

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement is made effective on the date of execution as set forth below.

Hawaiian Electric Company, Inc. ("HECO") has issued a *Final Request for Proposals for Renewable Energy Projects – Island of Oahu* on June 19, 2008 ("RFP"). The Final RFP seeks to elicit proposals from interested parties for renewable generation projects to supply up to approximately 100 Megawatts of non-firm renewable energy on Oahu (the "Project").

\_\_\_\_\_ ("Potential Bidder") has requested and may subsequently request certain information from HECO relating to the RFP and Project. This information includes or may include information about HECO's business, clients, prospects, plans, opportunities, products, financial condition, properties, technology, processes, intellectual property, trade secrets, customers, operations, development plans, costs, marketing plans, equipment configurations, data, access or security codes and/or research and development (hereinafter, "Proprietary Information"). Potential Bidder agrees to abide by the terms of this Agreement as an inducement to and in consideration for HECO's agreement to provide Proprietary Information to Potential Bidder hereunder.

### 1. Non-Disclosure of Proprietary Information

Proprietary Information shall include all such information furnished by HECO or its Representatives (as defined below), whether furnished before or after the date hereof, whether oral, written, or recorded/electronic, and regardless of the manner in which it is furnished. Proprietary Information shall also include all reports, summaries, compilations, analyses, notes or other information prepared by the Potential Bidder or its Representatives that are based on, contain or reflect any Proprietary Information. Proprietary Information does not include information which (a) is or becomes generally available to the public other than as a result of a disclosure, directly or indirectly, by the Potential Bidder or its Representatives; provided, however, that information shall not be disqualified as Proprietary Information (i) merely because it is embraced by more general or generic information which is in the public domain or available from a third party, or (ii) if it can only be reconstructed from information taken from multiple sources, none of which individually shows the whole combination (with matching degree of specificity), (b) was available to the Potential Bidder on a non-confidential basis prior to its disclosure by HECO or its Representatives or (c) becomes available to the Potential Bidder on a non-confidential basis from a person other than HECO or its Representatives who is not otherwise bound by a confidentiality agreement with HECO or any of its Representatives, or is otherwise not under an obligation to HECO or any of its Representatives not to transmit the information to the Potential Bidder. As used in this Agreement, (1) the term "Representative" means a person's affiliates and its and their directors, officers, employees, agents, advisors (including, without limitation, financial advisors, counsel and accountants) and controlling persons, and (2) the term "person" shall be broadly interpreted to include, without limitation, any entity or individual.

Unless otherwise agreed to in writing by HECO, the Potential Bidder agrees (a), except as required by law, to keep all Proprietary Information confidential and not to disclose or reveal any Proprietary Information to any person other than its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know the Proprietary Information for the purpose of evaluating the Project, (b) not to use Proprietary Information for any purpose other than in connection with its evaluation of the Project or the consummation of the Project in a manner that HECO has approved and (c) except as required by law, not to disclose to any person (other than those of its Representatives who are actively and directly participating in the evaluation of the Project or who otherwise need to know for the purpose of evaluating the Project) any Proprietary Information. The Potential Bidder agrees to take reasonable steps to safeguard and protect the confidentiality of the Proprietary Information. The Potential Bidder will not disclose the Proprietary Information to any of its Representatives unless they have been informed by the Potential Bidder of its confidential nature and they have agreed to act in accordance with the terms and conditions of this Agreement. The Potential Bidder will cause its Representatives to observe the terms of this Agreement, and the Potential Bidder will be responsible for any breach of the terms of this Agreement by the Potential Bidder or its Representatives.

2. Use of Proprietary Information

The Potential Bidder agrees that it will use the Proprietary Information only for purposes of evaluating the Project and responding to the RFP.

3. Notice of Disclosure

In the event that the Potential Bidder is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Proprietary Information or any other information concerning HECO or the Project, the Potential Bidder agrees that it will provide HECO with prompt notice of such request or requirement in order to enable HECO (a) to seek an appropriate protective order or other remedy, (b) to consult with the Potential Bidder with respect to HECO taking steps to resist or narrow the scope of such request or legal process, or (c) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that HECO waives compliance with the provisions hereof, the Potential Bidder agrees to furnish only that portion of the Proprietary Information which the Potential Bidder is advised by counsel is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded such Proprietary Information. In any event, neither the Potential Bidder nor any of its Representatives will oppose action by HECO to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

