the Company-owned Interconnection Facilities and the interconnection portion of the Seller's Facility to determine conformance with Section 3 and Appendix C and Good Engineering and Operating Practices. Successful completion of the Acceptance Test to the Company's satisfaction shall be a condition precedent for the performance of the Control System Acceptance Test and the Initial In-Service Date. Seller shall provide the Company with at least seven (7) Days advance written notice of the Acceptance Test. No energy will be delivered from Seller to the Company during this Acceptance Test. No later than [] Days prior to conducting the Acceptance Test, the Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Within [] Business Days of successful completion of the Acceptance Test, the Company shall notify Seller in writing that the Acceptance Test has been passed and the date upon which the Acceptance Test was passed.

Actual Output: The total quantity of energy (measured in kilowatt hours) produced by the Seller's Facility over a given time period and delivered to the Point of Interconnection, as measured by the revenue meter. For Wind Turbine facilities, Actual Output shall be the kilowatt hours of energy produced by each Wind Turbine net of any electrical energy consumed by the Wind Turbines and electrical losses up to the Point of Interconnection, delivered to the Point of Interconnection, as measured by the revenue meter.

Allowed Capacity: Shall have the meaning set forth in Section 5.e of Appendix A to this contract.

Annual Adjusted Energy: The Actual Output during a Contract Year as increased by (1) the amount of energy that was not delivered because of events or conditions of Force Majeure and (2) the amount of Curtailed Excess energy, unless energy was curtailed by the Company because the Seller's Facility was not operating in compliance with

Deleted: total amount of energy actually delivered by Seller to the Company

Deleted: reduced

Deleted: curtailed by the Company

Good Engineering and Operating Practices or other requirements set forth in this Contract, and (3) outages on the HECO transmission system unless such outages were caused by Seller's actions or inactions that were not in compliance with this Contract.

Deleted: Agreement

Annual Contract Energy: The amount of energy specified in Section 2(e) of this Contract, subject to adjustment in accordance with Section 2(b) of this Contract. The initial amount of Contract Energy that is specified in Section 2(e) of this Contract represents Seller's estimate of expected annual average energy deliveries to Company under this Contract over the term of this Contract.

As-Available Energy: Energy provided to the Company on an unscheduled basis as Seller determines it to be available from its Facility, in accordance with the terms and conditions of this Contract, rather than at prearranged times and in prearranged amounts.

Average Annual Energy: A three-year average of Annual Adjusted Energy over a rolling period of three (3) consecutive Contract Years calculated at the end of each Contract Year beginning with the end of the fourth Contract Year.

Base Load Unit: A 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.

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

Business Day: Any calendar day that is not a Saturday, a Sunday, or a federal or Hawaii state holiday.

Capacity: The output potential Seller's Facility can produce or carry under specified conditions expressed in kW or MW. The Capacity for Seller's Facility is set forth in Appendix A to this Contract.

Commercial Operations: Seller's Facility shall be considered to have achieved Commercial Operations when all of the following events have occurred: (1) the Acceptance Test has been passed, (2) generating units representing 80% of the Facility's Capacity have passed Control System Acceptance Tests, (3) Seller provides Company with written notice that (i) the foregoing events have occurred, (ii) Seller reasonably expects that the generating units representing the remaining 20% of the Facility's Capacity will be

ready to undergo the Control System Acceptance Tests within the following sixty (60) days, and (iii) the Commercial Operation Date has therefore occurred.

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

Company's Dispatch: The Company's sole and absolute right to control, from moment to moment, through supervisory equipment, or otherwise, and in accordance with Good Engineering and Operating Practices in the electric utility industry, the rate of delivery of energy offered by the Seller to the Company, [subject to the operating constraints of Seller's Facility and as permitted under this Contract.](#)

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

Company's System Operator: The authorized representative of the Company who is responsible for carrying out Company's Dispatch.

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

Construction Milestones: Shall have the meaning set forth in Section 13 of this Contract.

Construction Start Date: The date on which continuous construction of permanent structures begins at Seller's Site. In the case of a wind project, the Construction Start Date occurs when Seller begins pouring foundations for Wind Turbines.

Contract Capacity: Shall have the meaning set forth in Section 2(f) of this Contract.

Contract Price: The price that the Company will pay Seller for energy delivered on a monthly basis as set forth in Table D-1 of Appendix D to this Contract.

Contract Year: A twelve calendar month period which begins on the first day of the month coincident with or next following the Commercial Operation Date and, thereafter, anniversaries thereof;

provided, however, that, in the event the Commercial Operation Date is not the first day of the calendar month, the initial Contract Year shall also include the days from the Commercial Operation Date to the first day of the succeeding month.

Control System Acceptance Test(s): A test or tests performed on the centralized control system and Curtailment Control Interface of Seller's Facility, consisting of a functional demonstration of such equipment through the successful completion of such test to Company's satisfaction, and conducted in accordance with procedures set forth in Section 1.h of Appendix B.

Curtailed Excess Energy: Means the difference (measured in kilowatt hours) between the Facility's Actual Output and its Uncurtailed Output over a given period of curtailment, as measured by equipment installed by Seller at the Facility sufficient to enable Seller to collect data necessary to reasonably demonstrate the amount of Curtailed Excess Energy to the Company. The Company shall have the right on a real time basis 24 hours per day to access this data electronically at the Company's expense.

Curtailment Control Interface: Shall have the meaning set forth in Section 1.g of Appendix B of this Contract.

Daily Delay Damages: Shall have the meaning set forth in Section 13(f) of this Contract.

Day: Means a calendar day.

Development Period Security: Shall have the meaning set forth in Section 14(b) of this Contract.

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

Environmental Credits: Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any governmental or international agency to the Company or the Seller based in whole or in part on the fact that the Seller's Facility is a non-fossil fuel facility. Such Environmental Credits shall include, but not be limited to, emissions credits, including credits triggered because such facility does not produce carbon dioxide when generating electric energy, or any renewable energy credit, but in all cases shall not mean tax credits.

Event of Default: Shall have the meaning set forth in Section 15 of this Contract.

Facility: Seller's renewable energy facility that is the subject of this Contract and is classified as an eligible resource under Hawaii's Renewable Portfolio Standards Statute (codified as Hawaii Revised Statutes (HRS) 269-91 through 269-95 ("RPS Law") (RPS Statute).

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

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

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, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

Force Majeure: Shall have the meaning set forth in Section 21 of this Contract.

Forced Outage: 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: The practices, methods and acts engaged in or approved by a significant portion of the electric utility industry for similarly situated U.S. facilities 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, safety, environmental protection, economy and expedition. With respect to the Seller's Facility, Good Engineering and Operating Practices include, but are not limited to, taking reasonable steps to ensure that:

Adequate materials, resources and supplies, including fuel, are available to meet the Seller's Facility's needs under normal conditions and reasonably anticipated abnormal conditions.

Sufficient operating personnel are available and are adequately experienced and trained to operate the Seller's Facility properly, efficiently and within manufacturer's guidelines and specifications and are capable of responding to emergency conditions.

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.

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 emergency conditions.

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

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

Guaranteed Commercial Operation Date: The date specified in Appendix E of this Contract.

Guaranteed Project Milestone: Shall have the meaning set forth in Section 13(b) of this Contract.

Ideal Output: Means the maximum number of kilowatt hours that the Facility is capable of producing over a given period of time at a given point along its Power Curve taking into account actual

operating conditions during that period of time, for example, derated units, and adjusted for any electricity consumed by the Facility and electrical losses from the Wind Turbines to the Point of Interconnection. For example, the Ideal Output of a wind farm during a period of curtailment is equal to one hundred percent (100%) of the kilowatt hours which should be generated during the period of curtailment, calculated by combining the Power Curve with the Average Wind Speed over the entire period of curtailment, adjusted for any electricity consumed by the Facility and electrical losses from the Wind Turbines to the Point of Interconnection.

Ideal Output Ratio: Means the Facility's Actual Output divided by its Ideal Output.

Independent Evaluator: A person empowered to resolve disputes due to failure of the parties to agree on a Performance Standards Revision Document pursuant to Sections 23(e) and 23(j) of this Contract.

In-Service Date: The date that both the Acceptance Test and Control System Acceptance Test(s) for all generating units are deemed by the Company to have been successfully completed.

Initial In-Service Date: The date, on or after the Acceptance Test is successfully completed, on which Seller's first generating unit has been installed and has successfully completed the Control System Acceptance Test.

Interconnection Facilities: The equipment and devices required to permit Seller's Facility to operate in parallel with and deliver electric energy to Company's System, such as, but not limited to, transmission lines, transformers, switches, and circuit breakers.

Interconnection Requirements Study ("IRS"): A study, performed in accordance with the terms of the IRS Letter Agreement and with Section 4 and Appendix C of this Contract, to assess the projected interaction of the Seller's Facility with the Company's System.

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

kV: Kilovolt.

kW: Kilowatt.

Measured Wind Speed: The arithmetic mean, over any given period of time, of the wind speed readings from each of a Facility's wind turbine anemometers, taken or sampled every two (2) seconds by the Facility's monitoring equipment, in meters per second (m/s).

Motion for Reconsideration: A motion to the PUC for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof, of a PUC Order.

MW: Megawatt.

Non-appealable PUC Approval Order: (1) A PUC Approval Order that is not subject to appeal to any Circuit Court of the State of Hawaii or the Supreme Court of the State of Hawaii, 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 (2) a PUC Approval Order that was affirmed on appeal to any Circuit Court of the State of Hawaii or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawaii, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal (and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari) has passed without the filing of notice of such an appeal (or the filing for further appellate process).

Non-appealable PUC Approval Order Date: The date that the PUC Approval Order becomes a Non-appealable PUC Approval Order.

Operating Period Security: Shall have the meaning set forth in Section 14(c) of this Contract.

Performance Standards: The various performance standards for the operation of Seller's Facility and the delivery of energy from the Seller's Facility to the Company specified in item 3 of Appendix B as such standards may be revised from time to time pursuant to Section 23 of this Contract.

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

Performance Standards Modifications: For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to Seller's Facility and/or to changes in Seller's operations or maintenance

practices necessary to enable Seller's Facility to achieve the performance requirements of such Performance Standards Revision.

Performance Standards Pricing Impact: Any adjustment in Contract pricing in \$/MWh necessary to specifically reflect the recovery of the net costs and/or net lost revenues specifically attributable to any Performance Standards Modification necessary to comply with a Performance Standard Revision, which shall consist of the following: (i) recovery of any capital investment (A) 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 (B) based on a proposed capital structure that is commercially reasonable for such an investment and the return on investment is at market rates for such an investment or similar investment); (ii) recovery of reasonably expected net additional operating and maintenance costs; and (iii) an adjustment in pricing necessary to compensate Seller for reasonably expected reductions, if any, in the delivery of energy to Company under this Contract, which shall consist of (A) an increase in payments necessary to compensate Seller for expected reduced energy payments under this Contract; and (B) to the extent applicable, an increase in payments necessary to compensate Seller for reasonably expected reductions in receipt of Production Tax Credits (pursuant to Section 45 of the Internal Revenue Code) calculated on an after-tax basis.

Performance Standards Proposal: A written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (a) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefore; (b) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (c) 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 energy delivered to Company; (d) the Performance Standards Pricing Impact of such costs and/or lost revenues; (e) information regarding the effectiveness of such technical improvements or operational modifications; (f) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (g) such other information as may be reasonably required by the Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller's own initiative.

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

Performance Standards Revision Document: A document specifying one or more Performance Standards Revisions and setting forth the changes to the Contract necessary to implement such Performance Standards Revision(s). A Performance Standards Revision Document may be either a written agreement executed by Company and Seller or as directed by the Independent Evaluator pursuant to Section 23(j) of this Contract, in the absence of such written agreement.

Permit Application Filing Date: The Construction Milestone by which Seller shall file all applications for Permits required for the construction and operation of the Facility.

Permits: All permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership and operation of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

Point of Interconnection: The point of delivery of energy and/or Capacity supplied by Seller to Company where Seller's Facility interconnects with Company's System.

Power Curve: Means the manufacturer-warranted power curve.

Project: The Facility as described in Appendix A.

PUC (Public Utilities Commission): The Public Utilities Commission of the State of Hawaii.

PUC Approval Order: The decision and order of the PUC approving the application or motion as filed on the PUC Submittal Date by the parties seeking approval of this Contract as set forth in Section 12 of this Contract.

PUC Approval Order Date: The 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, the PUC Approval Order Date shall be the issuance date of the PUC Approval Order;

(2) If the PUC Approval Order becomes subject to a Motion for Reconsideration, and the Motion for Reconsideration is denied

or the PUC Approval Order is affirmed after reconsideration, the PUC Approval Order Date shall be deemed to be the issuance date of the order denying reconsideration of or affirming the PUC Approval Order.

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 Contract pricing changes on Company's revenue requirements is reasonable, and (iii) approval to include the costs arising out of pricing changes in the Company's Energy Cost Adjustment Clause (or equivalent).

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

PUC Submittal Date: The date of submittal of the Company's complete application or motion for approval to include the costs of purchased energy under this Contract in the Company's Energy Cost Adjustment Clause (or equivalent).

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

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

Renewable Portfolio Standards ("RPS"): The Hawaii law that mandates that The Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. Those requirements are 10% by 2010, 15% by 2015, and 20% by 2020. The RPS requirements in Hawaii are codified as Hawaii Revised Statutes (HRS) 269-91 through 269-95.

Security Funds: A collective designation for the Development Period Security and Operating Period Security established by Seller as provided in Section 14 of this Contract.

Seller's Facility: All equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery or furnishing of electricity by Seller to Company and required to interconnect with Company's System.

Site: The parcel of real property on which the Facility will be constructed and located, including any 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 Facility. The Site is more specifically described in Appendix A to this Contract.

Subordinated Mortgage: Shall have the meaning set forth in Section 14(k) of this Contract.

Term: The Term of this Contract is as defined in Section 12 of the Contract.

Termination Damages: Shall have the meaning set forth in Section 15(c) and shall be calculated in accordance with Section 16 of this Contract.

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

Total Actual Interconnection Cost: Actual costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in Appendix C.

Total Estimated Interconnection Cost: Estimated costs for the Interconnection Facilities, to be designed, engineered and constructed by Company, as provided in Appendix C.

Transfer Date: The date, prior to the Initial In-Service Date, upon which Seller transfers to Company all right, title and interest in and to the Company-owned Interconnection Facilities to the extent, if any, that such facilities were constructed by Seller and/or its Contractors.

Uncurtailed Output: Means the quantity of energy that would have been produced by a curtailed Facility and delivered to the Point of Interconnection over a given period of curtailment had the Facility's generation not been so curtailed. The Facility's Uncurtailed Output shall be calculated by multiplying the Facility's Ideal Output Ratio over the ten (10) minute period immediately prior to the Facility's receipt of the curtailment signal by the Facility's Ideal Output for the period of curtailment.

Waiver Agreement: A written agreement between the Company and the Seller to waive the requirement of obtaining a satisfactory Non-

appealable PUC Approval Order as provided in Section 12(d) of this Contract.

Waiver Agreement Date: The date on which the Waiver Agreement is effective as stated in the Waiver Agreement.

Wind Turbine: A generating device powered by the wind that is included in the Seller's Facility. *[Applicable only to proposals for wind generation.]*

1) Parallel Operation

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

2) Purchase and Sale of Energy; Rate for Purchase and Sale; Billing and Payment

(a) The Seller agrees to deliver to the Company all of the Actual Output produced by the Facility and delivered to the Point of Interconnection from the initial delivery of energy under this Contract through the end of the Term, and for such additional period as provided in Section 12(a) (Term), in accordance with the terms and conditions of this Contract. The Company agrees to purchase energy from the Seller pursuant to the terms and conditions which are more fully described below in (b) and in Appendix D, Energy Purchases By the Company. Included in the purchase and sale of Actual Output (energy) are all of the Environmental Credits associated with the Actual Output. The Company will not reimburse the Seller for any taxes or fees imposed on the Seller including, but not limited to, State of Hawaii general excise tax.

(b) The Seller will be paid for Actual Output, on a monthly basis equal to the product of the price specified in Appendix D and the Actual Output; provided, in any Contract Year, if the

Deleted: energy delivered

Deleted: amount of energy delivered by the Seller

| Actual Output exceeds 120% of the quantity of Annual Contract Energy specified in subsection (e), below, the price paid on a monthly basis for the Actual Output in excess of the Annual Contract Energy in such Contract Year shall be 75% of the Contract Price for such month. The level of Annual Contract Energy shall be adjusted based on the performance of the Seller in meeting its Contract requirements. For the first four Contract Years of the Contract, the Annual Contract Energy will be the Annual Contract Energy specified in Section 2(e). After the fourth Contract Year and subsequently on each anniversary of the end of the fourth Contract Year, the Company will calculate the Average Annual Energy. When the Average Annual Energy is less than 80% of the Annual Contract Energy for that same three-year period, the Annual Contract Energy amount will be reduced such that the Annual Contract Energy in any year shall be based on the lowest three year rolling average of Average Annual Energy. For the period following the Effective Date and prior to the earlier of the Initial In-Service Date, the Non-Appealable PUC Approval Order Date or the Waiver Agreement Date, the Company shall not be obligated to accept or pay for any energy delivered by the Seller, however, any energy accepted by the Company during this period shall be paid for at a rate equivalent to 75% of the first year Contract Price. For the period following the earlier of the Initial In-Service Date, the Non-Appealable PUC Approval Order Date or the Waiver Agreement Date and prior to the Commercial Operation Date, Company shall be obligated to accept and pay for energy, except for those circumstances set forth in Section 8(a) of this Contract, from each new generating unit as it is installed and successfully completes the Control System Acceptance Test(s), up to the Allowed Capacity, however, energy accepted by the Company during this period shall be paid for at a rate equivalent to 75% of the first year Contract Price.

Deleted: Seller delivers energy in excess of

Deleted: energy

Deleted: In-Service

- (c) Curtailment adjustments will be based on the difference between the Actual Output during any hour of curtailment and the Uncurtailed Output. This difference is the Curtailed Excess Energy. For purposes of calculating Uncurtailed Output, the Seller shall provide an estimate to the Company with data reasonably sufficient to calculate the Facility's Ideal Output during the hour of curtailment.
- (d) The initial Annual Contract Energy is set at ___ MWh for a Contract Year.

- (e) The Contract Capacity is set at ___ MW and is equal to the Allowed Capacity as specified in Appendix A. Seller shall not make any alteration or modification to the Facility which results in a change to the Contract Capacity without the Company's prior written consent.
- (f) Sales of energy by the Company to the Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Contract, except with respect to the reactive amount adjustment referred to in Appendix B.
- (g) By the fifth Business Day of each calendar month, the Company shall provide the Seller or its designated agent with the appropriate data for the Seller to compute the energy charge for the Actual Output in the preceding calendar month as determined in accordance with this Contract.
- (h) By the tenth Business Day of each calendar month, the Seller shall submit to the Company an invoice that separately states the following for the preceding month: (1) the Actual Output during this period; (2) the energy charge for energy purchased by the Company as set forth in Appendix D of this Contract; and (3) the monthly metering charge as set forth in Section 7 of this Contract.
- (i) By the twentieth Business Day of each calendar month (but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty Business Days in that month), the Company shall make payment on such invoice, or provide to the Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. The time in which the Company must make payment to Seller shall be increased on a day-for-day basis for each Day that Seller is delinquent in providing to the Company the information under Section 2(c) of this Contract. If the Company is not timely in providing data required in Section 2(c) and the Seller's invoice is subsequently not received by the Company in accordance with Section 2(a), the Company must still meet the twentieth Business Day payment date. An estimated payment, subject to reconciliation with the complete invoice, may be made as an interim provision until a complete invoice can be prepared by the Seller and received by the Company.
- (j) Notwithstanding all or any portion of such invoice in dispute, any payment not made to the Seller by the twentieth Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in

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that month), or by the due date for such payment if extended pursuant to subsection (e), above, shall accrue interest at the average daily prime rate at the Bank of Hawaii plus two percent (2%) for the period until the outstanding interest and invoiced amounts (or amounts due to the Seller if determined to be less than the invoiced amounts) are paid in full. Partial payments shall be applied first to outstanding interest and then to outstanding invoice amounts.

- (k) 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 amounts due during the period of the inaccuracy. The difference between the amount paid and that recomputed for the invoice shall either be (i) paid to Seller, or set-off by the Company against the next invoice payment to Seller, as appropriate, together with interest from the date that such invoice was payable until the date that such recomputed amount is paid at the average daily prime rate at the Bank of Hawaii for the period, or (ii) objected to by the party responsible for such payment within thirty (30) Days following its receipt of such request. All claims for adjustments shall be waived for any deliveries of electricity made more than thirty-six (36) months preceding the date of any such request.

The Seller, after giving reasonable advance written notice to the Company, shall have the right to review all billing, metering and related records relating to the Seller's Facility during normal working hours on Business Days. The Company shall maintain such records for a period of not less than thirty-six (36) months.

3) Facility Owned and/or Operated by the Seller

The Seller agrees to furnish, install, operate, and maintain suitable and sufficient equipment, to maintain adequate records, and to follow such operating procedures, as may be specified by the Company to protect the Company's System from damages resulting from the parallel operation of the Seller's Facility, including such equipment, records and operating procedures as more fully described in Appendix B. The Seller agrees that no material changes or additions to the Seller's Facility shall be made without prior written approval by the Company and amendment to the Contract.

The net instantaneous MW output from the Seller's Facility may not exceed the Allowed Capacity as specified in Appendix A. The Company may take appropriate action to limit the Allowed Capacity pursuant to, but not limited to, Section 8(a) (Continuity of Service), Section 9 (Personnel and System Safety), Section 25 (Good Engineering and Operating Practices), Appendix B (Facility Owned by the Seller), Appendix D (Energy Purchases by the Company) of this Contract.

The Point of Interconnection is shown on the final single-line diagram, provided by the Seller and reviewed by the Company, which is attached to Appendix B. The Point of Interconnection will be at the voltage level of the Company's System. If it is necessary to step up the voltage at which the Seller's energy is delivered to the Company's System, the Point of Interconnection will be on the high voltage side of the step-up transformer.

4) Interconnection Facilities Owned by the Company

Subject to the terms and conditions included in Appendix C, the Company agrees to furnish, install (or, pursuant to Appendix C, Section 1(d), may allow the Seller to install in whole or in part), own, operate and maintain such Interconnection Facilities on the Company's side of the Point of Interconnection with the Seller's Facility as required to accept energy from the Seller's Facility and for parallel operation of the Seller's Facility with the Company's System as more fully described in Appendix C. All such Interconnection Facilities shall be the property of the Company. Where any Company-Owned Interconnection Facilities are to be located on the site of the Seller's Facility, the Seller shall provide, at no expense to the Company, a location and access acceptable to the Company for all such facilities. If power sources (120/240VAC) are required, the Seller shall provide such sources, at no expense to the Company.

5) Scheduling

- (a) [Although scheduling of output may not be practicable depending on the nature of the proposed Project, Bidders are invited to propose a means for scheduling output consistent with the following provision:
Scheduling of Output: To the extent that scheduling is required now or in the future, (i) Seller will reasonably cooperate with the Company with respect to the scheduling of

Net Output, and (ii) each party shall designate authorized representatives to communicate with regard to scheduling and related matters arising under this agreement.]

- (b) Scheduling of Maintenance: The Seller shall submit a schedule of maintenance outages for the next five year period beginning with January of the following year in writing to the Company each year by June 30. The schedule shall state the estimated periods of operation, number of anticipated and scheduled shutdowns or reductions of output and the reasons therefore, and 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. The Company shall review the maintenance schedule for the five year period and inform the Seller in writing no later than December 1 of the same year of the Company's concurrence or requested revisions. The Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate the Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by the Company if such changes are deemed necessary by the Company to meet its electrical system requirements.

6) Forecasting

- (a) For The Company's planning purposes, Seller shall, by December 1 of each year during the Term of the Contract (except for the last year of the term), provide a forecast of each month's average-day energy production from the facility, by hour, for the following calendar year. This forecast (i) shall include an expected range of uncertainty based on historical operating experience, and (ii) shall be updated on a monthly basis by notice given to the Company at least six Business Days before the first Business Day of each month.
- (b) By 0900 Hawaii time on the Business Day immediately preceding the day on which energy from the Facility is to be delivered, Seller shall provide the Company with an hourly forecast of deliveries for each hour of the next day. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of net output from the then current forecast; provided, however, that Seller shall not be required to update such forecasts more frequently than once per hour.

- (c) In order to make Seller's forecasts as accurate as possible, Seller will install and maintain, among other equipment, instrumentation to measure and record wind speed and direction.
- (d) When Seller learns that any of its equipment will be taken out of service or will be return to service which may effect its delivery of energy to the Company, Seller shall notify the Company as soon as practicable, and in any event, no later than the daily forecasts required by Section 6(b), above. This requirement to notify shall include, but not be limited to, notice to the Company of Seller's intention to start up or shut down any turbines, such as a high wind-speed shut-down. Any turbine start-up or shut-down must be coordinated with the Company in advance to the extent practicable to allow a reasonable amount of time for the Company to make generation adjustments required by the additional energy resulting from a turbine start-up or the loss of energy from a turbine shut-down.
- (e) The forecasts called for by this Contract shall be non-binding, good faith estimates only, and shall be substantially in the form reasonably requested by The Company. If the Project is a wind farm, Seller shall prepare such forecasts and updates by utilizing a wind speed and direction prediction model or service that is (i) commercially available or proprietary to the Seller, and (ii) comparable in accuracy to models or services commonly used in the wind energy industry and that reflect turbine availability, so long as such model or service is available at a commercially reasonable cost and is satisfactory to the Company in the exercise of its reasonable discretion.

7) Seller Payments

Seller shall pay to the Company a) all amounts pursuant to Appendix C, and b) a monthly metering charge of \$25.00 per month, which is in addition to any charges due the Company pursuant to the applicable rate schedule pursuant to Section 2(g) of this Contract.

8) 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 Acceptance Test of non-utility owned facilities to the Company's 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 such as, but not limited to, those described in Appendix B, Section 2; or the inability to accept deliveries of energy due to light loading conditions; or if either the Seller's 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's 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's System Operator determines, at his or her sole discretion using Good Engineering and Operating Practices, could place in jeopardy system reliability. In the event that the Company temporarily curtails, interrupts, or reduces deliveries of energy pursuant to this Section 8(a), the Company shall not be obligated to accept or pay for any energy from the Seller except for such energy that the Company notifies the Seller that it is able to take during this period due to the aforesaid circumstances.

The Company shall not be required to purchase energy during any period during which, due to operational circumstances, purchases from the Seller will result in costs greater than those which the Company would incur if it did not make those purchases, but instead generated an equivalent amount of energy itself. The Company shall provide the Seller with at least twenty-four (24) hours advance oral or written notice of any such period to allow the Seller to cease the delivery of energy to the Company. The Company and the Seller will work to develop a mutually acceptable format for this notice, including, but not limited to, a listing of typical parameters that define anticipated constraints in purchases from the Seller. If the Company fails to provide such notice, it will pay the same rate for such purchase of energy as would be required had the period not occurred.

- (b) Section 8 of this Contract is not intended to permit the Company to require the Seller to curtail, interrupt or reduce deliveries of energy based on the Company's economic dispatch (for example, as a consequence of the Company's filed Avoided Energy Cost Data being lower than the applicable price per MWh paid to the Seller under this Contract, or to make

purchases of less expensive energy from a Qualifying Facility).

- (c) The Company shall take all reasonable steps (such as reducing the output of base-load generation, including its own base-load generating units, during light loading conditions, 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) to minimize the number and duration of curtailments, interruptions or reductions, subject to and in accordance with Appendix B. For purposes of this Section 8, as of the Effective Date, light loading conditions typically occur between the hours of 12:00 midnight and 7:00 a.m., but the timing of such conditions may change over time.

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9) Personnel and System Safety

Notwithstanding any other provisions of this Contract, if at any time the Company reasonably determines that the Seller's Facility may endanger the Company's personnel, and/or the continued operation of the Seller's Facility may endanger the integrity of the Company's System or have an adverse effect on the Company's other customers' electric service, the Company shall have the right to curtail or disconnect, as determined in the sole discretion of Company's System Operator, the Seller's Facility from the Company's System. The Seller's Facility shall remain curtailed or disconnected, as the case may be, until such time as the Company is satisfied that the condition(s) referred to above have been corrected, and the Company shall not be obligated to accept or pay for any energy except for such energy as is accepted by Company from the Seller during such period. If the Company curtails or disconnects the Seller's Facility from the Company's System for personnel or system safety reasons, it shall as soon as practicable notify the Seller by telephone and thereafter confirm in writing the reasons for the curtailment or disconnection.

10) Metering

- (a) Meters - The Company shall purchase and own meters suitable for measuring the net energy output of the Seller's Facility sold to the Company in kilowatts and kilowatthours on a time-of-day basis and of reactive power flow in kilovars and

true root mean square kilovarhours. The metering point shall be at the Point of Interconnection. The Seller shall supply, at no expense to the Company, a mutually agreeable location and mounting structure for meters and associated equipment. The Company will calibrate these devices in accordance with the latest edition of the American National Standards Institute (ANSI) Code for Electricity Metering. All meters shall be ratcheted to prevent reversal. The Company shall install, maintain and annually test such meters and shall be reimbursed by Seller for all reasonably incurred costs for such installation, maintenance and testing work.

- (b) Meter Testing - The Company shall provide at least twenty-four (24) hours' notice to Seller prior to any test it may perform on the metering or telemetering equipment. The Seller shall have the right to have a representative present during each such test. Seller may request, and the Company shall perform if requested, tests in addition to the annual test and Seller shall pay the cost of such test. The Company may, at its own discretion, perform tests in addition to the annual test and the Company shall pay the cost of such test. If any of the metering equipment is found to be inaccurate at any time, as determined by testing in accordance with this Section 10(b), the 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(c).

- (c) Corrections - If any test of metering equipment conducted by the Company indicates that the meter readings are in error by one percent (1%) or more, the meter readings shall be corrected as follows: (i) determine the error by testing the meter at approximately ten percent (10%) of the rated current (test amperes) specified for the meter; (ii) determine the error by testing the meter at approximately one hundred percent (100%) of the rated current (test amperes) specified for the meter; (iii) the average meter error shall then be computed as the sum of one-fifth (1/5) the error determined in (i) and four-fifths (4/5) the error determined in (ii). The average meter error shall be used to adjust the bills for the amount of electric energy supplied to the Company for the previous six (6) months from the Seller's Facility, unless records of the 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.

11) Permits, Licenses and Land Rights

- (a) The Seller shall obtain, at its expense, any and all authorizations, permits and licenses required for the construction and operation of the Seller's Facility, including but not limited to rights-of-way, easements or leases. The Seller shall install, operate and maintain the Seller's Facility safely and in compliance with all applicable laws and regulations. To the extent private land or land owned by a government entity is involved, the Seller shall obtain, at its expense, any necessary authorizations, permits, licenses, rights-of-way, easements and leases required in order that the Seller's Facility can be interconnected with the Company's System.
- (b) If the land on which the Seller's Facility is located is not owned by the Seller's Facility's owner, a copy of the agreement with the owner of the land which establishes the right of the Seller's Facility's owner to put the Seller's Facility on the land and the existence of required rights-of-way, easements and leases shall be provided to the Company before the Initial In-Service Date.
- (c) Seller shall, prior to commencement of construction of the Company-owned Interconnection Facilities (whether to be built by the Seller or by the Company), provide the necessary authorizations, permits, licenses, rights of way, easements, leases and/or rights-of-entry for construction, ownership, operation and maintenance of the Company-owned Interconnection Facilities. Seller shall also provide the Company access to occupy designated space, operate, maintain, modify, and remove such Company-owned Interconnection Facilities.

12) Term

- (a) Subject to Section 12(b) of this Contract, the Term of this Contract shall commence upon the Effective Date of this Contract and shall remain in effect for twenty (20) Contract Years following the Commercial Operation Date and shall continue in effect thereafter until terminated by either party as provided for herein. Either the Company or Seller may terminate this Contract at any time after the end of the initial twenty (20) year Term upon not less than ninety (90) Days' advance written notice to the other party. The Annual Contract Energy and Contract Price in effect at the end of the initial twenty (20) year Term shall remain in effect

thereafter until this Contract is terminated as provided in the previous sentence.

- (b) Except where obligations of the parties are explicitly stated as being effective before the **earlier of the Waiver Agreement Date or the** Non-appealable PUC Approval Order Date, only Section 3 (Facility Owned and/or Operated by the Seller), Section 12 (Term), Section 14 (Credit Assurance and Security) as it relates to Development Period Security, Section 17 (Indemnification), Section 22 (Warranties and Representations), Section 29 (Miscellaneous) and the Definitions of this Contract shall become effective on the Effective Date of this Contract. All other portions of this Contract become effective on the earlier of the Waiver Agreement Date or the Non-appealable PUC Approval Order Date.
- (c) Upon the Effective Date of this Contract, the parties shall use their reasonable efforts to obtain a PUC Approval Order satisfactory to the parties. Company shall submit to the PUC an application for a satisfactory PUC Approval Order. A satisfactory PUC Approval Order shall include authorization for the purchased energy charges to be paid by the Company to the Seller hereunder (and related revenue taxes) to be included in the Company's Energy Cost Adjustment Clause (or equivalent) for the Term of this Contract and for such additional period following the Term as provided in Section 12(a), above. If the satisfactory PUC Approval Order is not obtained within twelve (12) months of the PUC Submittal Date, or within such longer period as the Company and the Seller may agree to by a written agreement, the Company or the Seller may, by written notice delivered within 30 days of such date, declare this Contract null and void. In the event the PUC Approval Order is obtained within twelve (12) months of the PUC Submittal Date but that Order is appealed, and a Non-appealable PUC Approval Order is not obtained within eighteen (18) months of the PUC Submittal Date, or within such longer period as the Company and the Seller may agree to by a subsequent written agreement, the Company or the Seller may, by written notice delivered within 30 days of such date, declare this Contract null and void. If the Contract is declared null and void as provided herein, the parties hereto shall thereafter be free of all obligations hereunder and shall pursue no further remedies against one another; except, however, that the provision of Section 12 shall continue to remain in effect, regardless. However, if the Seller had requested the Company to incur costs associated with the Company-owned Interconnection Facilities

prior to receipt of a satisfactory PUC Approval Order, or if there is an appeal, a Non-appealable PUC Approval Order, the Seller shall pay the Company the actual costs and cost obligations incurred by the Company as of the date the Contract is declared null and void for the Company-owned Interconnection Facilities and any reasonable costs incurred thereafter.

- (d) If the PUC Approval Order is appealed, the Parties shall meet within six months of the PUC Approval Order Date and decide whether to waive the requirement of obtaining a satisfactory Non-appealable PUC Approval Order. Neither Party shall be required to agree to such a waiver. If the Parties agree in writing to such a waiver ("Waiver Agreement"), Seller agrees that it shall proceed with its performance solely at its own risk. Furthermore, if the Parties conclude a Waiver Agreement, the provisions of the Contract ~~that would otherwise become effective upon obtaining a satisfactory Non-appealable PUC Approval Order shall become effective as of the date of the Waiver Agreement Date.~~

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- (e) Notwithstanding any of the foregoing, the Company or Seller may terminate the Contract at any time upon the occurrence of any condition described in Section 15, Events of Default.

13) Construction Milestones

- (a) Time is of the essence of this Contract, and Seller's ability to meet certain milestones is critically important. Seller's inability to achieve ~~Commercial Operations~~ for the Project by the Guaranteed Commercial Operation Date may cause the Company to not meet applicable requirements under Hawaii's RPS law. As such, the Company may incur financial consequences for failure to meet such requirements.

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- (b) The Construction Milestones include a Guaranteed Project Milestone, namely the Commercial Operation Date, which shall occur no later than the date set forth in Appendix E, subject to any allowed extension caused by Force Majeure (the "Guaranteed Commercial Operation Date"). If the Guaranteed Commercial Operation Date is missed, then subsection (e) below shall apply.
- (c) The Construction Milestones also include the Reporting Milestones that are set forth in Appendix F.

(d) If Seller misses the Permit Application Filing Date Milestone, the Construction Financing Closing Milestone or the Construction Start Date as set forth in Appendix F, by more than ninety (90) Days, Seller shall submit to the Company, within ten (10) Business Days of an such missed Construction Milestone date, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve the missed Construction Milestone date and all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.

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(e) Seller shall cause the Project to meet the Guaranteed Commercial Operation Date on or before the date for that Construction Milestone specified in Appendix E to this Contract. In the event Seller fails to achieve the Guaranteed Commercial Operation Date, Seller shall have ninety (90) days to cure its failure to perform. In the event Seller's delay in meeting the Guaranteed Commercial Operation Date is caused by Force Majeure, Seller shall have up to a maximum of three hundred sixty-five (365) days from the Guaranteed Commercial Operation Date to cure its failure to perform. After the cure period, the Company shall be entitled on a monthly basis to draw upon the Development Period Security for liquidated damages equal to Daily Delay Damages, as calculated in subsection (f), below, for each day that Seller fails to meet the Guaranteed Commercial Operation Date. Each Party agrees and acknowledges that (1) the damages that the Company would incur due to delay in achieving the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (2) the Daily Delay Damages are an appropriate approximation of such damages.

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(f) Daily Delay Damages shall be calculated as follows: the Seller shall pay the Company, for each day that Seller fails to meet the Guaranteed Commercial Operation Date, specified in Appendix E to this Contract, after applicable cure periods as provided in Section 13(e), an amount of \$167/MW multiplied by the contract capacity up to a maximum amount of \$XXX [\$30,000/MW x Contract Capacity].

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(g) Commencing upon the Effective Date of this Contract, Seller shall submit to the Company, on the first Day of each calendar month until the Commercial Operation Date is achieved, progress reports in a form reasonably satisfactory to the Company. These progress reports shall notify the

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Company of the current status of each Construction Milestone. Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses relating to any Governmental Authority and shall provide any such documents as may be reasonably requested by the Company. In addition, Seller shall advise the Company as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Seller shall provide the Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from the Company.

14) Credit Assurance and Security

- (a) Bidders are required to post Development Period Security and Operating Period Security based on the following requirements.
- (b) Development Period Security: To guarantee its undertaking to meet the Guaranteed Commercial Operation Date, the Seller shall provide Development Period Security to the Company within ten (10) Days of Effective Date of the Contract in an amount of \$30/kW based on the original Contract Capacity.

In the event a Non-appealable PUC Approval Order is not obtained within eighteen (18) months of the PUC Submittal Date, or within such longer period as the Company and the Seller may agree by a subsequent written agreement as provided in Section 12(c) of this Contract, and the Parties do not enter into a Waiver Agreement as provided in Section 12(d) of this Contract, or if the PUC issues an order denying approval for an application for a PUC Approval Order, or if the PUC issues an order that is not a complete approval and which is not satisfactory to Company or Seller, the Development Period Security (including any accumulated interest, if applicable) shall be returned to the Seller.

- (c) Operating Period Security: To guarantee the performance of the Seller's obligations under the Contract for the period starting from the Commercial Operation Date to the end of the Contract, the Seller shall provide Operating Period Security to the Company in the amount of \$40/kW based on the original Contract Capacity, due within five (5) Days of the Commercial Operation Date. Upon receipt of the Operating Period Security, the Development Period Security (including any accumulated interest, if applicable) shall be returned

to Seller minus an amount, if any, for Daily Delay Damages that is due and owing to Company but not previously paid by Seller. On the fifteenth (15th) anniversary of the Commercial Operation Date, the amount of Operating Period Security shall be increased to \$50/kW based on the original Contract Capacity.

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- (d) Form of Security: Seller may supply the Development Period and Operating Period Security required in the form cash or an irrevocable letter of credit substantially in the form attached to this Contract as Appendix G from a bank or other financial institution with a credit rating of "A-" or better. If the rating (as measured by Standard & Poors) of the bank or financial institution issuing the irrevocable letter of credit falls below A-, the Company may require Seller to replace the irrevocable letter of credit with an irrevocable letter of credit from another bank or financial institution with a credit rating of "A-" or better. If security of the form of an irrevocable letter of credit is utilized by the Seller, such security must be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security must be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. Security in the form of an irrevocable letter of credit shall be consistent with this Contract and include a provision for at least thirty (30) Days advance notice to the Company of any expiration or earlier termination of the security so as to allow the Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security.

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- (e) The Development Period Security and Operating Period Security (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Section 14 shall be available to pay any amount due the Company pursuant to this Contract, and to provide the Company security that Seller will construct the Facility to meet the Construction Milestones. The Security Funds shall also provide security to the Company to cover damages, should the Facility fail to achieve the Commercial Operation Date or otherwise not operate in accordance with this Contract. Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Contract. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by the Company.

- (f) In addition to any other remedy available to it, the Company may, before or after termination of this Contract, draw from the Security Funds such amounts as are necessary to recover amounts the Company is owed pursuant to this Contract, including, but without limitation, any damages due the Company and any amounts for which the Company is entitled to indemnification under this Contract. The Company may, in its sole discretion, draw all or any part of such amounts due the Company from any form of security to the extent available pursuant to this Section 14, and from all such forms, and in any sequence the Company may select. Any failure to draw upon the Security Funds or other security for any damages or other amounts due the Company shall not prejudice the Company's rights to recover such damages or amounts in any other manner.
- (g) The Security Funds shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") acceptable to the Company. Seller may change the form of the Security Funds at any time and from time to time upon reasonable prior notice to the Company, but the Security Funds must at all times be comprised of one or a combination of the forms specified above in Section 14(d).
- (h) The form of such security must meet the Company's requirements to ensure that claims or draw-downs can be made unilaterally by the Company in accordance with the terms of this Contract. If the security is not renewed or extended as required herein, the Company shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with Section 14(i) below, until and unless Seller provides a substitute form of such security meeting the requirements of this [Section 14](#). 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.
- (i) If the form of security is in the form of cash as permitted in Section 14(d), above, the cash shall be United States currency, in which the Company holds a first and exclusive perfected security interest, deposited with a reputable, federally-insured bank, either: (i) in an account under which the Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) held by Issuer as escrow agent with

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instructions to pay claims made by the Company pursuant to this Contract, such instructions to be in a form satisfactory to the Company. Security provided in this form shall include a requirement for immediate notice to the Company from Issuer and Seller in the event that the sums held as security in the account or trust do not at any time meet the required level for the Security Fund as set forth in this Section 14. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date is achieved, annual account sweeps for recovery of interest earned by the Security Fund shall be allowed by Seller. At such times as the balance in the escrow account exceeds the amount of Seller's obligation to provide security hereunder, the Company shall remit to Seller on demand any excess in the escrow account above Seller's obligations, including, but not limited to, any and all damages owed by the Seller to the Company under the terms of this Contract.

(j) Promptly following the end of the Term, and for such additional period following the Term as provided in Section 12(a), above, and the completion of all of Seller's obligations, including, but not limited to, the obligation to pay any and all damages owed by the Seller to the Company, under this Contract, the Company shall release the Security Fund (including any accumulated interest, if applicable) to Seller.

| (k) Additional Security. [\[Optional Provision\]](#)

(A) Prior to the Commercial Operation Date, Seller and/or the Company, as the case may be, shall execute and record, as appropriate, separate agreements, documents, or instruments under which Seller will provide the Company, in a form reasonably acceptable to the Company and the Facility Lender, a fully perfected subordinated security interest, and mortgage lien (collectively the "Subordinated Mortgage") in the Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or operate the Facility. The Subordinated Mortgage shall be given to secure Seller's continuing performance and any amounts that may be owed by Seller to the Company pursuant to this Contract. Seller agrees, and shall cause

the Facility Lender to agree and the Financing Documents to provide, (i) that the lien of such Subordinated Mortgage shall be subordinate to the lien of the Facility Lender, and (ii) that, as long as the Company is not in material default of its obligations under this Contract, the Facility and any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of this Contract (including the obligation to reinstate the Subordinated Mortgage, subject to the terms of this Section 14, following any foreclosure by the Facility Lender) and shall assume all of Seller's obligations hereunder, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. The collateral secured by the Subordinated Mortgage shall not include the pledge, assignment, or other interest in any stock or ownership interest in Seller; provided that Seller shall not pledge or assign, or cause or permit to be pledged or assigned, any stock or ownership interest in Seller as collateral to any party other than the Facility Lender without the prior consent of the Company.

(B) The Company agrees to cooperate with Seller and diligently negotiate in good faith, at Seller's request, to establish the form of these agreements and to execute and deliver such agreements as reasonably necessary to enable Seller to meet the Construction Milestones. The Parties shall confirm, define, and perfect such Subordinated Mortgage by executing, filing, and recording, at the expense of Seller, the Subordinated Mortgage. In addition, Seller agrees to execute and file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by the Company to confirm and continue the validity, priority, and perfection of the Subordinated Mortgage. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to the Company by reason of any breach or default by Seller under this Contract or the early termination of this Contract as provided for herein. The Subordinated Mortgage shall be discharged and released, and the Company shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term of this Contract, including any extension of the

Term, and satisfaction by Seller of all obligations hereunder.

(C) The Subordinated Mortgage shall provide that if the Company acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to this Section 14(k), Seller shall take all steps necessary to transfer all permits and licenses necessary to operate the Facility to the Company, and shall diligently pursue and cooperate in these transfers.

15) Event of Default

(a) An Event of Default shall mean, with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) The failure to make any payments required pursuant to this Contract when due if such failure is not remedied within five (5) Business Days after written notice is received by the party failing to make such payment;

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(ii) Any representation or warranty made by such party herein is false and misleading in any material respect when made;

(iii) Such party becomes bankrupt; or

(iv) Such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the same time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Contract to which it or its predecessor was a party by operation of law pursuant to an agreement reasonably satisfactory to the other party; or

(v) The Company, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Contract, and fails to cure such breach or default within thirty (30) days after written notice of such breach or default from the Seller, unless (1) such breach or default is due to Force Majeure; provided, however, that if the Company does not cure such breach or default resulting from Force Majeure within 365 days of such notice, Seller may terminate this Contract or, (2) such breach or default cannot be cured within thirty (30) days and

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the Company is making diligent efforts to cure such breach or default, provided, however, that if such breach or default is not cured within 365 days of such notice, Seller may terminate this Contract.

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(b) An Event of Default shall mean, with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the term of the Contract, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Contract energy that was not generated by the Seller's Facility;

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(ii) failure by the Seller to deliver from the Seller's Facility at least sixty percent of the initial Annual Contract Energy to the delivery point for a period of three (3) consecutive Contract Years;

(iii) failure by the Seller to meet the Guaranteed Commercial Operation Date after the cure period provided in Section 13(e) of this Contract;

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(iv) failure by Seller to satisfy the Credit Assurance and Security requirements agreed to pursuant to Section 14 of this Contract;

(v) failure by the Seller to install, operate, maintain, or repair the Seller's Facility in accordance with Good Engineering and Operating Practices within thirty (30) days of written notice of such breach from the Company, and subject to the same extension of cure periods as set forth in Section (vii) below; or

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(vi) failure of the Seller to provide energy to the Company for a period of three hundred sixty-five (365) or more consecutive days, unless such failure is caused by Force Majeure or the inability of the Company to accept such energy; or

(vii) Seller, by act or omission, materially breaches or defaults on any material covenant, condition or other provision of this Contract, and fails to cure such breach or default within thirty (30) days after written notice of such breach or default from the Company, unless (1) such breach or default is due to Force Majeure, provided, however, that if Seller does not cure such breach or default resulting from Force

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Majeure within 365 days of such notice, the Company may terminate this Contract, or, (2) such breach or default cannot be cured within thirty (30) days and the Seller is making diligent efforts to cure such breach or default, provided, however, that if such breach or default is not cured within 365 days of such notice, the Company may terminate this Contract.

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- (c) If an Event of Default with respect to a defaulting party shall have occurred and be continuing, the other party ("non-defaulting party") shall have the right (a) to terminate this Contract by sending Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such notice is deemed to be received, as an early termination date of the Contract ("early termination date"); (b) (to withhold any payments due to the defaulting party under this Contract; (c) suspend performance; and (d) exercise any other right or remedy available at Law or in equity to the extent permitted under this Contract. If the Contract is terminated by Company because of one or more of the Events of Default in Section 15(b), above, the Company shall have the right, in addition to the rights set forth above in this subsection (c), to collect liquidated damages ("Termination Damages"), which shall be calculated in accordance with Section 16 below. Disputes regarding the Termination Damages shall be determined in accordance with Article 28.

16) Damages in the Event of Termination by Company

- (a) If the Contract is terminated by the Company in accordance with this Contract before the Commercial Operation Date due to an Event of Default where Seller is the defaulting party, the Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$30/kW.
- (b) If the Contract is terminated by the Company in accordance with this Contract after the Commercial Operation Date due to an Event of Default where Seller is the defaulting party, the Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$40/kW. On and after the fifteenth (15th) anniversary of the Commercial Operation Date, the Termination Damages shall be calculated by multiplying the Contract Capacity by \$50/kW.
- (c) Each Party agrees and acknowledges that (1) the damages that the Company would incur due to early termination of the Contract, as provided in Section 15, would be difficult or

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impossible to predict with certainty, and (2) the Termination Damages are an appropriate approximation of such damages.

17) Indemnification

- (a) The Seller shall indemnify, defend and hold harmless the Company and its directors, officers, employees and agents (including but not limited to affiliates and contractors and their employees) from and against any and all liabilities, damages, losses, penalties, claims, demands, suits, costs, expenses (including attorneys' fees), and proceedings of every kind, including those for damage to the property or real property of any person or entity (including the Seller) and/or for injury to or death of any person (including the Seller's employees and agents) (collectively "Injury or Damage"), directly or indirectly arising out of or attributable to or in any manner connected with the location, construction, interconnection or parallel operation of the Seller's Facility with the Company's System, including land restoration costs for which the Seller is responsible, if any, and/or directly or indirectly arising out of or attributable to or in any manner connected with the breach of any of Seller's representations or warranties herein, except to the extent that such Injury or Damage is attributable to the gross negligence or willful misconduct of the Company.
- (b) The Company shall indemnify, defend and hold harmless the Seller and its directors, officers, employees and agents (including but not limited to affiliates and contractors and their employees) from and against any and all liabilities, damages, losses, penalties, claims, demands, suits, costs, expenses (including attorneys' fees), and proceedings of every kind, including those for damage to the property or real property of any person or entity (including the Company) and/or for injury to or death of any person (including the Company's employees and agents) (collectively "Injury or Damage"), directly or indirectly arising out of or attributable to or in any manner connected with the location, construction, interconnection or parallel operation of the Company's System with the Seller's Facility, and/or directly or indirectly arising out of or attributable to or in any manner connected with the breach of any of the Company's representations or warranties herein, except to the extent that such Injury or Damage is attributable to the gross negligence or willful misconduct of the Seller.

18) Insurance

The Seller shall, at its own expense and during the term of the Contract and during any other time that the Seller's Facility is interconnected with the Company's System, secure and maintain in effect with a responsible insurance company authorized to do insurance business in Hawaii the following insurance that will protect the Seller and the Company. The Seller shall maintain commercial general liability insurance with respect to the Seller's Facility, the Seller's operations, and the Seller's interconnection with the Company's System, with a bodily injury and property damage combined single limit of at least [To be determined; minimum of \$2,000,000] for any occurrence. Said insurance shall name the Company as an additional insured, shall include contractual liability coverage for written contracts and agreements including this Contract, and shall be non-cancelable and non-alterable without thirty (30) days' prior written notice to the Company. "Claims made" policies are not acceptable. The coverage limits shall be reviewed annually by the Company and if, in the Company's discretion, the Company determines that the coverage limits should be increased, the Company shall so notify the Seller. The amount of any increase of the coverage limits, when considered as a percentage of the then existing coverage limits, shall not exceed the cumulative amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. The Seller shall within thirty (30) days of notice from the Company increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by the Seller. The insurance required hereunder shall provide that it is primary with respect to the Seller and the Company. The Seller shall provide evidence of such insurance by providing certificates of insurance to the Company prior to construction of the Company's Interconnection Facilities and within 30 days of any change. The Seller's indemnity and other obligations shall not be limited by the foregoing insurance requirements. Any deductible shall be the responsibility of the Seller.

19) Assignment

This Contract may not be assigned by either the Company or the Seller without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned, or delayed); provided that Seller shall have the right, without

the consent of the Company, for the purposes of arranging or rearranging debt and/or equity financing for Seller's Facility, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for Seller's Facility. Seller shall immediately provide written notice to the Company of any assignment of all or part of the Contract and Seller shall provide to the Company all information about the assignment and the assignee reasonably requested by the Company.

20) Sale of Energy to Third Parties

The Seller shall not sell energy from the Seller's Facility to any Third Party, which includes subsidiaries or affiliates of the Seller.

21) Force Majeure

(a) The term "Force Majeure", as used in this Contract, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, or volcanic activity; high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; lightning; fire; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and emergency orders issued by a Governmental Authority.

(b) Force Majeure does not include:

- (i) any acts or omissions of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;
- (ii) any full or partial curtailment in the electric output of the Seller's Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal

wear and tear or flaws, unless such mishap is caused by Force Majeure;

- (iii) changes in market conditions that affect the cost of the Seller's supplies, or that affect demand or price for any of the Seller's products, or that otherwise render this Contract uneconomic or unprofitable for the Seller;
 - (iv) Seller's inability to obtain Permits or approvals of any type for the construction, operation, or maintenance of the Seller's Facility;
 - (v) Seller's inability to obtain sufficient fuel, power or materials to operate its Facility, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure as defined above in Section 21(a);
 - (vi) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by the Company pursuant to this Contract;
 - (vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure as defined above in Section 21(a) of this Contract;
 - (viii) litigation or administrative or judicial action pertaining to the Contract, the Site, the Facility, the acquisition, maintenance or renewal of financing or any Permits, or the design, construction, maintenance or operation of the Facility or the Company's System;
 - (ix) any full or partial curtailment in the delivery of the Actual Output of the Seller or of the ability of the Company to accept Capacity and Actual Output from the Seller which is caused by any third party including, without limitation, any vendor or supplier of the Seller or the Company, except to the extent due to Force Majeure as defined above in Section 21(a) of this Contract.
- (c) Neither Party shall be responsible or liable for any delay or failure in its performance under this Contract, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure,

occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

- (i) the nonperforming Party gives the other Party, within 48 hours after the Force Majeure cause or event begins, written notice describing the particulars of the Force Majeure cause or event;
 - (ii) the nonperforming Party gives the other Party, within 14 days after the Force Majeure cause or event begins, a written explanation of the Force Majeure cause or event and its effect on the nonperforming Party's performance, which explanation shall include evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in Section 21(a) of this Contract;
 - (iii) 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;
 - (iv) the nonperforming Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
 - (v) when the event or condition of Force Majeure ends and the nonperforming Party is able to resume performance of its obligations under this Contract, that Party shall give the other Party written notice to that effect.
- (d) Except as otherwise expressly provided for in this Contract, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Contract (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.
- (e) In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Contract beyond its stated Term. However,
- (i) If an event of Force Majeure causes the Seller to not achieve the Guaranteed Commercial Operation Date established in Section 13 and Appendix E of this Contract, then such date shall be extended for such

reasonable period of delay directly resulting from such Force Majeure event subject to the limits set forth in Section 13. However, after the Commercial Operation Date, an event of Force Majeure shall not extend the Term of this Contract.

- (ii) In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 21(c)(i) and (ii), above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this Contract upon written notice to the affected Party, without further obligation by either Party except as to (1) costs and balances incurred prior to the effective date of such termination and (2) Termination Damages to which the Company is entitled pursuant to Section 16 of this Contract. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

22) Warranties and Representations

- (a) Both the Company and the Seller represent and warrant, respectively, that:

Each respective party has all necessary right, power and authority to execute, deliver and perform this Contract

The execution, delivery and performance of this Contract by each respective party will not result in a violation of any law or regulation of any governmental authority, 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, including any governmental authority (other than the PUC and other agencies whose approval is necessary for construction of Company-owned Interconnection Facilities), is required for such execution, delivery and performance by either party.

- (b) Seller represents and warrants that it is an entity in good standing with the Hawaii Department of Commerce and Consumer Affairs and shall provide the Company with a certified copy of a certificate of good standing by the Effective Date.

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23) Process for Addressing Revisions to Performance Standards

- (a) The parties acknowledge that, during the Term of the Contract, certain Performance Standards may be revised to facilitate necessary improvements in integrating intermittent renewable energy resources into the Company's System and operations. In particular, the following Performance Standards in Appendix B to this Contract may be revised: Section 3(c), Ramp Rates; Section 3(d), Power Fluctuation Rate; and, Section 3(m), Frequency Regulation. Such revisions may attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company's System, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in regulations or laws (e.g., new environmental constraints, which may limit the Company's ability to start/stop its generators in response to integration of intermittent generation, or laws, rules or regulations impacting the power quality standards for the Company's System).
- (b) If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company's System and is capable of being complied with by Seller, Company shall have the right to issue to Seller a Performance Standards Information Request with respect to such Performance Standards Revision. Seller shall, within a reasonable period of time following Seller's receipt of such Performance Standards Information Request, but in no event more than 90-Days after Seller's receipt of such Request (or such other period of time as Company and Seller may agree in writing), submit to Company a Performance Standards Proposal responsive to the Performance Standards Revision proposed in such Performance Standards Information Request.
- (c) Upon receipt of a Performance Standards Proposal submitted in response to a Performance Standards Information Request, Company will evaluate such Performance Standards Proposal and Seller shall assist Company in performing such

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evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request). Company shall have no obligation to evaluate a Performance Standards Proposal submitted at Seller's own initiative.

(d) If, following Company's evaluation of a Performance Standards Proposal, Company desires to consider implementing the Performance Standards Revision addressed in such Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of the Performance Standards Proposal, and Company and Seller shall proceed to negotiate in good faith a Performance Standards Revision Document setting forth the specific changes to the Contract that are necessary to implement such Performance Standards Revision. A decision by the Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's Performance Standards Proposal for the Performance Standards Revision in question, including but not limited to the Performance Standards Modifications and the Performance Standards Pricing Impact. Any adjustment to Contract pricing set forth in 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(f).

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(e) If Company and Seller are unable to agree upon an execute a Performance Standards Revision Document within 180 Days of Company's written notice to Seller pursuant to Section 23(d) above, 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 23(j) of this Contract. 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(d) above.

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- (f) No Performance Standards Revision Document shall constitute an amendment to the Contract 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 the Contract. To be "non-appealable" under this Section 23(f), such Order must be either (i) not subject to appeal to any Circuit Court of the State of Hawaii or the Supreme Court of the State of Hawaii, 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 Hawaii or the Supreme Court, or the Intermediate Appellate Court upon assignment by the Supreme Court, of the State of Hawaii, 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).
- (g) The rights granted to Company under Section 23(d) and (e) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under Section 23(j), as a result of a failure to agree upon and execute any Performance Standards Revision Document.
- (h) Notwithstanding any provision of this Section 23 to the contrary, (i) Company shall have no right to issue a Performance Standards Information Request prior to the end of the fifth Contract Year and (ii) Company shall have no right to issue more than one Performance Standards Information Request during any 12-month period.
- (i) Section 23 is intended to specifically address necessary revisions to the Performance Standards to enhance integration of intermittent resources onto the Company's generating system, or to comply with future laws and regulations which may be driven in part by higher integration of intermittent resources, and is not intended for either party to provide a means for renegotiating any other terms of this Contract. Revisions to the Performance Standards in accordance with the provisions of this Section

23 are not intended to materially increase Seller's risk of non-performance or default.

(j) If the 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(e), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a Performance Standards Revision Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the parties are unable to agree upon an Independent Evaluator within such 20-day period, the Company shall apply to the Commission 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 Commission shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the Commission shall appoint another qualified person to serve as Independent Evaluator. In its application, the Company shall ask the Commission to appoint an Independent Evaluator within 30 Days of the application.

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- (i) Promptly upon appointment, the Independent Evaluator shall request the parties to address the following matters within the next 15 Days:
1. The Performance Standard Revision(s);
 2. The technical feasibility of complying with the Performance Standard Revision(s) and likelihood of compliance;
 3. How Seller would comply with the Performance Standard Revision(s);
 4. Reasonably expected net costs and/or lost revenues associated with the Performance Standards Revision(s);
 5. The appropriate level, if any, of Performance Standards Pricing Impact in light of the foregoing; and
 6. Contractual consequences for non-performance that are commercially reasonable under the circumstances.

(ii) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless it is

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necessary for the Independent Evaluator to have additional time to render a decision.

- (iii) 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.
- (iv) The following standards shall be applied by the Independent Evaluator in rendering his decision: (A) if it is not technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall determine that the Contract shall not be amended to incorporate such Performance Standard Revision (unless the parties agree otherwise); (B) if it is technically or operationally feasible for Seller to comply with a Performance Standard Revision, the Independent Evaluator shall incorporate such Performance Standard Revision in a Performance Standards Revision Document including (x) Seller's Performance Standards Modifications, (y) pricing terms that incorporate the Performance Standards Pricing Impact, and (z) contract terms and conditions that are commercially reasonable under the circumstances, especially with respect to the consequences of non-performance by Seller as to Performance Standards Revision(s). In addition to the Performance Standards Revision Document, the Independent Evaluator shall render a decision which sets forth the positions of the parties and Independent Evaluator's rationale for his or her decisions on disputed issues.
- (v) The fees and costs of the Independent Evaluator shall be paid by Company for the first \$___ 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 \$_____, shall be borne

equally by the parties. The Independent Evaluator in rendering his or her decision shall also state which party prevailed over the other party, or that neither party prevailed over the other.

24) Financial Compliance

- (a) Seller shall provide or cause to be provided to Company on a timely basis, as reasonably determined by Company, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by Company for purposes of permitting Company and its parent company, Hawaiian Electric Industries, Inc. ("HEI"), to comply with the requirements of (a) Interpretation No. 46 (revised December 2003) of the FASB, Consolidation of Variable Interest Entities, an interpretation of ARB No. 51 ("FIN No. 46R"), (b) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404") and (c) all clarifications, interpretations and revisions of and regulations implementing FIN No. 46R and SOX 404 issued by the FASB, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Tax Force or other governing agency. In addition, if required by Company in order to meet its compliance obligations, Seller shall allow Company or its independent auditor to audit, to the extent as is reasonably required, Seller's financial records, including its system of internal controls over financial reporting; provided that Company shall be responsible for all costs associated with the foregoing, including but not limited to Seller's reasonable internal costs. Company shall limit access to such Information to persons involved with such compliance matters and restrict persons involved in Company's monitoring, dispatch or scheduling of Seller and/or Seller's Facility, or the administration of the As-available Power Purchase Agreement ("Contract"), from having access to such Information, and persons reviewing such Information shall not participate in negotiations of amendments, modifications or clarifications of the PPC (unless such participation is approved, in writing in advance, by Seller).
- (b) Company shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Section 24. 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 Section 24 as "Recipient.") If either Company or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to Seller and/or this PPC is necessary, Company and HEI each shall have the right to disclose such of the Information as Company or HEI, as applicable, reasonably determines is necessary to satisfy applicable disclosure and reporting or other requirements and give Seller prompt written notice thereof (in advance to the extent practicable under the circumstances). If Company or HEI disclose Information pursuant to the preceding sentence, Company and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the PUC and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii ("Consumer Advocate") in connection with the PUC's rate making activities for Company and other HEI affiliated entities, provided that, if the scope or content of the Information to be disclosed to the PUC exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Information will not be disclosed until the PUC first issues a protective order to protect the confidentiality of such Information. Neither Company nor HEI shall use the Information for any purpose other than as permitted under this Section 24.

- (c) In circumstances other than those addressed in the immediately preceding paragraph, if any Recipient becomes legally compelled under applicable law or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Information, such Recipient shall undertake reasonable efforts to provide Seller with prompt notice of such legal requirement prior to disclosure so that Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 24. If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions at this Section 24, Recipient shall furnish only that portion of the Information which it is legally required to so furnish and to use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.
- (d) The obligation of nondisclosure and restricted use imposed on each Recipient under this Section 24 shall not extend to any portion(s) of the Information which (a) was known to such Recipient prior to receipt, or (b) without the fault of

such Recipient is available or becomes available to the general public, or (c) is received by such Recipient from a third party not bound by an obligation or duty of confidentiality.

25) Good Engineering and Operating Practices

- (a) 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 Contract in accordance with Good Engineering and Operating Practices in the electric industry and applicable laws, rules, orders and tariffs.
- (b) Wherever in this Contract and the attached Appendices the Company has the right to give specifications, determinations or approvals, such specifications, determinations or approvals shall be given in accordance with the Company's standard practices, policies and procedures and shall not be unreasonably withheld. Any such specifications, determinations, or approvals shall not be deemed to be an endorsement, warranty, or waiver of any right of the Company.

26) Equal Employment Opportunity and Employment of Disabled Veterans and Veterans of the Vietnam Era

(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(a).)

Seller is aware of and is fully informed of Seller's responsibilities under Executive Order 11246 (reference to which include amendments and orders superseding in whole or in part) and shall be bound by and agrees to the provisions as contained in Section 202 of said Executive Order and the Equal Opportunity Clause as set forth in 41 CFR 60-1.4 and 41 CFR 60-741.5(a), which clauses are hereby incorporated by reference.

Employment of Disabled Veterans and Veterans of the Vietnam Era.
(Applicable to all contracts of \$10,000 or more in the whole or aggregate. 41 CFR 60-250.4 and 41 CFR 60-741.5.)

Seller agrees that it is and will remain in compliance with the rules and regulations promulgated under The Vietnam Era Veterans Readjustment Assistance Act of 1974, The Affirmative Action Clause set forth in 41 CFR 60-250.4, the Rehabilitation Act of 1973 and the Equal Opportunity Clause set forth in 41 CFR 60-741.5, which clauses are incorporated by reference herein.

27) Set Off

The Company shall have the right to set off any payment under this Contract and any past due payment under the rate schedule referenced in Section 2(g) which is not paid by the Seller against the Company's payments of subsequent monthly invoices as necessary.

28) Dispute Resolution

(a) Good Faith Negotiations

Before any dispute under this Contract is subjected to the provisions of Section 28(b) or any litigation, the presidents, vice presidents, or authorized delegates from both the Seller and the Company having full authority to settle the dispute, shall personally meet in Hawaii and attempt in good faith to resolve the dispute.

(b) Dispute Resolution Procedures

If the parties are unable to resolve any dispute under this Contract under the procedures of Section 28(a), such dispute shall be resolved in Hawaii by binding arbitration in accordance with the requirements of this Section 28(b); provided that, this agreement to arbitrate shall be specifically enforceable and this Section 28 shall not preclude either party from pursuing its equitable remedies to enforce this agreement to arbitrate, including without limitation, seeking injunctive relief. Company and Settler agree that the procedures in this agreement to arbitrate shall be followed to the extent not prohibited by Hawaii Revised Statutes Chapter 658A ("Chapter 658A"). If any of such procedures conflict with Chapter 658A, then except as otherwise prohibited in Chapter 658A, Company and Seller agree to waive, or vary the effect of, the requirements of Chapter 658A.

1) Initiation of Arbitration

Either party shall give to the other written notice in sufficient detail of the existence and nature of any dispute proposed to be arbitrated under this Section 28(b) and the remedy sought as well as a detailed statement of its contentions of law and fact. Such notice shall be made within a reasonable time after the dispute in question arose, and in no event shall such notice be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable

statute of limitations but for this Section 28. Such notice will be signed by the president of the party issuing the notice and be delivered to the president of the other party. The other party shall file an answering statement within twenty (20) Days of receipt of the notice. After the answering statement is filed, the parties shall diligently negotiate in good faith for a period of sixty (60) Days.

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2) Appointment of Arbitrator

If the dispute is not resolved through the negotiations required by Section 28(b)1), the parties shall attempt to agree on a person with special knowledge and expertise with respect to the design, construction and operation of electric generating facilities to serve as an arbitrator panel of one. If the parties cannot agree on an arbitrator within twenty (20) Days after the negotiation period required by Section 28(b)1), each party shall within five (5) Days, appoint one person to serve as an arbitrator and the two arbitrators thus appointed shall select a third arbitrator to serve as chairman of the panel of arbitrators; and such three arbitrators shall determine all matters by majority vote; provided, however, if the two arbitrators appointed by the parties are unable to agree upon the appointment of the third arbitrator within twenty (20) Days after their appointment, both shall give written notice of such failure to agree to the parties and, if the parties fail to agree upon the selection of such third arbitrator within twenty (20) Days thereafter, then either of the parties upon written notice to the other may require such appointment from and pursuant to the rules for commercial arbitration of the American Arbitration Association. In selecting arbitrators under this Section 28(b)2), the parties shall give preference to qualified Hawaiian domiciliaries.

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Each arbitrator appointed pursuant to this Section 28(b)2) shall swear to conduct such arbitration in accordance with the terms of this Section 28(b), the laws of the State of Hawaii, and the Code of Ethics of the American Arbitration Association. Each arbitrator who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately resign or be withdrawn as an arbitrator. The arbitration panel may choose legal counsel to advise it on the remedies it may grant, procedures and such other legal issues as the panel deems appropriate. Copies of the notice, the statement of

contentions of law and fact, the answering statement and this Contract shall promptly be furnished by the initiating party to the arbitrator(s) selected.

3) Arbitration Procedures

- (i) The parties shall have one hundred and twenty (120) Days from the date of the formation of the arbitration panel to perform discovery and present evidence and argument to the arbitrators. During this period, the arbitrators shall be available to receive and consider all such evidence as is relevant, within reasonable limits due to the restricted time period, and to hear as much argument as is feasible, giving a fair allocation of time to each party to the arbitration. This period may be extended for sufficient cause by the arbitration panel or by agreement of the parties. The arbitration panel shall have the general powers of a court and may proceed in accordance with established rules of evidence and procedure, liberally construed to promote justice and expeditious resolution of the dispute. The arbitration panel shall have complete discretion over the mode and order of discovery, presentment of evidence, and the conduct of the hearing. The arbitrators shall not consider any evidence or argument not presented during such period. To the extent not prohibited by law and to the extent not in conflict with the procedures set forth in this Section 28(b), such arbitration shall be held in accordance with Chapter 658A, and the prevailing rules of the American Arbitration Association for commercial arbitration.
- (ii) The arbitrators shall use all reasonable means to expedite discovery and to sanction non-compliance with reasonable discovery requests or any discovery order. The Seller shall require and warrant that (i) all records of the Seller, its partners, members, or affiliates pertaining to the negotiation, administration, and enforcement of this Contract shall be maintained in the possession of the Seller, and (ii) each of its officers, employees, general partners, or managing members will submit to the jurisdiction of the arbitration panel appointed pursuant to this Section 28 and shall respond to all reasonable discovery requests of such arbitration panel. All documents and deponents made available in

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response to reasonable discovery requests shall be made available in _____, Hawaii.

(iii) At the conclusion of such one hundred and twenty (120) day period, the arbitrators shall have thirty (30) Days to reach a determination and to give a written decision to the parties, stating their findings of fact, conclusions of law and final order.

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(iv) Pending resolution of disputes pursuant to this Section 28, which disputes relate to or impact the Seller's construction schedule for the Seller's Facility, all applicable deadlines and cure periods under this Contract shall be extended on a day-for-day basis.

4) Arbitrator Limitations

The arbitrators shall have authority to interpret and apply the terms and conditions of this Contract and to order any remedy allowed by this Contract, but may not change any term or condition of this Contract, deprive either party of a remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.

(c) The provisions of this Section 28 shall not apply to any disputes within the authority of an Independent Evaluator under Section 23 (Process for Addressing Revisions to Performance Standards).

1) Decision Binding on the Parties

The decision of the arbitrators shall be binding on the parties at such time as the decision is confirmed by order of a court of competent jurisdiction pursuant to Chapter 658A.

2) Cost of Arbitration

The arbitrators in rendering their decision shall also state which party prevailed over the other party, or that neither party prevailed over the other. The costs of arbitration (including the attorney fees and costs of the parties and legal counsel appointed pursuant to Section 28(b)2) will be borne by the party which is not the prevailing party. In the event neither party prevails, the parties shall each pay fifty percent (50%) of the cost of the arbitration, arbitrator/chair of the panel, and any

legal counsel appointed pursuant to Section 28(b)2). Also, in the event neither party prevails, the parties each shall bear their own costs, including attorney fees, and those of the arbitrator they appointed to the panel of three arbitrators.

29) Miscellaneous

- (a) Amendments. Any amendment or modification of this Contract 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 by the party against whom waiver is asserted.
- (b) Binding Effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and permitted assigns.
- (c) Notices. Any written notice provided hereunder shall be delivered personally or sent by registered or certified first class mail, with postage prepaid, to the other party at the following address:

Company:

- 1) By Mail:

Attn: _____

- 2) Delivered:

Attn: _____

- 3) By facsimile:

(808) ____ - _____

Seller: The mailing address listed in Appendix A attached 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 facsimile must be followed by personal or mail delivery and the effective date of such notice shall be the date of personal delivery or, if by mail, the earlier of the actual date of delivery or the expiration of the fifth day after the date of mailing.

- (d) Effect of Section and Appendix Headings. The headings or titles of the several sections and appendices hereof are for convenience of reference and shall not affect the construction or interpretation of any provision of this Contract.
- (e) Non-Waiver. No delay or forbearance of the Company or the Seller in the exercise of any remedy or right will constitute a waiver thereof, and the exercise or partial exercise of a remedy or right shall not preclude further exercise of the same or any other remedy or right.
- (f) Relationship of the Parties. Nothing in this Contract 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. The Seller does not hereby dedicate any part of the Seller's Facility to serve the Company, the Company's customers or the public.
- (g) Entire Agreement. This Contract, Appendices A through -- and the IRS Letter Agreement, incorporated by reference, constitutes the entire understanding and agreement between the parties.
- (h) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Hawaii. The venue for a civil action related to this Contract shall be the judicial circuit in which the Seller's Facility is located.
- (i) Limitations. Nothing in this Contract shall limit the Company's ability to exercise its rights as specified in the

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 Hawaii, as either may be amended from time to time.]

- (j) Further Assurances. Each of the parties shall from time to time and at all times do such further acts and deliver all such further documents and assurances as shall be reasonably necessary fully to perform and carry out this Contract.
- (k) Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.
- (l) Definitions. Terms used in this Contract not otherwise defined in the context in which they first appear are defined in the Definitions Section.
- (m) Severability. If any term or provision of this Contract, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Contract, 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 Contract shall be valid and enforceable to the fullest extent permitted by law.
- (n) Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Contract or concerning the performance or the non-performance by either party of its obligations under this Contract shall be determined in accordance with the dispute resolution procedures set forth in Section 28 of this Contract.
- (o) Recovery of Payments. The parties to this Contract believe, and have entered this Contract relying on the belief, that, under and pursuant to Subchapter 3, Rule 6-74-22 of the PUC's Standards, after a satisfactory, Non-appealable PUC Approval Order has been obtained: (i) no adjustment in the payments to be paid Seller under the provisions of this Contract is either appropriate or lawful; and, (ii) that, also in light of the foregoing and of the fact that PURPA and 18 Code of Federal Regulations ("CFR") Part 292, require the Company to offer to purchase from a Qualifying Facility at a price equal to or less than avoided cost, it is neither

appropriate nor lawful for the PUC or any successor entity to deny the Company the recovery of any or all amounts paid to Seller pursuant to the terms of this Contract. Both parties will extend their best efforts to resist and appeal any PUC actions, decisions, or orders denying or having the effect of denying or otherwise preventing the Company from recovering any or all amounts paid to Seller pursuant to the terms of the Contract.

- (p) Environmental Credits. To the extent not prohibited by law, any Environmental Credit shall be the property of the Company; provided, however, that such Environmental Credits shall be to the benefit of the Company's ratepayers in that the value must be credited "above the line". Seller shall use all reasonable efforts to ensure such Environmental Credits are vested in the Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation, provided, however, that the Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.
- (q) Appendices. Each Appendix is an essential and necessary part of this Contract.
- (r) Patents. Seller agrees that in fulfilling its responsibilities under this Contract, it will not use any process, program, design, device or material that infringes on any United States patent. Seller agrees to indemnify, defend and hold harmless the Company from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Company for patent infringement arising out of Seller's performance under this Contract, including but not limited to patent infringement due to the use of technical features of Seller's Facility to meet the Performance Standards specified in the Contract.

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

By _____
Its

By _____
Its

("Company")

By _____
Its

By _____
Its

("Seller")

APPENDIX A

DESCRIPTION OF SELLER'S GENERATION AND CONVERSION FACILITY

1. Name of Seller's Facility: _____
 - a. Location: _____
 - b. Telephone number (for system emergencies):
() -

2. Owner (If different from Seller):

By Effective Date, Seller shall provide the Company with a certified copy of a certificate warranting that the owner is a corporation, partnership or limited liability company in good standing with the Hawaii Department of Commerce and Consumer Affairs.

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

 - a. Mailing address: _____

 - b. Hawaii Gross Excise Tax License number: _____

5. Equipment:
 - a. Type of facility and conversion equipment:
[For example: Small power production facility designated as a Qualifying Facility that produces electricity using _____.]

- b. Design and capacity

Total Seller's Facility 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]

	kVAR	kVAR
	Consumed	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
Uncorrected Power Factor _____
Corrected Power Factor _____
Corrected Current _____ A

c. Single or 3 phase: _____ phase

d. Name of manufacturer:

e. The "Allowed Capacity" of this Contract shall be the lower of (i) _____ kW, or (ii) the net nameplate capacity (net for export) of the Seller's Facility that are installed by the later of (a) the Commercial Operation Date or (b) In-Service Date.

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6. Insurance carrier(s):

7. If the Seller is not the operator, the Seller shall provide a copy of the agreement between the Seller and the operator which requires the operator to operate the Seller's Facility and which establishes the scope of operations by the operator and the respective rights of the Seller and the operator with respect to the sale of electric energy from the Seller's Facility no later than the Commercial Operation Date. The Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawaii Department of Commerce and Consumer Affairs.

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8. If the Seller is the operator, the Seller shall provide a certified copy of a certificate warranting that the Seller is a corporation, partnership or limited liability company in good standing with the Hawaii Department of Commerce and Consumer Affairs.

9. The Seller, owner and operator shall provide the Company a description of its ownership structure.

10. Any certificate or description of ownership structure required under Appendix A shall be provided to the Company by the Effective Date. In the event of a change in ownership or identity of the Seller, owner or operator, such entity shall provide within 30 Days thereof, a certified copy of a new certificate and a revised ownership structure.

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APPENDIX B

FACILITY OWNED BY THE SELLER

1. Seller's Facility

a. A preliminary single-line diagram, relay list, relay settings, and trip scheme of the Seller's Facility shall, after Seller has obtained prior written consent from the Company, be attached to this Contract on the ~~Effective~~ Date. A final single-line drawing, relay list and trip scheme of the Seller's Facility shall, after having obtained prior written consent from the Company, be attached to this Contract and made a part hereof ~~on the Commercial Operation Date~~. ~~An updated final single-line drawing showing any changes made after the Commercial Operation date shall be provided to the Company on the In-Service Date and be made part of the Contract.~~ The single-line diagrams shall expressly identify the Point of Interconnection of the Seller's Facility to the Company's System. The Seller agrees that no material changes or additions to the Seller's Facility as reflected in the final single-line diagram, relay list and trip scheme shall be made without the Seller first having obtained prior written consent from the Company. If any changes in or additions to Seller's Facility, records and operating procedures are required by the Company, the Company shall specify such changes or additions to the 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.

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b. (1) The Seller shall furnish, install, operate and maintain the Seller's Facility including breakers, relays, switches, synchronizing equipment, monitoring equipment and control and protective devices designated by the Company as suitable for parallel operation of the Seller's Facility with the Company's System. Seller's Facility shall be accessible at all times to authorized Company personnel.

(2) The Seller's Facility shall include:

[LIST OF SELLER'S FACILITY]

Examples may include, but not limited to:

- Interconnection facilities
- Substation
- Control and monitoring facilities
- Transformers
- Generators (as described in Appendix A)
- "lockable" cabinets or housings suitable for the installation of Interconnection Facilities owned by the Company located on Seller's premises
- relays and other protective devices
- leased telephone line and/or equipment to facilitate microwave communication

(3) A description of Seller's Facility follows [**includes excerpts of language that may be requested by the Company**]:

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

(b) The Seller will provide within the Seller's Facility switching station a separate, fenced area with separate access for the Company. The Seller will provide revenue metering PTs and CTs (as specified by the Company) and all conduits and accessories necessary for the Company

to install the Company-supplied revenue meters. The Seller will also provide within such area, space for the Company to install its communications, supervisory control and data acquisition ("SCADA") remote terminal unit ("RTU") and certain relaying if necessary for the interconnection. The Seller will also provide AC and DC source lines as specified later by the Company. The Seller will provide a telephone line for the Company-owned meters. The Seller will work with the Company to determine an acceptable location and size of the fenced-in area. The Seller shall provide an acceptable demarcation cabinet on its side of the fence where the Seller and the Company wiring will connect/interface.

(c) The Seller's Facility switching station will have a lockable cabinet for switching station relaying equipment. The relaying equipment shall be acceptable to the Company. At a minimum the relaying equipment will provide over and under frequency (81)negative phase sequence (46), under voltage (27), over voltage (59), and ground over voltage (59G), and over current functions (50/51). The protective relays will operate an Electro Switch lockout relay, which in turn will trip the main circuit breaker.

(d) The relay protection system will be configured to provide overpower protection to enable the Seller's Facility to comply with the Allowed Capacity limitation.

(e) Company specified equipment will also provide all line electrical measurements to the Company SCADA system. The Company will specify input data/analogue requirements at the time of design of the Company-owned Interconnection Facilities.

(f) If the Seller adds, deletes and/or changes any of its equipment, or changes its design in a manner that would change the characteristics of the equipment and specifications used in the IRS, Seller will be required to obtain Company's prior written approval. If an analysis to revise parts of the IRS is required, Seller will be responsible for the cost of revising those parts of the IRS, and modifying and paying for the cost of the modifications to Seller's Facility based on the revisions to the IRS.

(g) Wind energy providers shall also provide a Curtailment Control Interface with the ability to interface with the Company's RTU to incrementally curtail and restore individual wind turbines, incrementally raise or lower the voltage target at the Seller's Facility. The RTU interface shall also include wind speed and wind direction reading, total wind farm MW, mvar and power factor, available active power, transformer tap positions, voltage regulation set point, on/off status of reactive power devices, circuit breaker status, Air temperature, Air pressure, Frequency Response System mode, and Frequency response System status, and other telemetered, status and control functions as identified by the Company. Where the wind turbine generators are geographically dispersed, the meteorological data shall be provided for a number of wind turbine generator groups. It is expected that WTG within an individual group shall demonstrate a high degree of correlation in Active Power output at any given time.

c. The Seller shall provide to the Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Seller's Facility and the 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 the Company's and Seller's interconnected system. Seller shall provide the relay settings, fuse selection, and AC/DC Schematic Trip Scheme (part of design drawings) for Seller's Facility to Company at least sixty (60) Days prior to the Acceptance Test. The Company, at its option, may, with reasonable frequency, witness the Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. The Seller shall utilize relay settings prescribed by the Company, which may be changed over time as the Company's electrical system's requirements change.

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d. The Seller shall provide a manually operated disconnect device which provides a visible break to separate the Seller's Facility from the Company's System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

- e. The Seller shall furnish, install and maintain in accordance with the Company's requirements all conductors, service switches, fuses, meter sockets, meter (includes revenue metering structure, CT(s) and PT(s) and accessories) and instrument transformer housing and mountings, switchboard meter test buses, meter panels and similar devices required for service connections and meter installations on the Seller's premises.
- f. The Seller shall maintain the Seller's Interconnection Facilities in accordance with the following maintenance plan:

Transmission line: [REDACTED]

[REDACTED] kV Seller's Facility switching station:
[REDACTED]

Relay protection equipment: [REDACTED]

Other equipment as identified: [REDACTED]

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

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- g. The Seller shall provide and maintain in good working order all equipment, computers and software (the "Curtailement Control Interface") necessary to initiate, control the level of, and remove curtailments when required under Section 2.h. of this Appendix B. The implementation of the Curtailement Control Interface will allow the Company's System Operator to initiate the curtailment, vary the level of curtailment, and remove the curtailment remotely from the Company's System Operations Control Center through control signals from the Company's computerized control system (SCADA/EMS). The Company must review and provide prior written approval of the design for the Curtailement Control Interface to ensure compatibility with the Company's SCADA/EMS system. If Seller materially changes the approved design, such changes will also require Company's review and prior written approval. The Curtailement Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to the Company's RTU, located in the Company's portion of Seller's Facility switching station which shall

provide the control signals to the Seller's Facility and send feedback status to the Company's System Operations Control Center. The types of controls presently supported by the Company's SCADA/EMS system are fixed-length digital output controls, variable length digital output (pulse-width output) controls, and analog output (setpoint) controls. The Curtailment Control Interface shall also include provision for a feedback point from the Seller's Facility indicating when curtailment is in effect, the instantaneous MW output of all individual generating units, and the net instantaneous MW output of Seller's Facility at the Point of Interconnection. Seller shall provide an analog input to the RTU for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection. Wind farm facilities shall also provide wind speed and wind direction from a single point of measurement within the Seller's Facility. When a curtailment lower control signal is received by the Seller's Facility through the Curtailment Control Interface, the corresponding action (e.g., decrease in Seller's Facility's output) shall be initiated without delay. The Curtailment Control Interface shall provide for separate curtailment control and the indication of curtailment for the individual generating units, and for Seller's Facility as a whole; provided, however, that if such separate control features are not provided by Seller, whether temporarily or throughout the term of this Contract, then, notwithstanding Section 2.h of this Appendix B, Company shall have the right to curtail all of Seller's Facility during those periods that such separate control features are not provided. The Curtailment Control Interface shall be capable of receiving from the Company up to eight curtailment control signals during a one minute period. Each curtailment lower control signal shall initiate a reduction in the output of the Seller's Facility by [REDACTED] kW. The Seller's Facility shall be capable of and allow the Company to curtail output at a rate of up to [REDACTED] MW per minute. The requirements of the Curtailment Control Interface may be modified as mutually agreed upon in writing by the parties.

- h. Control System Acceptance Test procedures. Following the successful completion of the Acceptance Test, the Control System Acceptance Test(s) shall be conducted on each generator as that generator is designated by Seller to be ready to generate and deliver energy to the Company,

before that generator is included in the Seller's Facility. The first Control System Acceptance Test must be successfully completed before the Initial In-Service Date. No later than [] 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. Within [] Business Days of successful completion of the Control System Acceptance Test, Company shall notify Seller in writing that the Control System Acceptance Test(s) has been passed and the date upon which such Control System Acceptance Test(s) was passed.

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. The Company may require periodic reviews of the Seller's Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes the Company deems necessary for parallel operation or to protect the Company's System from damages resulting from the parallel operation of the Seller's Facility with the Company's System.
 - b. The Seller must separate from the Company's System whenever requested to do so by the Company's System Operator pursuant to Sections 6 and 7 of the Contract.
 - c. Logs shall be kept by the 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. The Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than thirty-six (36) months.
 - d. Under no circumstances shall the Seller, when separated from the Company's System for any reason, reclose into the Company's System without first obtaining specific approval to do so from the Company's System Operator.

e. (1) Pursuant to Sections 8, Continuity of Service, and Section 9, Personnel and System Safety, of the Contract, the Company may at times have limited ability to integrate energy produced by the Seller into the Company's System for engineering and/or operating reasons and may be required to curtail energy deliveries by the Seller. When a curtailment control signal is received by the Seller's Facility through the Curtailment Control Interface, the corresponding action (e.g., decrease in Seller's Facility's output) shall be initiated without delay. The Company shall send curtailment control signals to the Seller's Facility during a one minute period, which corresponds to a ramp rate not to exceed Section 3.c of Appendix B. Unless agreed to in writing by both parties, the curtailment signals will consist of raise and lower signals. Further curtailment may be implemented if conditions warrant and the Company's System Operator deems it necessary. The Seller shall not override the Company's curtailment. As conditions warrant, the Company shall end or reduce the curtailment when it is reasonably determined that the reason for the curtailment is no longer in existence. The Company's System Operator shall end or reduce the curtailment by sending raise control signals to the Seller's Facility through the Curtailment Control Interface. Seller may request that Seller's Facility be restored no sooner than one hour after the Company has curtailed the Seller's Facility.

(2) When the Company determines that curtailment of energy becomes necessary for reasons other than those directly attributable to the Seller's Facility, curtailments shall be made to the extent possible in reverse chronological order of the chronological seniority dates determined by the Company for the contracts, with deliveries under the contract with the most recent chronological seniority date being the first curtailed, and deliveries under the contract with the earliest chronological seniority date being the last curtailed. The chronological seniority date shall be the PUC Approval Order Date of the Non-appealable PUC Approval Order. If the Seller does not achieve a Commercial Operation Date on or before twelve (12) months following the earlier of the Waiver Agreement Date or the satisfactory Non-appealable PUC Approval Order Date, the chronological seniority date for curtailment will change by adding one day for each day the Commercial Operation Date is later than twelve (12) months after the earlier of the Waiver Agreement Date or

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the Non-Appealable PUC Approval Order Date. When the Company determines that curtailment of energy becomes necessary for engineering and/or operating reasons that are directly attributable to the Seller's Facility, reverse chronological curtailment order may not apply. The Company shall not be liable to the Seller for any such curtailments unless they were in violation of Section 6 or 7 of the Contract. Seller shall not override Company's curtailment.

(3) If the control system interface is unavailable, due to loss of communication link, RTU failure, or other event resulting in the loss of the remote control by the Company, provision must be made for the Seller to be able to institute, within 30 minutes or such other period as the Company accepts in writing, local curtailment raise and lower control and change in voltage regulation target via the local controls upon verbal request by the Company's System Operator.

3. Performance Standards

a. Voltage regulation.

The Seller shall regulate the voltage at the Point of Interconnection to a voltage specified by the Company's System Operator. The power factor at which energy is to be delivered by the Seller to the Company shall be adjustable and adjusted as necessary, within the limits of the leading and lagging power factor range specified in Section 3.b below, to maintain voltage at the specified level, but in no event shall the voltage deviate more than 0.5% from the voltage specified by the Company's System Operator. The design for the voltage regulation will be reviewed and approved by the Company.

b. Reactive Amount

(1) The Seller shall install sufficient equipment to have the ability to deliver reactive power to the Company at output levels ranging from [redacted] MVARs (Seller delivering reactive power to the Company while delivering real power to the Company) to [redacted] MVARs (Seller receiving reactive power from the Company while delivering real power to the Company) at the Seller's Facility at the Point of Interconnection, [These values will be based on the results of the

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Interconnection Requirements Study. For bidding purposes assume a 90% lagging and 95% leading reactive power factor requirement at rated output at the point of interconnection.] ~~The Company will not be obligated to purchase reactive power from the Seller. The Seller's Facility shall contain equipment able to continuously and actively control the output of reactive power, and to react to system fluctuations. The reactive response speed at the point of interconnection shall be able to achieve 90% of its final value within 1 second following a step change in voltage. Reactive power requirements will be determined upon completion of the IRS.~~

Deleted: lagging power factor at the Point of Interconnection, based on the completion of the Interconnection Requirements Study.

- (2) If the Seller's Facility does not operate in accordance with Section 3.b.(1) of this Appendix B, the Company may disconnect all or a part of the Seller's Facility from the Company's System until the Seller corrects its operation (such as by installing capacitors at the Seller's expense).

c. Ramp Rate

The Seller shall ensure that the ramp rate of the Seller's Facility are less than the following limits for all conditions including start up, normal operations, and shut down for the following periods. Note that time periods are subject to seasonal variations and typical times of day/night are provided for general planning purposes only.

Wind farm projects less than 50 MW in capacity

- Maximum Ramp Rate Upward of 2.0 MW/minute for all periods except during Early Morning Low-Load Periods (typically Midnight to 4:00 am) where Maximum Ramp Rate Upward is 1 MW/minute.
- Maximum Ramp Rate Downward of 2.0 MW/minute for all periods except during Evening Periods (typically 4:00 pm to 8:00 pm) where Maximum Ramp Rate Downward is 1 MW/minute.

Wind farm projects between 50 MW and 100 MW capacity

- Maximum Ramp Rate Upward of 2.0 MW/minute for all periods.

- Maximum Ramp Rate Downward of 2.0 MW/minute for all periods

= For all periods:

Wind farm projects less than 50 MW capacity,
10 megawatts per 10 minute period up and down.

Wind farm projects between 50 MW and 100 MW capacity,
20 megawatts per 10 minute period up and down.

d. Power Fluctuation Rate

The Seller shall ensure that the power fluctuation rate of the Seller's Facility is less than the following limit for all conditions including start up, normal operations, and shut down:

Instantaneous: 1 megawatt/2-second scan

Subminute Average: an average of 0.3 megawatt/2-second scan for any 60-second period

[In order for the Facility to conform to these specifications, it may be necessary for the Company to require that Seller may start up only one generating unit at a time.]

e. Undervoltage Ride-Through

Either the undervoltage relays for the Seller's Facility shall be set, or a compensation device external to a generator shall be installed at the Seller's Facility, so that the Seller's Facility will meet the following undervoltage ride-through requirements during an undervoltage disturbance 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 change based on the outcome of the IRS,]:

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$V \geq 0.80$ pu	Seller's Facility remains connected to the Company's System.
$0.75 \text{ pu} \leq V < 0.80$ pu	Seller's Facility may initiate disconnection from the Company's System if the voltage remains in this range for more than 2 seconds.
$0.00 \text{ pu} \leq V \leq 0.75$ pu	Seller's Facility may initiate disconnection from the Company's System if voltage remains in this range for more than 600 milliseconds.

The seller shall have sufficient capacity to fulfill the above mentioned requirements to ride-through the following sequences or combinations there of [the actual clearing times will be determined in 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.

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f. Over voltage ride-through

The overvoltage protection equipment at the Seller's Facility shall be set so that the Seller's Facility will meet the following overvoltage ride-through requirements during an overvoltage disturbance affecting one or more of the three voltage phases ("V" is the voltage of any of the three voltage phases at the point of interconnection).

[These values may change based on the outcome of the IRS. Ride-through requirements for other system will be determined in the IRS.]:

1.00 pu \leq V < 1.10 pu	Seller's Facility remains connected to the Company's System.
1.10 pu \leq V < 1.15 pu	Seller's Facility may initiate disconnection from the Company's System if voltage remains in this range for more than 3 seconds.
1.15 pu \leq V < 1.175 pu	Seller's Facility may initiate disconnection from the Company's system if voltage remains in this range for more than 2 seconds.
1.175 pu \leq V < 1.2 pu	Seller's Facility may initiate disconnection from the Company's system if voltage remains in this range for more than 1 second.
1.2 pu < V	Seller's Facility may initiate disconnection from the Company's system immediately.

g. Transient ride-through

Transient Ride Through - Seller's Facility shall be designed such that the transient stability of the Company's system is maintained for (1) three-phase fault located anywhere on the Company's system and lasting up to ___ cycles; and (2) a single line to ground fault located anywhere on the Company's system and lasting up to ___ cycles. [These values may change based on the outcome of the IRS. Ride-through requirements for other system will be determined in the IRS.]

h. Fault Ride Through

For transmission and sub-transmission faults, if voltage dips at the point of interconnection stay within the limits of the under voltage ride-through requirements in part e above, upon clearing of the fault, the Seller shall

within 1 second of restoration, provide at least 90% of the active power output at the point of interconnection immediately before the fault. This does not apply if the Seller's Facility was operating at less than 5% of its rated MW capacity.

i. Underfrequency ride-through

The underfrequency relays for the Seller's Facility shall be set so that the Seller's Facility will meet the following underfrequency ride-through requirements during an underfrequency disturbance ("f" is the Company's System frequency at the Point of Interconnection):

$f \geq 57.0$ Hz Seller's Facility remains connected to the Company's System.

$56.0 \text{ Hz} \leq f < 57.0$ Hz Seller's Facility may initiate disconnection from the Company's System if frequency remains in this range for more than 6 seconds.

$f < 56.0$ Hz Seller's Facility may initiate disconnection from the Company's System immediately.

j. Overfrequency ride-through

The overfrequency relays for the Seller's Facility shall be set so that the Seller's Facility will meet the following overfrequency ride-through requirements during an overfrequency disturbance ("f" is the Company's System frequency at the Point of Interconnection):

$f \leq 61.5$ Hz Seller's Facility remains connected to the Company's System.

$61.5 \text{ Hz} < f \leq 63.0$ Hz Seller's Facility may initiate disconnection from the Company's System if frequency remains in this range for more than 6 seconds.

$f \geq 63.0$ Hz

Seller's Facility may initiate disconnection from the Company's System immediately.

k. Voltage Flicker

Any voltage flicker at the Point of Interconnection caused by the Seller's Facility shall not exceed the limits defined by the "Borderline of Visibility Curve" identified in IEEE Standard 519-1992, or latest version "Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems".

l. Harmonics

Harmonic distortion at the Point of Interconnection caused by the Seller's 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". The Seller shall be responsible for the installation of any necessary controls or hardware to limit the voltage and current harmonics generated from the Seller's Facility to defined levels.

m. Frequency Regulation

For wind farm facilities, the Seller shall provide a droop response consistent with the droop response of the system as determined by the company (5% droop) in the event of a system overfrequency disturbance. The droop characteristic will be verified during the testing of the facility and based on the type of generation being proposed. The Seller's Facility shall have the capability for the Company to control frequency regulation through the HECO Energy Management System.

4. Maintenance of Sellers Interconnection Facilities

- a. Seller must address any Disconnection (as defined below) according to the requirements of this Appendix B, Section 4. For this purpose, a Disconnection is a disconnection from the Company's System of at least [redacted] MW from Seller's Facility over a "rolling 120-second period", if such disconnection is due to a defect in or a failure of the Seller-owned

Interconnection Facilities. A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period.

b. For every disconnection from the Company's System of at least [redacted] MW [to be determined by IRS] from Seller's Facility over a rolling 120-second period ("Disconnection Event"), the Seller shall investigate the cause of the Disconnection Event, and determine if it is a Disconnection as defined in Appendix B, Section 4.a. Within three (3) Business Days of the Disconnection Event, the Seller shall provide, in writing to the Company, an incident report that summarizes the sequence of events and probable cause of the Disconnection Event, and states whether the Seller believes the Disconnection Event is a Disconnection.

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c. Within forty-five (45) calendar Days of a Disconnection, the Seller shall provide, in writing to the Company, the Seller's findings, data relied upon for such findings, and proposed actions to prevent reoccurrence of a Disconnection ("Proposed Actions"). The Company may assist the Seller in determining the causes of and recommendations to remedy or prevent a Disconnection ("Company's Recommendations"). The Seller shall implement such Proposed Actions (as modified to incorporate the Company's Recommendations, if any) and the Company's Recommendations (if any) in accordance with the time period agreed to by the parties.

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d. In the event the Seller and the Company disagree as to (1) whether a Disconnection Event occurred, (2) the sequence of events and/or probable cause of the Disconnection Event, (3) whether the Disconnection Event is a Disconnection, (4) the Proposed Actions, (5) the Company's Recommendations, and/or (6) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the parties shall follow the procedure set forth in Appendix B, Section 5.

e. Upon the fourth (4th) Disconnection (and each subsequent Disconnection) within any Contract Year, the parties shall follow the procedures set forth in Appendix B, Section 2.n(iii) and (iv) above, to the extent applicable. If after following the procedures set forth in this Appendix B, Section 4, the Seller and the Company continue to have a disagreement as to (1) the probable cause of the Disconnection, (2) the Proposed Actions, (3) the Company's Recommendations, and/or (4) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the parties shall commission a study to be performed by a qualified independent thirty-party consultant ("Qualified Consultant") chosen from the Qualified Independent Third-Party Consultants List ("Consultants List") attached to the Contract as Appendix B-2. 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 the Seller- owned Interconnection Facilities ("Study"). The Seller and the Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) calendar Days from such fourth Disconnection (and each subsequent Disconnection) within any Contract Year, unless otherwise agreed to in writing by the Seller and the Company. The Qualified Consultant shall send the Study to the Company and the Seller. The Seller (and/or its third-party consultants and contractors), at the 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 the Seller-owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no later than forty-five (45) calendar Days from the day the completed Study is issued by the Qualified Consultant, unless otherwise agreed to in writing by the Company. In the event the time requirement for the (a) commissioning of the Study, (b) completion of the Study, or (c) completion of the design change, operating and maintenance procedure change, modifications, and/or maintenance recommended by the

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Study is not achieved, the Company may limit the total Allowed Capacity to ___ MW for the period that such requirement has not been achieved. Nothing in this provision shall affect the Company's right to curtail Seller's Facility as provided for in this Contract.

- f. The Consultants List attached hereto as Appendix B-2 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) calendar Days after notice is received by the other party unless written objection is made by such other party within said thirty (30) calendar day period. By mutual agreement between the parties, a new name or names may be added to the Consultants List at any time.

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5. Expedited Dispute Resolution

If there is a disagreement between the Company and the Seller regarding (1) the Seller's compliance with the standards set forth in Section 3 of this Appendix B, and/or (2) Section 4 of this Appendix B such as (a) whether a Disconnection Event occurred, (b) the sequence of events and/or probable cause of the Disconnection Event, (c) whether the Disconnection Event is a Disconnection, (d) the Proposed Actions, (e) the Company's Recommendations, and (f) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from the Company and the Seller, having full authority to settle the disagreement, shall meet in Hawaii (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the parties, the parties shall devote no more than five (5) business Days to settle

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the disagreement in good faith. In the event the parties are unable to settle the disagreement after the expiration of the time period, then either party may pursue the dispute resolution procedure set forth in Section 28 of this Contract.

6. Modeling

The Seller shall provide all of the data to allow the modeling of the generators, transformers and control systems within the Seller's facility. The Seller shall validate or update the modeling data as requested by the Company.

7. Testing Requirements

The Sellers shall coordinate periodic testing with the Company to test the facility to ensure the performance specified within the PPA. Immediately following the initial connection of the facility, the Seller shall test the voltage regulation capability, reactive power response, reactive power capability, harmonic and flicker limits, and any other testing as determined by the Company.

8. Forecasting

The Seller shall provide a power forecast in accordance with the terms of Section 6 of this Contract.

9. Technology Specific Requirements:

a. Three-Phase Synchronous Generators:

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

system. Unless otherwise agreed to between the utility and customer, synchronous generators shall automatically regulate power factor, not voltage, while operating in parallel with the utility system.

b. Induction Generators:

(1) Induction generators may be connected and brought up to synchronous speed (as an induction motor) if it can be demonstrated that the initial voltage drop measured at the Point of Interconnection is within the visible flicker limits as defined by IEEE 519-1992 (or latest version). The same requirements also apply to induction generation connected at or near synchronous speed because a similar voltage dip is present due to an inrush magnetizing current. The Seller's Facility shall submit number of starts per specific time period and maximum starting kVA draw data for the utility to verify that the voltage dip due to starting is within the visible flicker limits and does not degrade the normal voltage provided by the utility.

(2) Induction generators do not require separate synchronizing equipment. Starting or rapid load fluctuations on induction generators can adversely impact the utility's system voltage. Corrective step-switched capacitors or other techniques may be necessary if the voltage fluctuations measured at the Point of Interconnection are not within the visible flicker limits as defined by IEEE 519-1992 (or latest version). These measures can, in turn, cause ferroresonance. If these measures (additional capacitors) are installed on the Seller's side of the Point of Interconnection, the utility will review these measures and may require the Seller to install additional protective relaying equipment. The Company will determine whether additional equipment is required to protect the system.

c. Inverter Systems:

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

requirements of IEEE Std 929-2000 (or latest version) such that the synchronous inverter will automatically disconnect upon a utility system interruption.

(2) Self-commutated inverters of the utility-interactive type shall synchronize to the utility. Inverters capable of stand-alone operation shall not attempt to control the voltage while operating in parallel with the utility distribution 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).

APPENDIX B-1
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

Performance Standards as defined below shall be used, in part, to govern actions by the Company to curtail the electric output of the Seller's Facility for purposes of maintaining power quality on the Company's System. Specific standards are defined for:

- Ramp Rate (RR)
- Instantaneous Power Fluctuation Rate
- Sub-minute Power Fluctuation Rate

Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the SCADA/EMS system. These formulas are based on the periodicity at which analog data is retrieved from the RTU. This periodicity is called the "scan rate". The Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The transducer used to obtain the instantaneous power (MW) output from a wind farm is accurate to +/- 0.1%. The two-second scan rate, characteristics of transducers and RTU reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.

Ramp Rate Calculation:

$$RR = | MW_{s-30} - MW_s |$$

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

Power Fluctuation Rate Calculations:

Instantaneous

$$I = | MW_{s-1} - MW_s |$$

Where:

I = Instantaneous Power Change, calculated once every scan

MW_{s-1} = The instantaneous MW analog value for the previous scan

MW_s = The instantaneous MW analog value for the present scan

Subminute Average:

$$A_1 = \frac{\sum_{s=1}^{30} | MW_{s-1} - MW_s |}{30}$$

Where:

A_1 = Subminute Average, calculated once every 30 scans

MW_{s-1} = The instantaneous MW analog value for the previous scan

MW_s = The instantaneous MW analog value for the present scan

APPENDIX B-2

CONSULTANTS LIST

(To be completed prior to the initial in -service date)

APPENDIX C

INTERCONNECTION FACILITIES OWNED BY THE COMPANY

1. Description of the Company-Owned Interconnection Facilities

- (a) The Company will construct (or may allow Seller to construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect the Company's System with the Seller's Facility at _____ volts, up to the Point of Interconnection. The Seller shall furnish space at no expense to the Company for those Interconnection Facilities required to be placed at Seller's premises, as well as easements for and rights of access to any Company-owned Interconnection Facilities located on the site of the Seller's Facility.

An IRS addressing Seller's Facility requirements was completed for the project in accordance with the IRS Letter Agreement, and the results have been incorporated in this Appendix C as appropriate.

- (b) The Company-owned Interconnection Facilities, for which the Seller has agreed to pay, in accordance with Section 2 of this Appendix C, 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]:

[Line extension];

- 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;
- Supervisory control and communications equipment (including but not limited to, SCADA/RTU, microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.);
- Revenue meter support infrastructure;

- Any additional Interconnection Facilities needed to be installed as a result of final determination of the Seller's Facility switching station site, final design of Seller's Facility to enable the Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices.

The list of Company-owned Interconnection Facilities, and engineering and testing costs for Company-owned Interconnection Facilities, for which Seller agrees to pay in accordance with Section 2 of this Appendix C, are subject to revision if (a) before approving this Contract, the PUC approves a power purchase contract for another non-Company owned electric generating facility ("Second NUG Contract") to supply energy to Company using the same line to which Seller's Facility is to be connected or (b) the line to which the Seller's Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Contract and a Second NUG Contract, and the PUC, in approving this Contract, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement.

- | (c) If the Commercial Operation Date is not achieved within twelve (12) months of a satisfactory Non-appealable PUC Approval Order or thirty (30) months from the PUC Submittal Date, whichever is less, the listing of the Interconnection Facilities required in this Contract is subject to review and revision. This listing includes the cost of such Interconnection Facilities. 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.
- (d) Seller (and/or its third party consultants or contractors (collectively, "Contractors")) will install, test and place in service, at Seller's expense, the **[list Company-owned Interconnection Facilities to be constructed by Seller]**. Prior to Seller engaging the Contractors, Seller must obtain Company's written approval, which approval shall not be unreasonably withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for the Company-owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such

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as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the "Plans"), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company's design/drawing layout and symbols standards, equipment specifications and construction specifications and standards. Company will provide the design and specifications information so Seller can incorporate such information in its bid documents. No later than sixty (60) days before Seller and/or its Contractors first start to order materials and equipment for the Company-owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller must provide Company with the Plans. The Plans for the Company-owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all applicable laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "Standards"). Unless otherwise agreed to by the parties, Company shall have thirty (30) Days following receipt of the Plans for it to review and comment on the Plans, and verify in writing to Seller that the Plans comply with the Standards, which verification shall not be unreasonably withheld. If Company reasonably determines that the Plans are not in accordance with the Standards, then it may request in writing a response from Seller to its comments and Seller shall respond in writing within thirty (30) Days of such request by providing (i) its justification for why its Plans conform to the Standards or (ii) changes in the Plans responsive to Company's comments and in accordance with the Standards. 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 must 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 the Company-owned Interconnection Facilities to be constructed by Seller and/or its Contractors must meet the Standards. Company will be present when the Acceptance

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Test is conducted, and Seller must timely correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of the Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for the Company-owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If the Company (1) does not make any inspection or test, (2) does not discover defective workmanship, materials or equipment, or (3) accepts the Company-owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.

2. Seller Payment to the Company for the Company-Owned Interconnection Facilities and Review of Seller's Facility

- (a) (1) For Company-owned Interconnection Facilities to be designed, engineered and constructed by the Company, the Seller shall pay the Total Estimated Interconnection Cost which is comprised of the estimated costs of (i) acquiring and installing such Company-owned Interconnection Facilities, (ii) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with a) developing such Company-owned Interconnection Facilities and b) reviewing and specifying those portions of the Seller's Facility which allow interconnected operations as such are described in Appendix B, and (iii) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (i) through (iii)), together with the cost of the IRS (which will be paid pursuant to the IRS Letter Agreement), are the "Total Interconnection Cost".
- (2) Summary List of Company-owned Interconnection Facilities and Related Services

[This list should generally incorporate the list in Appendix C, Section 1(b), plus testing]

- (3) The following summarizes the Total Estimated Interconnection Cost:

[This list should include estimated costs for the items listed in Appendix C, Section 2(a)(2)]

The Total Estimated Interconnection Cost is \$.

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

(i) On the Effective Date, \$10,000.00 is due and payable by Seller to the Company; Deleted: Execution

(ii) Thirty (30) Days after the Effective Date, the additional amount in excess of \$10,000.00, up to that portion of the Total Estimated Interconnection Cost described in (ii) in Section 2(a) above, is due and payable by Seller to the Company; Deleted: d
Deleted: Execution

(1) The Company shall not be obligated to perform engineering and design work on the Company-owned Interconnection Facilities until the Seller pays the amounts in paragraphs (i) and (ii) of this Section 2(b); and

(iii) 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-owned Interconnection Facilities, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to the Company. Deleted: d

(1) The Company shall not be obligated to procure and construct the Company-owned Interconnection Facilities until the Seller pays the amount in paragraph (iii) of this Section 2(b). Deleted: d

(c) Within thirty (30) Days of the final accounting, which shall take place within thirty (30) Days of completion of construction of the Company-owned Interconnection Facilities, the Seller shall remit to the Company the difference between the Total Estimated Interconnection Deleted: d
Deleted: d

Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. 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 Seller within thirty (30) Days of the final accounting.

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(d) If any Event of Default by the Seller occurs such that termination of the Contract results, or if the Contract is declared null and void by either party pursuant to Section 12(c) or as otherwise provided herein, the Seller shall pay to the Company the actual costs and cost obligations reasonably incurred by the Company for the Company-owned Interconnection Facilities as of the date the Contract is terminated or declared null and void. Such payment shall be made within thirty (30) Days of receipt of an invoice from the Company.

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(e) All the Company-owned Interconnection Facilities including those portions, if any, provided, or provided and constructed, by the Seller shall be the property of the Company.

3. Ongoing Operation and Maintenance Charges

Seller shall operate and maintain, at its cost, the Company-owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain the Company-owned Interconnection Facilities. The Company shall bill the Seller monthly for any costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) the Company-owned Interconnection Facilities. The Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overheads at the time incurred, consulting fees and applicable taxes. The Seller shall, within thirty (30) Days after the billing date, reimburse the Company for such monthly billed operation and maintenance charges.

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4. Relocation of Interconnection Facilities

The Company shall bill the Seller for any costs incurred in relocating the Company-owned Interconnection Facilities in the event that Seller's land rights require a relocation clause and such clause is exercised or if the Company-owned Interconnection

Facilities must be relocated for another reason not caused by the Company. The Seller shall, within thirty (30) Days after the billing date, reimburse the Company for such billed relocation charges.

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5. Guarantee for Interconnection Costs

To ensure that the Company is paid by the Seller for the Company-owned Interconnection Facilities to be provided and/or constructed by the Company described in Section 2 of this Appendix C, the Seller shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("Standby Letter of Credit"), wherein the Company shall receive payment from the bank upon request by the Company. The Standby Letter of Credit shall be (i) at least in the amount of twenty-five percent (25%) of the Total Estimated Interconnection Cost, (ii) issued by a bank in Hawaii which is reasonably acceptable to the Company, and (iii) in form and substance reasonably acceptable to the Company. The Standby Letter of Credit shall be effective from the earlier of (i) thirty (30) Days following the date of the issuance of a satisfactory Non-appealable PUC Approval Order, or (ii) the date that the Seller requests the Company to order equipment or commence construction on the 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 Contract is terminated. The Seller shall provide to the Company within fourteen (14) Days of the effective date of the Standby Letter of Credit a document from the bank which indicates that such a Standby Letter of Credit has been established. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Seller may provide such other form of security as is agreed to by the Company in writing.

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6. Site Restoration

After termination of this Contract, the Seller shall, at its expense, remove all (1) the Company-owned Interconnection Facilities from the site and (2) Seller-owned Interconnection Facilities designated by the Company. Provided that, the Company may elect to remove all or part of such designated Company-owned Interconnection Facilities and/or designated Seller-owned Interconnection Facilities because of operational concerns over the removal of such Interconnection Facilities, in which case the Seller shall reimburse the Company for its costs to remove such Company-owned Interconnection Facilities and/or Seller-owned Interconnection Facilities. After the termination of this Contract, Seller shall,

at its expense, restore the site to its condition prior to construction of such the Company-owned Interconnection Facilities. For the purposes of this Section 6, this site includes the land where the Seller's Facility is located and the land where the Interconnection Facilities are located. Site restoration shall be completed within ninety (90) Days of termination of this Contract, or as otherwise agreed to by both parties in writing.

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7. Transfer of Ownership/Title

(a) On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to the Company-owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors. In connection with the transfer of the Company-owned Interconnection Facilities, Seller shall transfer and assign to Company all applicable manufacturers' or Contractors' warranties which are assignable. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.

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(b) Company's title to and ownership of the Company-owned Interconnection Facilities that were designed and constructed by Seller and/or its Contractors shall be free and clear of liens and encumbrances.

(c) In connection with the transfer of the Company-owned Interconnection Facilities to Company, Seller shall grant, transfer or assign to Company, such easements, rights of way, licenses or leases, as the case may be, necessary to operate and maintain the Company-owned Interconnection Facilities on and after the Transfer Date.

8. Government Approvals for Any Company-owned Interconnection Facilities to be Constructed by Seller

Seller shall obtain all required permits, licenses, approvals and other governmental authorizations (the "Government Approvals") required to construct, own, operate and maintain the Company-owned Interconnection Facilities (that Seller and/or its Contractors will construct) and shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such permits and approvals obtained by Seller

regarding the construction, ownership or operation of the Company-owned Interconnection Facilities (that Seller and/or its Contractors constructed) and (ii) documentation that all such permits and approvals have been closed with the issuing governmental agency.

9. Easements, Rights of Way, Licenses and Leases

Seller shall obtain all easements, rights of way, licenses and leases (collectively, "Land Rights") on the site of Seller's Facility and any other affected property, which are required to construct, maintain and operate the Company-owned Interconnection Facilities. Seller shall use its best efforts to obtain perpetual easements. Such Land Rights shall contain terms and conditions which are acceptable to Company and shall be provided in advance to Company for its review. For so long as Seller has the right under this Contract to sell energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-owned Interconnection Facilities.

APPENDIX D

ENERGY PURCHASES BY THE COMPANY

1. Price for Purchase and Rate of Delivery. Subject to the provisions of this Contract, the Company shall accept and pay for energy generated by the Seller's Facility and delivered by the Seller to the Company at the rates set forth in Table D-1 below beginning with the Commercial Operation Date.

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2. Test Energy. The Company shall use commercially reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to the Company during the Control System Acceptance Test but not during the Acceptance Test), provided the Seller must use commercially reasonable efforts to coordinate such normal testing with the Company so as to minimize adverse impacts on the Company's System and operations. The Company shall compensate the Seller for test energy at a rate equivalent to 75% of the first year Contract Price.

Deleted: [Table from Proposal] provided, however, that in any Contract Year, if the Seller delivers energy in excess of 120% of the quantity of Annual Contract Energy, the price paid for the energy in excess of the Annual Contract Energy shall be 75% of the otherwise applicable Contract Price for such energy

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[Table D-1 placeholder]

APPENDIX E

GUARANTEED PROJECT MILESTONE

<u>Guaranteed Milestone</u>	<u>Results Seller Must Achieve</u>
------------------------------------	-------------------------------------------

[Date]	
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	Guaranteed Commercial Operation Date: Commercial Operation Date is achieved. (Commercial Operation Milestone)
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APPENDIX F
REPORTING MILESTONES

<u>Reporting Milestone</u>	<u>Results Seller Must Achieve</u>
[Date]	Permit Application Filing Date: Seller shall file all applications for Permits required for the construction and operation of the Facility.
[Date]	Seller shall provide the Company with a copy of the executed Facility equipment, engineering, procurement and construction (“EPC”), or other general contractor, agreements.
[Date]	Seller shall provide the Company with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s).
[Date]	Seller shall provide the Company with copies, as applicable, of executed Facility operating agreements, [<i>electric transmission and/or interconnection agreements (?)</i>].
[Date]	Seller shall provide the Seller with documentation that all governmental Permits have been obtained or will be obtained by the time needed to meet all Construction Milestones.
[Date]	Seller shall provide the Company with documentation of having achieved closing on financing for the Facility or provided the Company with proof of financial capability to construct the Facility. (“Construction Financing Closing Milestone.”)
[Date]	Construction Start Date: The date on which continuous construction of permanent structures begins at Seller’s Site.
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	The turbine(s)/generator(s) shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.
[Date]	Seller shall have constructed Seller’s Interconnection Facilities and such facilities are capable of being energized.
[Date]	The Acceptance Test of the Facility commences.

[Bank Letterhead]

[Date]

**Beneficiary: [Hawaiian Electric Company
Address]**

**[Bank's Name]
[Bank's Address]**

Re: **[Beneficiary's Name]
[Beneficiary's Address]**

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

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

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

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Hawaiian Electric Company, and (ii) the amount of the draft accompanying this certification is due and owing to Hawaiian Electric Company under the terms of the Power Purchase Agreement dated as of _____, between _____, and Hawaiian Electric Company.

The amounts of any drafts drawn under this credit are to be endorsed on the reverse side hereof. Such drafts must bear the clause "Drawn under **[Bank's Name and Letter of Credit Number _____ and date of Letter of Credit.]**"

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

Appendix G
FORM OF LETTER OF CREDIT
Page 2 of 2

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.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, International Chamber of Commerce publication no. 500.

[Bank's Name]:

By: _____
[Authorized Signature]