4. Return of Proprietary Information

If HECO decides not to proceed with the Project, or Potential Bidder decides not to respond to the RFP, then it will promptly advise the other party of that decision. In that case, or in the event that HECO, in its sole discretion, so requests for any reason, the Potential Bidder will promptly deliver to HECO all Proprietary Information, including all copies, reproductions, summaries, compilations, third party analyses or extracts thereof or based thereon in its possession or in the possession of any of its Representative, but excluding documents, memoranda, notes and other writings prepared by the Potential Bidder or by its Representatives to whom it has delivered Proprietary Information, based on the information in the Proprietary Information. Non-destruction or return of electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel shall not be deemed to violate this Agreement, so long as the Confidential Information contained therein is not disclosed or used in violation of the other terms of this Agreement. All documents, memoranda, notes and other writings prepared by the Potential Bidder, or by its Representatives to whom it has delivered Proprietary Information, based directly on the information in the Proprietary Information (including recorded/electronic versions thereof), and only to the extent the same reflects Proprietary Information, shall be destroyed by the Potential Bidder (such destruction to be confirmed in writing to HECO). Any non-written Proprietary Information will continue to be subject to the terms of this Agreement.

5. No Representations or Warranties

The Potential Bidder acknowledges that neither HECO nor any of its Representatives and none of the respective officers, directors, employees, agents or controlling persons of HECO or such Representatives makes any express or implied representation or warranty as to the accuracy or completeness of any Proprietary Information, and the Potential Bidder agrees that none of such persons shall have any liability to the Potential Bidder or any of its Representatives relating to or arising from the use of any Proprietary Information by the Potential Bidder or any of its Representatives or for any errors therein or omissions therefrom. The Potential Bidder also agrees that it is not entitled to rely on the accuracy or completeness of any Proprietary Information and that it shall be entitled to rely solely on such representations and warranties regarding Proprietary Information as may be made to it in any final agreement relating to the Project, subject to the terms and conditions of such agreement.

6. No Obligations

Except as expressly provided herein, the Potential Bidder agrees that until a final agreement regarding the Project has been executed by HECO and the Potential Bidder, if ever, neither HECO nor any of its Representatives shall have any legal obligation or any liability to the Potential Bidder of any nature whatsoever with respect to the Project by virtue of this Agreement. The Potential Bidder also acknowledges and agrees that (a) HECO and its Representatives may conduct the process that may or may not result in the

Project in such manner as it, in its sole discretion, may determine (including, without limitation, negotiating and entering into a final agreement with any third party without notice to the Potential Bidder) and (b) HECO reserves the right to change (in its sole discretion, at any time and without notice to the Potential Bidder) the procedures relating to its and the Potential Bidder's consideration of the Project (including, without limitation, terminating all further discussions with the Potential Bidder and requesting that the Potential Bidder return all Proprietary Information to it). Subject to the express terms and conditions of this Agreement, neither this Agreement nor discussions and/or communications between HECO and Potential Bidder shall impair the right of HECO to develop, make, use or procure any products or services, alone or with others, now or in the future, including those which may be competitive with those offered by the Potential Bidder.

7. Property Rights in Proprietary Information

The Potential Bidder agrees that all Proprietary Information will remain the property of HECO notwithstanding the disclosure of such Proprietary Information to the Potential Bidder hereunder. Unless otherwise expressly agreed in a separate license agreement, the disclosure of Proprietary Information to the Potential Bidder by HECO will not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Proprietary Information or in any patents or patent applications of HECO.

8. Remedies

In the event of any breach of the provisions of this Agreement by Potential Bidder, HECO shall be entitled to equitable relief, including in the form of injunctions and orders for specific performance, in addition to all other remedies available at law or in equity.

9. No Waiver

No failure or delay by HECO in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii without regard to its conflicts of laws principles.

11. Assignment Prohibited

This Agreement shall not be assigned by the Potential Bidder, by operation of law or otherwise, without the prior express written consent of HECO.

12. Entire Agreement

This Agreement contains the entire agreement between HECO and the Potential Bidder concerning confidentiality of the Proprietary Information disclosed hereunder, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon HECO, unless approved in writing by HECO.

13. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. Acknowledgement:

Potential Bidder understands and acknowledges that HECO will rely on Potential Bidder's promises and commitments to comply fully and unconditionally with the terms herein in disclosing any Proprietary Information to Potential Bidder hereunder.

AGREED AND ACCEPTED:

\_\_\_\_\_ (“Potential Bidder”)

By \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

Mailing Address: