

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I**

In the Matter of the Application of

**HAWAIIAN ELECTRIC COMPANY,
INC.**

DOCKET NO.

**For Approval of Power Purchase
Agreement for Renewable Dispatchable
Generation with Waiawa Phase 2 Solar,
LLC.**

HAWAIIAN ELECTRIC COMPANY, INC.'S APPLICATION

EXHIBITS 1 - 9

VERIFICATION

AND

CERTIFICATE OF SERVICE

**DUKE T. OISHI
Managing Counsel
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai'i 96840-0001**

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of

**HAWAIIAN ELECTRIC COMPANY,
INC.**

DOCKET NO.

**For Approval of Power Purchase
Agreement for Renewable Dispatchable
Generation with Waiawa Phase 2 Solar,
LLC.**

HAWAIIAN ELECTRIC COMPANY, INC.’S APPLICATION

**TO THE HONORABLE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII:**

By this Application, Hawaiian Electric Company, Inc. (“Hawaiian Electric” or the “Company”) seeks approval of a Power Purchase Agreement for Renewable Dispatchable Generation (“PPA” or “RDG PPA”) executed by the Company and Waiawa Phase 2 Solar, LLC (“Seller”) and other matters relating to the Seller’s proposed 30-megawatt (“MW”) photovoltaic project paired with energy storage (“Project” or “Facility”). The Project will be located in Pearl City and Waipio, on the island of O‘ahu. Pursuant to the Commission’s guidance regarding the accelerated timeline for the Hawaiian Electric Companies’ Stage 2 Request for Proposals for Variable Renewable Dispatchable Generation and Energy Storage (“Stage 2 RFP”), approval of the PPA is sought by early 2021.¹

¹ See Docket No. 2017-0352, Order No. 36604, issued on October 9, 2019, at 25: “The commission has repeatedly expressed that timely execution of the competitive procurement process is a central objective of this proceeding.”

EXECUTIVE SUMMARY

The PPA is a product of the Company’s Stage 2 RFP and is based on the renewable dispatchable generation contracting mechanism, which allows for better utilization of the Project’s renewable resource by Hawaiian Electric and facilitates the increasing contribution from new renewable resources, while mitigating the financial risk associated with curtailment for Seller. The PPA gives Hawaiian Electric dispatch rights over the renewable energy facilities (both generation and storage). In exchange, the Seller is provided a fixed monthly payment (“Lump Sum Payment”), which is subject to adjustment based on the availability and performance of the Facility.

Hawaiian Electric’s previous as-available power purchase agreements required that the energy produced by the associated facility be accepted by the Company based on the seniority of the project. This practice limited the ability to move to 100% renewable energy, as the contribution from newer renewable resources was necessarily less than older resources, and the energy-only compensation limited the ability to use resources for grid services such as operating reserves, or to operate each facility on the basis of overall benefit to grid operations. The energy-only contracts therefore hindered the Company’s ability to increase renewable energy opportunities. In contrast, the RDG PPA enables Hawaiian Electric to use the facility to meet the system’s energy and grid service requirements. This flexibility is critically important over the 20-year term of the PPA as Hawai‘i progresses toward its goal of 100% renewables by 2045.

Hawaiian Electric has entered into a PPA with Seller for the proposed Project, which Seller represents will be capable of generating up to 107,595 MWh per year. The Project’s solar photovoltaic (“PV”) and storage components together will provide the Company with flexible, semi-dispatchable renewable energy. The Facility as a whole will provide grid services and

energy to the Hawaiian Electric system. In particular, the storage capability of the Facility will allow the Company to store solar energy generated by the Facility to be delivered during times of available demand. When grid charging is permitted, the Company will also be able to store energy from other resources on the grid to allow for greater certainty of supply for periods of lower solar production.

As discussed in more detail herein, Hawaiian Electric respectfully submits that the PPA is reasonable and in the public interest and should be approved for the following reasons:

- (a) Both the PPA and Project are consistent with the Hawaiian Electric Companies² *PSIP Update Report: December 2016*,³ and the Commission’s Inclinations;⁴
- (b) The Project was selected through a competitive procurement process approved by the Commission and overseen by the Independent Observer, consistent with the Commission’s Framework for Competitive Bidding.⁵ This process allowed the Company to choose a portfolio of projects, including this Project, to provide the contemplated benefits the Company was seeking as part of the Stage 2 RFP on O‘ahu with competitive pricing;
- (c) The PPA is expected to provide bill savings to Hawaiian Electric’s customers over the contract term and for the modeled set of assumptions. It is estimated that, as a result of the PPA, a typical residential Hawaiian Electric customer consuming 500 kilowatt-hours (“kWh”) per month could save approximately \$0.04 per month on average over the course of the term of the PPA. On a portfolio basis with the other projects selected in the Company’s Stage 2

² The “Hawaiian Electric Companies” or “Companies” are Hawaiian Electric, Maui Electric Company, Limited (“Maui Electric”) and Hawai‘i Electric Light Company, Inc. (“Hawai‘i Electric Light”).

³ See Docket No. 2014-0183, The Hawaiian Electric Companies’ Power Supply Improvement Plan (“PSIP”) Update Report, filed on December 23, 2016 and accepted by Commission in Decision and Order No. 34696, issued on July 14, 2017 (“D&O 34696”).

⁴ The *Commission’s Inclinations on the Future of Hawai‘i’s Electric Utilities* (“Commission’s Inclinations”) were appended as Exhibit A to Decision and Order No. 32052, filed on April 28, 2014 in Docket No. 2012-0036.

⁵ See Docket No. 03-0372, Decision and Order No. 23121 issued on December 8, 2006.

RFP process on the island of O‘ahu, it is estimated that a typical residential Hawaiian Electric customer consuming 500 kWh per month could save on average, approximately \$0.99 per month;⁶

(d) Fossil fuel prices are volatile. The PPA will reduce customer exposure to fuel price volatility by adding renewable generation at a fixed price, which will result in reduced fossil fuel consumption;

(e) The Project is not expected to increase curtailment of existing as-available renewable resources or impede consideration of additional renewable resources to Hawaiian Electric’s system;

(f) The Project will help to meet the State of Hawai‘i’s energy policy objectives and Renewable Portfolio Standards (“RPS”) goals. The Facility is expected to increase Hawaiian Electric’s 2025 RPS by up to 1.61 percentage points, and increase the Hawaiian Electric Companies’ consolidated 2025 RPS by up to 1.23 percentage points, thus contributing to the State’s goal of greater energy security and energy self-sufficiency;⁷

(g) The Facility provides essential Grid Services as defined in the Integrated Grid Planning process as well as providing grid forming capability, black start, and the allowance to use the battery for grid charging pursuant to the terms of the PPA;

(h) As further discussed in Exhibit 3 to this Application, according to the modeling conducted, the Facility will reduce fossil fuel consumption by Hawaiian Electric’s generating

⁶ The projected bill impact calculations are only intended to provide an illustrative example of potential customer bill savings. The specific assumptions and results used in the bill impact calculations are provided in the evaluation attached hereto as Exhibit 3. Changes to any of these assumptions would have an impact on the results of the analysis. For example, an event such as the current epidemic, if such were to occur during the term of the PPA could change fuel prices, load forecasts, and other assumptions which would change the results of the analysis.

⁷ See Exhibit 6. The RPS calculations are based on the fossil fuel displacement identified in Exhibit 3 to this Application. Time may be required to prove the capabilities of the Facility as the operation of the systems displaces conventional plants that provide inertial response and other grid services before such replacement is realized in full.

units. It is estimated from these results that the Facility has the potential to displace about 2,908,097 barrels of fossil fuel over the term of the PPA; and

(i) The PPA incorporates the Renewable Dispatchable Generation contracting mechanism that will improve on the Company's ability to leverage maximum value from this and subsequent renewable resources.⁸

I. REQUESTED APPROVALS

Hawaiian Electric respectfully requests that the Commission issue two decisions and orders as follows:

1. First Decision and Order Request: Approval of Power Purchase Agreement

(a) Approve the PPA, by and between Hawaiian Electric and Seller,⁹ for the Project, as further described below and attached hereto as Exhibit 1;

(b) Find that the purchased power arrangements under the PPA, pursuant to which Hawaiian Electric will dispatch energy on an availability basis from Seller and pay fixed Lump Sum Payments to Seller, are prudent and in the public interest with explicit consideration, if required by law under Hawai'i Revised Statutes ("HRS") § 269-6, of the effect of the State of Hawai'i's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas ("GHG") emissions;

(c) Authorize Hawaiian Electric to include all payments, as compensation for both energy and non-energy services under the PPA, including the Lump Sum

⁸ See Docket No. 2014-0183, D&O 34696, at 3: "The commission expects the Companies to continuously improve and refine their resource planning tools and methods, and employ these tools to support appropriate competitive procurement processes and project applications in the near term."

⁹ Hawaiian Electric and Seller are jointly referred to herein as the "Parties."

Payment, and related revenue taxes, through the Purchased Power Adjustment Clause (“PPAC”), to the extent such costs are not included in base rates;

- (d) Approve the proposed accounting and ratemaking treatment for the purchased power expenses under the PPA; and
- (e) Grant such other relief as may be just and reasonable under the circumstances.

Hawaiian Electric respectfully requests that the Commission issue this decision and order as soon as practicable in order to help facilitate the implementation of this competitively bid renewable energy project, and its attainment of tax credits, which is expected to ultimately reduce the cost of electricity to benefit customers, as further described herein.

2. Second Decision and Order Request: Approval of Above-Ground 46 kilovolt (“kV”) Line Extension

Upon completion of an Interconnection Requirements Study (“IRS”) for the Project, the informational filing of an Amendment to the PPA based on the IRS results (“Interconnection Requirements Amendment”),¹⁰ and the filing of such additional information as may be necessary in connection with the requested approval of the above-ground 46 kV line extension, that the Commission issue a Decision and Order that:

- (a) If necessary, determines that a 46 kV line extension that is included as part of Company-Owned Interconnection Facilities may be constructed above the surface of the ground, pursuant to HRS § 269-27.6(a);¹¹

¹⁰ See PPA § 12.4(a).

¹¹ As discussed further below, to take advantage of favorable pricing under the PPA and to speed the progress of the Project, Hawaiian Electric is filing this Application while the IRS for the Project is pending completion. Upon completion of the IRS, Hawaiian Electric will file for informational purposes the Interconnection Requirements Amendment in this docket that will reflect the results of the IRS. The IRS will determine, among other things, the

- (b) If necessary, conducts a public hearing pursuant to HRS § 269-27.5; and
- (c) Grants such other relief as may be just and reasonable under the circumstances.

II. CORRESPONDENCE

Correspondence and communications regarding this Application should be addressed to:

Kevin M. Katsura
Director, Regulatory Non-Rate Proceedings
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, Hawai‘i 96840-0001

Kevin.Katsura@hawaiianelectric.com
Regulatory@hawaiianelectric.com

III. DESCRIPTION OF APPLICANT

Hawaiian Electric, whose principal place of business and executive offices are located at 1001 Bishop Street, Honolulu, Hawai‘i 96813, is a corporation duly organized under the laws of the Kingdom of Hawai‘i on or about October 13, 1891, and now exists under and by virtue of the laws of the State of Hawai‘i. Hawaiian Electric is an operating public utility engaged in the production, transmission, distribution, purchase and sale of electric energy on the island of O‘ahu.

IV. SUPPORTING EXHIBITS

The following exhibits are provided in support of this Application:

Exhibit 1 – PPA

Exhibit 2 – RFP Development

specific location of the expected line extension. Importantly, however, the agreed-upon pricing under the PPA is locked in and is not subject to renegotiation based on the results of the IRS.

- Exhibit 3 – Project Benefits Analysis¹²
- Exhibit 4 – Key PPA Terms and Conditions
- Exhibit 5 – Reserved
- Exhibit 6 – Renewable Portfolio Percentage
- Exhibit 7 – Site Map of Seller’s Facility
- Exhibit 8 – Community Outreach Summary and Public Comments¹³
- Exhibit 9 – Confidentiality Justification Table

V. JUSTIFICATION

Approval of the Project and PPA is reasonable and in the public interest for the following reasons:

(a) Consistent with the Commission’s Inclinations. In the Commission’s Inclinations, the Commission offered “perspectives on the vision, business strategies and regulatory policy changes required to align the HECO Companies’ business model with customers’ interests and the state’s public policy goals.”¹⁴ Specifically, the Commission’s Inclinations urged the Hawaiian Electric Companies to seek higher penetrations of lower-cost renewables and to lower fuel costs in existing power plants.¹⁵ The PPA is consistent with these inclinations. Among other things, as noted in this Application, the PPA will increase renewable

¹² A redacted version of Exhibit 3 is attached in support of this Application. Exhibit 9, Confidentiality Justification Table, is being provided in order to identify the redacted information and the basis for confidentiality in accordance with Section IV (Guidance Regarding the Frustration Exception to the UIPA) of the Commission’s Order No. 34367, issued on January 30, 2017, in Docket No. 2016-0328. The Company will file an unredacted version of the pages from which confidential information has been redacted upon the issuance of an appropriate protective order in this docket.

¹³ A redacted version of Exhibit 8 is attached in support of this Application. Exhibit 9, Confidentiality Justification Table, is being provided in order to identify the redacted information and the basis for confidentiality in accordance with Section IV (Guidance Regarding the Frustration Exception to the UIPA) of the Commission’s Order No. 34367, issued on January 30, 2017, in Docket No. 2016-0328. The Company will file an unredacted version of the pages from which confidential information has been redacted upon the issuance of an appropriate protective order in this docket.

¹⁴ See Commission’s Inclinations at 1.

¹⁵ See Commission’s Inclinations at 4.

energy generation on the system and decrease the amount of fossil fuel consumption by existing power plants, thereby lowering fossil fuel purchases;

(b) Result of Competitive Procurement. The Project was selected through a competitive procurement process for defined target quantities and operation dates. This process allowed the Company to choose a portfolio of projects, including this Project, to provide the contemplated benefits the Company was seeking as part of the Stage 2 RFP on O‘ahu at competitive pricing. The competitive procurement process is further described in Exhibit 2;

(c) Provides Essential Grid Services. The Project is advantageous due to the ability for the Company to dispatch the Facility’s available energy in real time, allowing the Facility to potentially contribute to many of the grid services as proposed in the Integrated Grid Planning process¹⁶ traditionally provided by conventional synchronous generation, including: Regulating Reserve, Primary Frequency Response, and Voltage Support. Hawaiian Electric will be able to dispatch energy from the Project’s PV or storage system as needed to serve customer demand outside solar production hours, and to provide replacement reserves. The Facility’s technical and operational capabilities will contribute to grid stabilization for faults and contingencies, subject to Facility limits and energy availability. This allows the renewable Facility to provide energy and grid services rather than relying on fossil fuel firm conventional generation units to provide these services. The Project has the ability to be grid charged, allowing Hawaiian Electric greater flexibility and certainty in delivering necessary grid services. The Project can also operate in grid-forming mode, which facilitates maintaining system reliability in the future as the Company reduces or eliminates use of fossil-fueled synchronous units. Although grid-forming inverters

¹⁶ See
https://www.hawaiianelectric.com/documents/clean_energy_hawaii/integrated_grid_planning/stakeholder_engagement/working_groups/solution_evaluation_and_optimization/20200522_wg_seo_meeting_presentation_slides.pdf

for use in a grid of the scale of the Company's service territory is still considered a nascent technology, these capabilities are prudent over the course of the 20 year PPA, as the Company expects increasing reliance on inverter-based resources. Finally, the Facility's available stored energy can be used to provide black start capability, supporting restoration of the grid after a system blackout and thereby adding to grid resilience;

(d) Renewable Dispatchable Generation PPA. The PPA was based on the model Renewable Dispatchable Generation PPA filed with the Stage 2 RFP. Specific terms and conditions of the PPA were negotiated by the Company and Seller at arms-length and contain indemnification, insurance, and other provisions that will serve to protect the Company and its customers from certain risks associated with interconnecting the PV plus storage Facility. Hawaiian Electric negotiated significant provisions to assess the Facility's availability and performance throughout the term to ensure Facility capabilities at any time it is dispatched during the Term, as further discussed in Exhibit 4;

(e) Reasonable Pricing for Customers. The Unit Price, as defined in the PPA, is advantageous in that it is fixed for the duration of the PPA, is not tied to the price of fossil fuels, and is anticipated to result in lower effective rates for customers based on modeled assumptions. The PPA is therefore expected to provide bill savings to Hawaiian Electric's customers over the term of the contract. It is estimated that, as a result of the PPA, a typical residential Hawaiian Electric customer consuming 500 kWh per month could save approximately \$0.04 per month on average during the term of the PPA. On a portfolio basis with the other projects selected in the Company's Stage 2 RFP process on the island of O'ahu, it is estimated that as a result of the portfolio of Stage 2 RFP projects selected, a typical residential Hawaiian Electric customer

consuming 500 kWh per month could save on average approximately \$0.99 per month;¹⁷

(f) Reduces Fossil Fuel Consumption. As shown in Exhibit 3, the Facility is anticipated to have a substantial positive impact by decreasing Hawaiian Electric's future dispatch of oil-fueled units;

(g) Reduces GHG Emissions. Hawaiian Electric will submit a GHG analysis for the Project to the Commission within four weeks of this submittal of this Application. The estimated GHG emissions result will be presented in metric tons ("MT") of carbon dioxide equivalent ("CO₂e") and in kilograms of CO₂e per megawatt-hour ("MWh") for the Project lifetime. Detailed calculations including assumptions and inputs will be properly documented and included with the accompanying GHG analysis report.

(h) Increase RPS. The renewable energy to be purchased from the Facility pursuant to the PPA will assist Hawaiian Electric in achieving the State of Hawai'i's RPS goals. As shown in Exhibit 6, Hawaiian Electric estimates that the Facility has the potential to contribute up to 1.61 percentage points of Hawaiian Electric's 2025 RPS and 1.23 percentage points towards the Hawaiian Electric Companies' consolidated 2025 RPS;

(i) Consistent with PSIP Objectives and Decreases Reliance on Foreign Imported Oil. The Project is consistent with the Hawaiian Electric Companies' PSIP objectives, which set forth the Companies' intention to competitively procure new grid-scale generation resources through detailed plans and actions for the years 2017 to 2021.¹⁸ The right to dispatch the Facility

¹⁷ The projected bill impact calculations are only intended to provide an illustrative example of potential customer bill savings. The specific assumptions and results used in the bill impact calculations are provided in the evaluation attached hereto as Exhibit 3. Changes to any of these assumptions would have an impact on the results of the analysis. For example, an event such as the current epidemic, if such were to occur during the term of the PPA could change fuel prices, load forecasts, and other assumptions which would change the results of the analysis.

¹⁸ See Docket No. 2014-0183, D&O 34696 at ES-1.

under the PPA will assist Hawaiian Electric in achieving the goals set forth in Hawaiian Electric's PSIP¹⁹ to move towards energy independence and decreased reliance on foreign imported oil while maintaining reliability of the Company system. The Stage 2 RFP actually sought more generation than the Companies originally planned for following their Stage 1 RFP, therefore accelerating the Company's efforts to reach RPS targets; and

(j) Reduced Customer Exposure to Volatility in Fuel Prices. The PPA reduces customer exposure to volatility in fuel prices. The PPA pricing is not linked to fossil fuel and is fixed over the term of the contract, meaning customers will not be subject to bill increases with rises in the price of fossil fuel. Further, as noted above, the PPA will result in a reduction in fossil fuel consumption. New renewable energy will be generated displacing fossil fuels. Historically, fuel prices have been volatile and will likely continue to be unpredictable. Reducing generation from other resources dependent on fossil fuels protects customers from the volatility of fuel prices.

VI. BACKGROUND

A. Procedural History

As noted above, this Project is the result of the Company's Stage 2 RFP. The Stage 2 RFP is a continuation of the Hawaiian Electric Companies' efforts in their Stage 1 Requests for Proposals for Variable Renewable Dispatchable Generation for O‘ahu issued in February 2018 (“Stage 1 RFP”). During the Stage 1 RFP, based on the PSIP identified resource needs through 2022, the Companies sought up to approximately 485,000 MWh of variable renewable dispatchable generation on O‘ahu. During the Stage 1 RFP, the Hawaiian Electric Companies

¹⁹ See Docket No. 2014-0183, D&O 34696, at ES-2.

indicated that they would procure any remaining MWh of renewable generation from the Stage 1 RFPs through a Stage 2 RFP.

On February 27, 2019, the Commission issued Order No. 36187, *Providing Guidance in Advance of the Hawaiian Electric Companies’ Phase 2 Draft Requests for Proposals for Dispatchable and Renewable Generation* (“Order 36187”). Among other things, Order 36187 stated that the Hawaiian Electric Companies should conduct an RFP for renewable generation on the islands of O‘ahu, Maui and Hawai‘i to fulfill the remaining energy needs from the Stage 1 RFP as well as to meet the energy, capacity and ancillary services needs following the retirement of the AES Hawaii coal plant on O‘ahu and the Kahului Power Plant on Maui. Order 36187 also noted that the Stage 2 RFP for Hawai‘i Island “can and should build contingencies for uncertainties surrounding PGV and Hu Honua, recognizing the contingency benefits of procuring additional renewable resources on Hawai‘i Island even if both PGV and Hu Honua are put into service, as planned.”²⁰ After a series of technical conferences before the Commission, advisory orders issued by the Commission, and filings by the Hawaiian Electric Companies, the Companies ultimately issued the Stage 2 RFP for O‘ahu seeking up to 1,300,000 MWh of renewable energy, 200 MW of storage to fill the capacity need for the expiration of the AES Hawaii power purchase agreement, and 50 MW of contingency storage. Exhibit 2 provides a detailed summary of the RFP process.

The Stage 2 RFP required that projects have a Guaranteed Commercial Operations Date (“GCOD”)²¹ no later than December 31, 2025, with the exception of projects that were intended to provide replacement capacity for AES Hawaii; such projects required a GCOD no later than

²⁰ Order 36187 at 12-13.

²¹ Capitalized terms used, but not defined herein shall have the meaning set forth in the PPA.

June 1, 2022. The intent of the short timeframe for projects to reach commercial operations was to meet the Commission’s stated objectives of timely bringing on new renewable energy to displace fossil fuels. In order to meet these aggressive timelines, proposals could not require substantial infrastructure improvements in order to interconnect to the Company’s system.

The Company notes that none of the Stage 2 RFP projects, including this Project, include the assumption of any Hawai‘i State tax credit for renewable energy. Pursuant to Commission guidance in Order No. 36356, *Providing Guidance on the Hawaiian Electric Companies’ Phase 2 Draft Requests for Proposals for Dispatchable and Renewable Generation*, issued on June 10, 2019, the Company removed the risk of changes in State tax policy from Seller²² and incorporated provisions in Attachment J of the PPA which requires the developer to pass through any State tax credit received to the Company’s customers. If the Project does end up being eligible for renewable energy tax credits from the State of Hawai‘i, it would result in greater benefits for the Company’s customers. However, the Company notes that the 2020 Hawai‘i State Legislature recently passed S.B. No. 2820 S.D. 2 H.D. 2²³ that will end the State tax credit for utility scale solar energy projects over 5 MW that require a power purchase agreement to be approved by the Commission.

B. Policy Objectives

As noted above, this Project is consistent with the Hawaiian Electric Companies’ PSIP objectives. Further, the Project is consistent with many tenets of the State of Hawai‘i’s energy policy, which encourages the use and development of renewable energy.²⁴ The Project will help

²² See Order No. 36356 at 24-25.

²³ This bill is currently enrolled to the Governor for signature and does not appear on the Governor’s intent to veto list.

²⁴ See Title 15, Chapter 269, Part V, HRS.

Hawaiian Electric meet the State's energy policy goals by reducing Hawaiian Electric's reliance on fossil fuels and implementing additional renewable energy resources, with the operational flexibility and technical characteristics to support 100% renewable goals. The State's overall energy objectives are set forth in HRS § 226-18(a), which states, in relevant part:

- (a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to all:
 - (1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
 - (2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased;
 - (3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; [and]
 - (4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

The objectives in the area of renewable energy are to promote commercialization of Hawai'i's sustainable energy resources and technologies to reduce the State's high dependence on imported oil, increase local economic development, and reduce the potential negative economic impacts of oil price fluctuations. In support of these renewable energy objectives, Hawai'i's RPS law was established by the State Legislature in 2001, and amended in 2006, 2009, and 2015. Pursuant to HRS § 269-92(a), each electric utility company²⁵ that sells electricity for consumption in Hawai'i is required by law to establish a RPS of: (a) 30% of its net electricity sales by December 31, 2020; (b) 40% of its net electricity sales by December 31, 2030; (c) 70% of its net electricity sales by December 31, 2040; and (d) 100% of its net electricity sales by

²⁵ Pursuant to HRS § 269-93, “[a]n electric utility company and its electric utility affiliates may aggregate their renewable portfolios in order to achieve the [RPS].”

December 31, 2045. In addition, HRS § 269-92(b)(1) requires that after December 31, 2014, the entire RPS be met by electrical energy generated using renewable energy sources, and HRS § 269-92(b)(2) requires that beginning January 1, 2015, electrical energy savings shall not count toward the RPS. The Project will assist Hawaiian Electric in satisfying these RPS goals, and will give Hawaiian Electric the opportunity to increase its annual RPS contribution on average 1.65 percentage points over the 20-year term of the PPA, and increase the Hawaiian Electric Companies' annual consolidated RPS on average 1.25 percentage points;²⁶ as further shown in Exhibit 6.

C. **Greenhouse Gas Emissions**

The renewable energy objectives also encompass HRS § 269-6(b) which requires that the Commission:

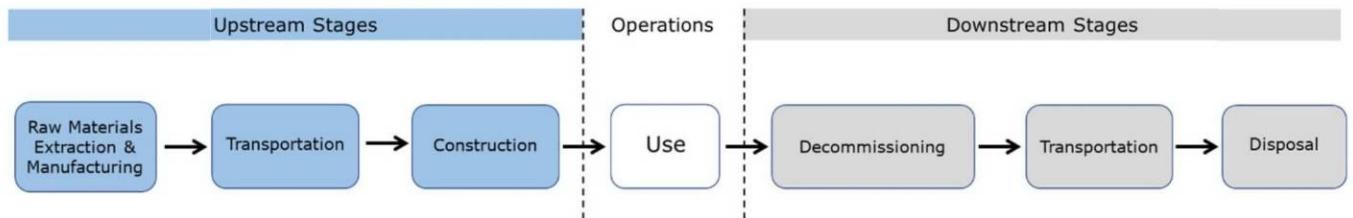
[C]onsider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the [C]ommission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, expert of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The [C]ommission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

The methodology described below will be utilized to estimate the GHG emissions associated with the proposed Project. Hawaiian Electric will submit the GHG analysis as described below, to the Commission within four weeks of this submittal.

²⁶ See Exhibit 6.

This approach addresses the Upstream, Construction, Operations, and Downstream Stages, as shown in **Figure 1**, below.

Figure 1. Stages for Consideration in GHG Emissions Calculation



Potentially significant and reasonably foreseeable equipment, materials and activities are accounted for throughout the Project lifecycle. The following sections provide an overview of the methodology for the Upstream, Operations and Downstream Stages.

1. Upstream Stages

Upstream Stages include the raw materials extraction, manufacturing, transportation and construction stages of the Project, including GHG emissions that occur off-island. GHG emissions associated with raw material extraction and manufacturing are for equipment and materials installed or used during the Project. The GHG emissions for upstream stages also consider total number of pieces of equipment within the Project lifetime.

The Transportation and Construction Stages' GHG emissions are calculated using an “inventory approach” where estimated direct GHG emissions from transportation and construction are calculated based on Project- and location-specific data. This includes Upstream and Downstream transportation for material and equipment from manufacturer locations which are mostly off-island to the Project site, and from the Project site to disposal locations. The Construction Stage includes GHG emissions produced during construction of the Project, including on-road and off-road construction GHG emissions associated with site development,

foundation or civil work, and installation of new equipment.

2. Operations Stage

Operations Emissions include direct GHG emissions associated with the operation and maintenance of the Project (e.g., the “Operations Stage” shown in **Figure 1**). The Operations Stage includes GHG emissions generated from operation and maintenance activities of the equipment and materials in scope for the Project, including: onsite energy; material and water use; mobile trips required for worker commute; and maintenance or other operational mobile trips.

3. Downstream Stages

The Downstream Stages include GHG emissions from transportation, distribution, decommissioning and disposal of the proposed equipment at such time the Project is decommissioned after the projected Project lifetime.

4. Avoided Emissions

Avoided emissions will be analyzed using the projected amount of fossil fuel that will be avoided as a result of the Project for the duration of the PPA and as further discussed in Exhibit 3 of this Application. The analysis will focus solely on direct emissions, since those emissions alone are expected to be significantly higher than those of the Project and represent the majority of projected GHG emissions from avoided fuel consumption if the Project were not built.

5. Net GHG Emissions

Net GHG Emissions will demonstrate the benefits of the Project over the avoided in terms of GHG emissions. Estimated Net GHG Emissions are defined as the estimated Avoided GHG Emissions from Fossil-Fueled Plants minus estimated GHG emissions from the

Project. The lower the Project's GHG Emissions relative to the Avoided GHG Emissions, the higher the Net Emissions reduction.

6. Report

As previously stated, Hawaiian Electric will submit the GHG analysis as described above to the Commission within four weeks of this Application. The estimated GHG emissions result, using the methodology described above, will be presented in MTs of CO₂e and in kilograms of CO₂e per MWh for the Project lifetime. Detailed calculations including assumptions and inputs will be properly documented and included with the accompanying GHG analysis report.

Accordingly, Commission approval of the PPA for the Project: (1) will give Hawaiian Electric the opportunity to increase its annual RPS contribution;²⁷ (2) is consistent with the State's energy policy encouraging the use and development of renewable energy resources; (3) advances the need to reduce the State's reliance on fossil fuels and the reduction of GHG emissions as articulated in HRS § 269-6(b); and (4) promotes the State's overall energy objectives set forth in HRS § 226-18(a).

VII. PROJECT DESCRIPTION

A. Description of Developer

Waiawa Phase 2 Solar, LLC is a wholly owned subsidiary of AES Distributed Energy, Inc., which is in turn, a wholly owned subsidiary of The AES Corporation. AES Distributed Energy, Inc. has over 200 MW of operating solar projects, including a 28 MW PV plus 100 MWh BESS project on Kaua'i, and over 300 MW in development, including 100 MW on O'ahu,

²⁷ See Exhibit 6.

Maui and Hawai‘i Island. The AES Corporation is a Fortune 500 Global Power Company with 2019 revenues of \$10 billion, and \$34 billion in assets owned and managed.

B. Site and Facility

The proposed Facility will be located on land particularly identified by Tax Map Key Nos. 196-004: 024, 025, 026, 194:006: 036. The land secured by Seller is approximately 387 acres zoned urban. A map showing the general location of the Project site is attached as Exhibit 7.

The Facility, which will be located on portions of a much larger property, is located north of Pearl City and east of the H-2 Freeway and Ka Uka Boulevard interchange. It is bordered to the north by the Waiawa Correctional Facility and Mililani Memorial Park & Mortuary, and to the west and south by branches of Waiawa Stream. The H-2 Freeway is located beyond Waiawa Stream to the west. The area to the east of the property consists of conservation land associated with the Ko‘olau Mountains. Nearby communities include Pacific Palisades and Pearl City to the south (beyond Waiawa Stream), and Waipi‘o and Mililani to the west and north (beyond the H-2 Freeway).

This property was historically used for sugarcane cultivation but has been fallow since approximately 1983 and currently comprises vacant, undeveloped land. The Facility would be located within the northwest portion of the property, as shown on the map attached hereto as Exhibit 7. A separate solar project, which was selected by Hawaiian Electric as part of a previous phase of its RFP process, is currently being developed by a non-affiliated third-party developer in the eastern portion of the property.

Pursuant to the terms of the PPA, Seller is responsible to construct,²⁸ own and operate the proposed 30 MW Facility, including all Seller-owned interconnection facilities and all other 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 electric energy by Seller to Hawaiian Electric, in parallel with Hawaiian Electric's system. Electric energy produced by the Facility will be provided by Seller to Hawaiian Electric and delivered to the Point of Interconnection in response to Company dispatch of the Facility. The Seller expects that this Project, if approved, would support 120-150 construction jobs within the State of Hawai'i.²⁹

Seller represents and warrants that, as of the Commercial Operations Date of the Facility ("COD"), the Facility will be a qualified renewable resource under the RPS in effect as of the effective date of the PPA ("Effective Date") and that, absent a change in RPS law, any and all energy delivered by Seller to Hawaiian Electric from or through the Facility will meet the definition of "renewable electrical energy" or "renewable energy" as defined under HRS § 269-91.³⁰

The Facility is capable of generating up to 30 MW and will consist of approximately 113,336 high efficiency solar photovoltaic modules mounted on a single-axis trackers and twelve 2.86 MW and two 1.43 MW inverters. Powered by solar energy with additional on-site battery energy storage, the Facility is capable of generating power used by up to 18,000 homes.

²⁸ Seller, as a developer of renewable energy systems, intends to hire a properly licensed contractor to build the proposed renewable energy facility that is classified as an eligible resource under Hawai'i's RPS Statute, HRS §§ 269-91 – 269-95. See PPA at 1.

²⁹ Estimated construction jobs are based on a similar size project. Seller is conducting a project-specific job and economic analysis.

³⁰ See PPA at § 22.2(E) and preamble.

Preliminary screening identified that an operational constraint may need to be imposed during operation due to existing terminal or reliability constraints on the Company's system. The Project was evaluated based on these preliminary limits, assuming no additional infrastructure or system improvements would be put in place, and such evaluation was taken into account during final selection. The IRS for the Project will determine the final operational constraint to be imposed.

The storage component of the Facility will comprise of a Battery Energy Storage System (“BESS”) that will connect directly to the PV component of the Facility. An eight-hour, 30 MW, 240 MWh lithium-ion BESS is included. The BESS consists of battery modules, inverter systems, and switchgear. The BESS will charge from energy collected by the PV component of the Facility. The BESS will also have the ability to charge from energy provided by the Hawaiian Electric grid upon the expiration of the federal investment tax credit recapture period.

The key benefit of the PV plus storage Facility, contracted through the RDG PPA, is that the Company will be able to utilize renewable energy produced by the Facility during periods of system demand, outside of PV production hours. Having the PV system paired with the BESS adds significant value to the Facility by allowing the energy produced during the day that cannot be readily accepted by the Company to be stored and dispatched to the Company's system at future times of higher customer demand, which is more beneficial to the Company's system than past projects that required instantaneous use of energy produced. The BESS energy supplements the PV energy in meeting the Company's dispatch and thereby reduces volatility and variability of the PV energy resource, allowing the Facility to be semi-dispatchable and able to contribute to reserves. The storage allows the PV energy to be shifted to periods of peak energy demand, and other non-solar periods, that could otherwise require fossil generation to meet. The charged

storage contributes to the primary frequency response of the Facility, and can assist in grid stabilization subject to discharge limits. See Exhibit 3, Attachment 8 for the representative dispatch of the Project.

The Seller's receipt of the full Lump Sum Payment per payment period is contingent on the Facility meeting the specific Performance Metrics specified in the PPA. If the Facility fails to satisfy one or more of the Performance Metrics, liquidated damages will be assessed against the full Lump Sum Payment amount. Liquidated damages tied directly to the capacity of the BESS will be assessed based on the BESS Allocated Portion of the Lump Sum Payment, which is a percentage of the full Lump Sum Payment. The Lump Sum Payment, as affected by liquidated damages for the availability of the Facility and other Performance Metrics, has the potential to reduce down to zero if the Facility is completely unavailable or if the Facility is available but underperforming in other aspects as measured by the Performance Metrics. See Exhibit 4 for further information regarding the PPA Performance Metrics and Liquidated Damages Assessment.

VIII. INTERCONNECTION

The Facility will interconnect to the Company's existing Waiau-Mililani 46 kV and Wahiawa-Waimano 46 kV circuits. To ensure the Project is completed in a timely manner and to preserve the Seller's ability to seek the federal investment tax credits that began to phase out in 2019 and are scheduled to expire in 2022, but which can be safe harbored and claimed after 2022, the Parties agreed to execute the PPA prior to the completion of the IRS for the Project.³¹ Following completion of the IRS, the Parties will execute an Interconnection Requirements Amendment, substituting new versions of attachments to the PPA, including, but not limited to,

³¹ See PPA § 12.4.

Attachment A (Description of Generation, Conversion and Storage Facility), Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawings), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment L (Reporting Milestones), and Attachment N (Acceptance Test General Criteria) to reflect the results of the IRS.³² The Interconnection Requirements Amendment will also reflect the Company's estimate of total interconnection costs based on the results of the IRS, as well as the Project development schedule agreed to by the Company and Seller. The Company will submit the Interconnection Requirements Amendment to the Commission in a subsequent informational filing.

Pursuant to Section 12.4(b) of the PPA, if Seller is dissatisfied with the results of the IRS (because, for example, of the technical requirements imposed or the cost of the interconnection work), Seller has the option, by written notice delivered to the Company no later than the Termination Deadline,³³ to declare the PPA null and void.

Notably, the PPA does not allow for any adjustment to pricing upon completion of the IRS and interconnection cost estimates.

IX. PPA TERMS AND CONDITIONS

The terms and conditions of the PPA were negotiated by the Parties at arms-length. The PPA contains indemnification, insurance, pricing, and other provisions, including those pertaining to the Term, Seller's delivery of dispatchable energy from the Facility, and Seller's compliance with laws, which will serve to protect the Company and its customers from certain

³² See PPA § 12.4(a).

³³ As defined in the PPA, "Termination Deadline" means the 14th day following the date the completed IRS (including the Total Estimated Interconnection Costs and project schedule completed by Company) is provided to Seller, or such later date as Company and Seller may agree to by a written agreement.

risks associated with interconnecting with the Facility. Moreover, the terms and conditions of the PPA will not affect the Company's ability to provide electric service to its customers and are not discriminatory to other small power producers. Hawaiian Electric maintains that, for these reasons, the purchased power arrangements (i.e., terms and conditions) under the PPA, pursuant to which Hawaiian Electric purchases rights to dispatch energy from Seller's Facility, are prudent and in the public interest.

Pursuant to Section 12.3(b) of the PPA, Seller shall seek participation without intervention in the Commission Docket for the approval of this Application for the limited purpose and only to the extent necessary to assist the Commission in making an informed decision regarding the approval of the PPA. The scope of Seller's participation shall be determined by the Commission.

A detailed summary and discussion of the key terms and conditions of the RDG PPA is set forth in the document entitled "Key PPA Terms and Conditions", attached hereto as Exhibit 4.

X. COMMUNITY OUTREACH

Pursuant to the community outreach requirements set forth in the RFP, Seller was required to develop a comprehensive community outreach and communications plan to work with and inform neighboring communities and stakeholders about the Project and to gain support for the Project. Seller agreed to provide information to the neighboring communities and stakeholders on a timely basis during all phases of the Project. Seller's community engagement document is a public document and Seller was required to create a Project website that contained

meaningful information about the proposed Project as well as their community outreach plan.³⁴ The Company's Renewable Project Status Board was updated to identify all Final Award Group Projects and provided links to those individual Project websites in a consolidated location for interested community members and stakeholders.³⁵ Due to the ongoing COVID-19 crisis, Seller was required to conduct a virtual public meeting either televised or online, and incorporate technology that allowed for live engagement and interaction between the Seller and community participants. The intent of the meeting was to gather stakeholders and other interested parties in the area to apprise the community about the Project, and to allow an opportunity for community concerns and questions to be raised. In addition, Seller was required to perform media outreach and advertising to raise community awareness of any public meeting. Seller was also required to account for the Project's potential impacts on historical and cultural resources and to share such information with the neighboring community. Further, Seller was required to designate an individual as the Seller's Community Representative.

Article 29.21 of the PPA details the Seller's community outreach obligations during the entire development period, which include soliciting written community comments, and submitting all written community comments received by August 8, 2020 as part of this Application.³⁶ Seller's current Community Representative is listed in Article 29.21 of the PPA. Attached as Exhibit 8 are copies of public comments from Seller's community outreach efforts, as well as a summary of Seller's community outreach efforts made to date. Additional written

³⁴ The Project website can be found at: www.waiawaphase2solar.com

³⁵ See <https://www.hawaiianelectric.com/clean-energy-hawaii/our-clean-energy-portfolio/renewable-project-status-board>.

³⁶ See PPA at § 29.21.

comments received after the compilation of this Application will be filed in this docket no later than with the filing of the Company's Reply Statement of Position.

XI. ACCOUNTING AND FINANCIAL IMPACTS

Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation, addresses variable interest entities ("VIE") and primary beneficiaries (entities that consolidate VIEs). FASB ASC 810 could potentially require that the purchaser under a PPA, such as Hawaiian Electric, consolidate the Seller, such as Waiawa Phase 2 Solar, LLC. If the PPA is determined to constitute a variable interest in Seller and that Hawaiian Electric is the primary beneficiary, then Hawaiian Electric will be required to consolidate Seller onto its financial statements. Consolidating Seller onto Hawaiian Electric's financial statements will have uncertain impacts on the assessments of investors and/or credit rating agencies on the risks associated with this PPA and Hawaiian Electric's creditworthiness. In addition, if Hawaiian Electric is required to consolidate Seller onto its financial statements, then Hawaiian Electric's management will be required to assess the adequacy of its internal controls over financial reporting, in order to comply with Section 404 of the Sarbanes-Oxley Act of 2002. Hawaiian Electric is unwilling to be subject to accounting treatment that results from VIE treatment as set forth in FASB ASC 810.³⁷

A preliminary consolidation evaluation of the PPA and Seller was performed under FASB ASC 810, and it appears consolidation is not required. An evaluation will be performed when Commission approval is received. Thereafter, FASB ASC 810 requires Hawaiian Electric to continuously reassess its evaluation on an on-going basis.

³⁷ See PPA at § 24.5.

A. Lease Accounting

FASB ASC 842, Leases, effective January 1, 2019, specifies tests to be applied to an arrangement, in this case, the PPA, to determine: (1) whether or not the arrangement contains a lease and specifies the circumstances under which an arrangement should be evaluated to determine whether or not it contains a lease; and (2) if it is deemed a lease, whether it is an operating or finance lease.

If the PPA is deemed a lease, it would be classified as either an operating or a finance lease. If it is deemed an operating lease, Hawaiian Electric will report the right-of-use asset, lease obligation and lease expense. If the PPA is deemed a finance lease, Hawaiian Electric will report the right-of-use asset, lease obligation and related interest and amortization expense.

A preliminary evaluation of the PPA was performed under FASB ASC 842, which resulted in the identification of the PV system and the BESS as separate units of account for lease consideration. Based on the preliminary evaluation, the PV system was concluded to not contain a lease, while the BESS was concluded to contain a lease. As such, a right-of-use asset and lease liability will be recorded on Hawaiian Electric's financial statements for the present value of the fixed payments attributable to the BESS over the term of the PPA. A final evaluation will be performed upon Commission approval of the PPA.

For U.S. Generally Accepted Accounting Principles ("U.S. GAAP") purposes, if the PPA or a portion thereof is an operating lease, the lease expense would be straight-lined throughout the term of the lease, and if the PPA or portion thereof is a finance lease, the lease will have a front-loaded expense recognition. However, Hawaiian Electric requests that for rate-making purposes, the actual payments under the PPA be recorded as a purchase power expense and the

difference between the actual payments and the lease expense be reflected as a regulatory asset/liability for the entire term of the PPA.

B. Impact of Imputed Debt on Credit Quality

The payments Hawaiian Electric is required to make under this PPA are for availability and performance of renewable dispatchable generation, as well as the energy dispatched by the Company, as set forth in the PPA. A preliminary evaluation of the PPA was performed and it appears that the PV system does not contain a lease, while the BESS appears to contain a lease. Since the PV system appears to not contain a lease, there is no recorded liability for the long-term lease expense payment attributable to the PV system. However, credit rating agencies would reflect these obligations as imputed debt in the ratios used to evaluate Hawaiian Electric's risk profile, which drive the resulting credit rating. Since the BESS unit appears to contain a lease, a right-of-use asset and lease liability will be recorded. The Company's understanding is that Standard & Poor's ("S&P") will continue to use this information in its analysis and will use the lease liability in calculating the debt to be imputed for PPA-related fixed obligations. On May 7, 2007, S&P published an article titled "Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements" ("S&P's 5-7-07 Article"). In this article, S&P imputes debt for fixed PPA obligations and includes this imputed debt in its analysis of a company's financial metrics.

New lease accounting rules effective January 1, 2019 will require all leases with terms greater than twelve months to be included on the balance sheet. On April 16, 2018, S&P published a Credit FAQ titled "What Do New Lease Accounting Changes Mean For Corporate Credit Ratings?" ("S&P's 4-16-18 Article"). In this article, S&P states:

[F]orthcoming changes to lease accounting within international and U.S. accounting standards that come into force from 2019 will

generally not affect S&P Global Ratings' view of the creditworthiness of companies it rates, because nothing will be changing about the underlying credit fundamentals of these companies. That said, we do not rule out the possibility that, in certain cases, the new financial reporting might highlight new information that we will need to factor into our analysis. Yet, although some components of certain individual credit ratings might change, we expect the overall effect to be limited.³⁸

For companies that follow U.S. GAAP, S&P expects to continue applying current methodology for operating leases.³⁹

Hawaiian Electric prepared estimates of the imputed debt and rebalancing costs based on S&P's methodology as described. Imputed debt at inception is estimated to be approximately \$34.960 million, with annual rebalancing costs estimated at about \$1.670 million.

XII. AUTHORITY FOR REQUESTED APPROVALS

A. General

The approvals in this Application are requested pursuant to Sections 226-18, 269-6, 269-16.22, 269-27.2, 269-91 and 269-92 of the Hawai'i Revised Statutes; Section 16-601-74 of the Hawai'i Administrative Rules ("HAR"); Order No. 36474 *Approving the Hawaiian Electric Companies' Phase 2 Draft Requests for Proposals, with Modifications*, issued on August 15, 2019 in Docket No. 2017-0352; Decision and Order No. 34696, issued on July 14, 2017 in Docket No. 2014-0183 (PSIP docket); and other statutory and regulatory authorities as specifically set forth below.

³⁸ S&P's 4-16-18 Article at 1.

³⁹ In this regard, S&P's 4-16-18 Article (at 4) states:

Under our current methodology for operating leases, the lease-related expense is allocated to interest and depreciation. Interest expense is increased by the product of the 7% standard discount rate we currently use, multiplied by the average net present value of the lease payments for the current and previous years. Additionally, our EBITDA calculation increases because we add back in the interest and depreciation. We expect to continue applying this approach for companies that follow U.S. GAAP.

B. PPA Approval

This Application is filed pursuant to the Rules of Practice and Procedure Before the Public Utilities Commission of the State of Hawai‘i, Title 16, Chapter 601, of the Hawai‘i Administrative Rules. Commission approval of this PPA, purchased energy charges, if applicable, and Lump Sum Payments is sought pursuant to HRS § 269-27.2 and HAR Chapter 6-74, as amended, which generally guide the Commission’s review of the rates agreed upon between Hawaiian Electric and Seller. Specifically, HRS § 269-27.2(c) provides, in relevant part:

The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

The commission’s determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the non-fossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of non-fossil fuel generated electricity. As the commission deems appropriate, the just and reasonable rate for non-fossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.

HAR § 6-74-22(a) also provides that the rates for purchase shall:

- (1) Be just and reasonable to the electric consumer of the electric utility and in the public interest;
- (2) Not discriminate against qualifying cogeneration and small power production facilities; and

(3) Be not less than one hundred per cent of avoided cost for energy and capacity purchases to be determined as provided in [HAR §] 6-74-23 from qualifying facilities and not less than the minimum purchase rate.⁴⁰

As such, Hawaiian Electric respectfully requests the Commission: (i) approve the PPA, (ii) find that the purchased power arrangements under the PPA are prudent and in the public interest; and (iii) find that the Lump Sum Payment to be paid pursuant to the PPA is just and reasonable based on the information provided in this Application and its Exhibits. In particular, see Section V. (Justification) of this Application setting forth the reasons that approval of the Project and the PPA is reasonable and in the public interest.

C. **Purchased Power Adjustment Clause**

The total Lump Sum Payments, as defined in the PPA, are payments made by Hawaiian Electric to Seller in exchange for Seller making the Net Energy Potential of the Facility available for dispatch by the Company.⁴¹ The amount of energy delivered by the Facility to the Company is not a factor in calculating the Lump Sum Payment for any given period. Using the availability of the Facility and its Net Energy Potential as a basis for Lump Sum Payments limits the developer's financial risk associated with excess energy curtailment, as seen in PPAs for prior projects, while at the same time ensuring favorable pricing to benefit customers for the term of the PPA.

HRS § 269-16.22 provides:

All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an

⁴⁰ Notwithstanding, HAR § 6-74-15(b)(1) states that nothing in HAR Title 6, Chapter 74, Subchapter 3 (i.e., HAR §§ 6-74-15 to 28) “[p]rohibits an electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subchapter[.]”

⁴¹ See PPA, “Schedule of Defined Terms” for definition of Lump Sum Payment.

electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law. For purposes of this section, an “electric utility company” means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.

Accordingly, Commission authorization is requested to include the total Lump Sum Payments that are incurred by Hawaiian Electric through` the Company’s PPAC, as may be applicable, to the extent such costs are not included in base rates.

D. GHG Emissions Analysis

Finally, in making the threshold determination of the reasonableness of the terms of the PPA, the GHG emissions analysis will be submitted pursuant to HRS § 269-6(b).

Under this statutory section, the Commission is required to consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the Commission is required to explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and GHG emissions. The Commission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

E. HRS § 269-27.6 – 46 kV Transmission Line

Subject to completion of the IRS for the Project, and the filing of the Interconnection Requirements Amendment based on the IRS results, Hawaiian Electric will request a Commission determination for construction of the proposed 46 kV line extension pursuant to HRS § 269-27.6(a), which provides that:

Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new 46 kilovolt or greater high voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission shall consider:

- (1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;
- (2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected or built underground and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;

- (3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;
- (4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and
- (5) Any other relevant factors.

Subsections (b) and (c) of HRS § 269-27.6, which apply to 138 kV and greater lines, do not apply to this Project. Hawaiian Electric will address the elements of HRS § 269-27.6(a) as part of its subsequent request relating to the Project's IRS Amendment filing.

F. HRS § 269-27.5 – Public Hearing

Subject to completion of the IRS for the Project, and the filing of the Interconnection Requirements Amendment based on the IRS results, if the Project requires the proposed 46 kV overhead line extension to run through any residential area, Hawaiian Electric will request that the Commission conduct a public hearing, if necessary, under HRS § 269-27.5, which provides:

Whenever a public utility plans to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system above the surface of the ground through any residential area, the public utilities commission shall conduct a public hearing prior to its issuance of approval thereof. Notice of the hearing shall be given in the manner provided in section 269-16 for notice of public hearings.

XIII. CONCLUSION

Based on the foregoing, Hawaiian Electric respectfully requests that the Commission issue two decisions and orders as follows:

1. First Decision and Order Request: Approval of Power Purchase Agreement

(a) Approve the PPA, by and between Hawaiian Electric and Seller, for the Project, as further described below and attached hereto as Exhibit 1;

(b) Find that the purchased power arrangements under the PPA, pursuant to which Hawaiian Electric will dispatch energy on an availability basis from Seller and pay fixed Lump Sum Payments to Seller, are prudent and in the public interest with explicit consideration, if required by law under HRS § 269-6, of the effect of the State of Hawai‘i’s reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and GHG emissions;

(c) Authorize Hawaiian Electric to include all other payments for energy and non-energy under the PPA, including the Lump Sum Payment (as defined in the PPA), and related revenue taxes, through the PPAC, to the extent such costs are not included in base rates;

(d) Approve the proposed accounting and ratemaking treatment for the purchased power expenses under the PPA; and

(e) Grant such other relief as may be just and reasonable under the circumstances.

Hawaiian Electric respectfully requests that the Commission issue this decision and order as soon as practicable in order to help facilitate the implementation of this renewable energy Project, and its attainment of tax credits, which is expected to reduce the cost of electricity to benefit customers, as further described herein.

2. Second Decision and Order Request: Approval of Above-Ground 46 kV Line Extension

Upon completion of an IRS for the Project, the informational filing of an Interconnection Requirements Amendment to the PPA based on the IRS results, and the filing of such additional information as may be necessary in connection with the requested approval of the above-ground 46 kV line extension, that the Commission issue a Decision and Order that:

- (a) If necessary, determines that a 46 kV line extension that is included as part of Company-Owned Interconnection Facilities may be constructed above the surface of the ground, pursuant to HRS § 269-27.6(a);
- (b) If necessary, schedules a public hearing pursuant to HRS § 269-27.5; and
- (c) Grant such other relief as may be just and reasonable under the circumstances.

DATED: Honolulu, Hawai‘i, September 15, 2020.

/s/ Duke T. Oishi

DUKE T. OISHI
MANAGING COUNSEL
HAWAIIAN ELECTRIC COMPANY, INC.

VERIFICATION

STATE OF HAWAI'I)
)
CITY AND COUNTY OF HONOLULU) SS:
)

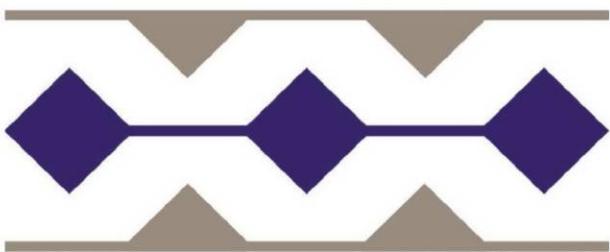
DUKE T. OISHI, being first duly sworn, deposes and says: That he is a MANAGING COUNSEL of Hawaiian Electric Company, Inc. ("Hawaiian Electric"), Applicant in the above proceeding; that he makes this verification for and on behalf of Hawaiian Electric and is authorized so to do; that he has read the foregoing Application, and knows the contents thereof; and that the same are true of his own knowledge except as to matters stated on information or belief, and that as to those matters he believes them to be true.

/s/ Duke T. Oishi

DUKE T. OISHI

EXHIBIT 1

**Power Purchase Agreement for Renewable Dispatchable
Generation, dated September 14, 2020, by and between
Hawaiian Electric Company, Inc.
and Waiawa Phase 2 Solar, LLC**



**Hawaiian
Electric**

*Power Purchase Agreement
For
Renewable Dispatchable Generation
(PV + BESS)*
Waiawa Phase 2 Solar, LLC.

Dated: September 14, 2020

TABLE OF CONTENTS

ARTICLE 1 PARALLEL OPERATION	3
ARTICLE 2 PURCHASE AND SALE OF ENERGY AND DISPATCHABILITY; RATE FOR PURCHASE AND SALE; BILLING AND PAYMENT	4
ARTICLE 3 FACILITY OWNED AND/OR OPERATED BY SELLER	42
ARTICLE 4 COMPANY-OWNED INTERCONNECTION FACILITIES	48
ARTICLE 5 MAINTENANCE RECORDS AND SCHEDULING	49
ARTICLE 6 FORECASTING	54
ARTICLE 7 SELLER PAYMENTS	58
ARTICLE 8 COMPANY DISPATCH	59
ARTICLE 9 PERSONNEL AND SYSTEM SAFETY	61
ARTICLE 10 METERING	62
ARTICLE 11 GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS	64
ARTICLE 12 TERM OF AGREEMENT AND COMPANY'S OPTION TO PURCHASE AT END OF TERM	67
ARTICLE 13 GUARANTEED PROJECT MILESTONES INCLUDING COMMERCIAL OPERATIONS	73
ARTICLE 14 CREDIT ASSURANCE AND SECURITY	79
ARTICLE 15 EVENTS OF DEFAULT	84
ARTICLE 16 DAMAGES IN THE EVENT OF TERMINATION BY COMPANY	90
ARTICLE 17 INDEMNIFICATION	92
ARTICLE 18 INSURANCE	97
ARTICLE 19 TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT	100
ARTICLE 20 SALE OF ENERGY TO THIRD PARTIES	103
ARTICLE 21 FORCE MAJEURE	104
ARTICLE 22 WARRANTIES AND REPRESENTATIONS	109
ARTICLE 23 PROCESS FOR ADDRESSING REVISIONS TO PERFORMANCE STANDARDS	111
ARTICLE 24 FINANCIAL COMPLIANCE	117
ARTICLE 25 GOOD ENGINEERING AND OPERATING PRACTICES	121

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ARTICLE 26 EQUAL EMPLOYMENT OPPORTUNITY	122
ARTICLE 27 SET OFF	123
ARTICLE 28 DISPUTE RESOLUTION	124
ARTICLE 29 MISCELLANEOUS	126
SCHEDULE OF DEFINED TERMS	1
ATTACHMENT A DESCRIPTION OF GENERATION, CONVERSION AND STORAGE FACILITY	1
EXHIBIT A-1 GOOD STANDING CERTIFICATES	1
EXHIBIT A-2 OWNERSHIP STRUCTURE	2
ATTACHMENT B FACILITY OWNED BY SELLER	1
EXHIBIT B-1 REQUIRED MODELS	45
EXHIBIT B-2 GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S) ...	46
ATTACHMENT C METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS	1
ATTACHMENT D CONSULTANTS LIST	1
ATTACHMENT E SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM	1
ATTACHMENT F RELAY LIST AND TRIP SCHEME	1
ATTACHMENT G COMPANY-OWNED INTERCONNECTION FACILITIES	1
ATTACHMENT H FORM OF BILL OF SALE AND ASSIGNMENT	2
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY	6
ATTACHMENT I FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION	1
ATTACHMENT J COMPANY PAYMENTS FOR ENERGY, DISPATCHABILITY AND AVAILABILITY OF BESS	1
ATTACHMENT K GUARANTEED PROJECT MILESTONES	12
ATTACHMENT K-1 SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES	13
ATTACHMENT L REPORTING MILESTONES	1
ATTACHMENT M FORM OF LETTER OF CREDIT	1
ATTACHMENT N ACCEPTANCE TEST GENERAL CRITERIA	1
ATTACHMENT O CONTROL SYSTEM ACCEPTANCE TEST CRITERIA	1
ATTACHMENT P SALE OF FACILITY BY SELLER	1
ATTACHMENT Q [RESERVED]	1
ATTACHMENT R REQUIRED INSURANCE	1

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ATTACHMENT S FORM OF MONTHLY PROGRESS REPORT	1
ATTACHMENT T MONTHLY REPORTING AND DISPUTE RESOLUTION BY INDEPENDENT AF EVALUATOR	1
ATTACHMENT U CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL .	1
Attachment V SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED IN PRIOR CALENDAR YEAR	1
ATTACHMENT W BESS TESTS	1
ATTACHMENT X BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR	1
ATTACHMENT Y BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR	1

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION

THIS POWER PURCHASE AGREEMENT FOR RENEWABLE DISPATCHABLE GENERATION ("Agreement") is made this 14th day of September, 2020 (the "Execution Date"), by and between Hawaiian Electric Company, Inc., a Hawai'i corporation (hereinafter called the "Company") and Waiawa Phase 2 Solar, LLC (hereinafter called the "Seller").

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

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

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

WHEREAS, Seller is a developer of renewable energy systems and intends to hire a properly licensed general contractor ("EPC Contractor") to build a renewable energy facility that is classified as an eligible resource under Hawai'i's Renewable Portfolio Standards Statute (codified as Hawai'i Revised Statutes ("HRS") 269-91 through 269-95) that will be owned and operated by Seller; and

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

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

WHEREAS, Seller desires to sell to Company, and Company agrees to purchase upon the terms and conditions set forth herein,

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

(i) the Actual Output produced by the Facility and delivered to the Point of Interconnection; (ii) the availability of the BESS; and (iii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement.

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

DEFINITIONS

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

ARTICLE 1
PARALLEL OPERATION

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

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

- 2.1 Purchase and Sale of Electric Energy, Dispatchability of Facility and Availability of the BESS. Subject to the other provisions of this Agreement, Company shall, by a Lump Sum Payment, pay for: (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; (ii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement; and (iii) the availability of the BESS. Included in such purchase and sale are all of the Environmental Credits associated with the electric energy. Company will not reimburse Seller for any taxes or fees imposed on Seller including, but not limited to, State of Hawai'i general excise tax.
- 2.2 [Reserved]
- 2.3 Lump Sum Payment. Commencing on the Commercial Operations Date, Company shall pay to Seller a monthly Lump Sum Payment as provided in Section 2 (Lump Sum Payment for Purchase of Dispatchability) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. As more fully set forth in Section 3 (Calculation of Lump Sum Payment) of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. For purposes of calculating the monthly Lump Sum Payment, the monthly Lump Sum Payment shall be adjusted downward to account for the time the Facility or any portion of the Facility is not available for Company Dispatch because of a Force Majeure condition (i) at the Facility or (ii) that otherwise delays or prevents the Seller from making the Facility or any portion of the Facility available for Company Dispatch, as more fully set forth in Section 3.iv of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

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

(a) Design, Operation and Maintenance to Achieve Required Performance Metrics; Charging of BESS. In order to provide Company with reasonable assurance that, subject to the Renewable Resource Variability, the Facility's Net Energy Potential will be available for Company Dispatch: (i) the Inverter System Equivalent Availability Factor Performance Metric shall be used to evaluate the availability of the Inverter System for dispatch by Company; (ii) the Guaranteed Performance Ratio ("GPR") Performance Metric shall be used to evaluate the efficiency of the PV System; (iii) the BESS Capacity Performance Metric shall be used to confirm the capability of the BESS to discharge continuously for four (4) hours at Maximum Rated Output or to discharge continuously for a total energy (MWh) equal to the BESS Contract Capacity if the test is conducted at less than Maximum Rated Output; (iv) the BESS EAF Performance Metric shall be used to determine whether the BESS is meeting its expected availability; and (v) the BESS EFOF Performance Metric shall be used to evaluate whether the BESS is experiencing excessive unplanned outages. Whenever the PV System potential output is in excess of the Company Dispatch, the excess energy from the PV System shall be used to maximize the BESS State of Charge so long as this does not conflict with the operating parameters of the BESS set forth in Section 9(d) (Battery Energy Storage System) of Attachment B (Facility Owned by Seller) to this Agreement. Seller shall design, operate and maintain the Facility in a manner consistent with the standard of care reasonably expected of an experienced owner/operator with the desire and financial resources necessary to design, operate and maintain the Facility to achieve the Performance Metrics. The foregoing is without limitation to Seller's other obligations under this Agreement, including the obligation to operate the Facility in accordance with Good Engineering and Operating Practices. The Performance Metrics set forth in Section 2.5 (Inverter System Equivalent Availability Factor; Liquidated Damages; Termination Rights) through Section 2.9 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages) of this Agreement shall be

interpreted consistent with the North American Electric Reliability Corporation Generating Availability Data System ("NERC GADS") Data Reporting Instructions.

(b) [Reserved]

2.5 Inverter System Equivalent Availability Factor; Liquidated Damages; Termination Rights.

(a) Calculation of the Inverter System Equivalent Availability Factor. Following the end of each LD Period, the Inverter System Equivalent Availability Factor shall be calculated for such LD Period as follows:

$$\text{Inverter System Equivalent Availability Factor} = 100\% \times \frac{AH - EDH}{PH}$$

where:

Period Hours (PH) is the total number of hours in the LD Period counting twenty-four (24) hours per day. In a normal year, PH = 8,760, and in a leap year PH = 8,784.

Available Hours (AH) is the number of hours that the Inverter System is not on Outage. It is the sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

An "Inverter System Outage" exists whenever the entire Inverter System is not online producing electric energy and is not in a Reserve Shutdown state.

Inverter System Service Hours (SH) is the number of hours during the LD Period the Inverter System is online and producing or converting electric energy to meet Company Dispatch.

Inverter System Reserve Shutdown Hours (RSH) is the number of hours the Inverter System was available to the Company System but not converting electric energy or is offline at the Company's request for reasons other than Seller-Attributable Non-Generation or the measured plane of array irradiance is below the inverter manufacturer's minimum irradiance level for production. All hours

between 7:00 pm and 6:00 am will be considered RSH. The Inverter System will be considered RSH in these hours, even if the system would otherwise be in an outage or derated state. A BESS Outage or Derating can exist due to an Inverter System Outage or Derating that occurs during Inverter System Reserve Shutdown Hours and the effect of such Inverter System Outage or Derating on the BESS availability shall be included when calculating the BESS Annual Equivalent Availability Factor in accordance with Attachment X (BESS Annual Equivalent Availability Factor).

An "Inverter System Derating" exists if the Inverter System is available for Company Dispatch, but at less than full potential output for the given PV and BESS conditions, including deratings due to Seller-Attributable Non-Generation. For avoidance of doubt, if there is an Inverter System Outage, there cannot also be an Inverter System Derating.

Equivalent Derated Hours (EDH) is the sum of ESADH, EPDH, and EUDH. For deratings due to inverter unavailability, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the number of inverters in the Inverter System unavailable and dividing by the total number of inverters in the Inverter System. For deratings that do not impact the availability of an entire inverter or set of entire inverters, the equivalent full outage hour(s) are calculated by multiplying the actual duration of the derating (hours) by the size of the derating (in MW) divided by the Contract Capacity.

Equivalent Seller-Attributable Derated Hours (ESADH): A Seller-Attributable Derating occurs when there is an Inverter System Derating, due to Seller-Attributable Non-Generation or deratings by Company pursuant to Section 8.3 (Company Rights of Dispatch). Equivalent Seller-Attributable Derated Hours (ESADH) does not include Unplanned Derating (Forced Derating). Each individual derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

Equivalent Planned Derated Hours (EPDH) includes Planned Deratings (PD) and Maintenance Deratings (D4). A Planned Derating is when the Inverter System experiences a derating scheduled well in advance and for a predetermined duration. A Maintenance Derating is a derating that can be deferred beyond the end of the next weekend (Sunday at midnight or before Sunday turns into Monday) but requires a reduction in capacity before the next Planned Derating (PD). Each individual derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

Equivalent Unplanned Derated Hours (EUDH): An Unplanned Derating (Forced Derating) occurs when the Inverter System experiences a derating that requires a reduction in availability before the end of the nearest following weekend. Equivalent Unplanned Derated Hours (EUDH) does not include Seller-Attributable Non-Generation. Each individual Unplanned Derating is transformed into equivalent full outage hour(s). These equivalent hour(s) are then summed.

The effect of Force Majeure is taken into account in calculating the Inverter System Equivalent Availability Factor over the 12 calendar month LD Period as follows: When an LD Period contains any hours in a month during which the Inverter System or a portion of the Inverter System is unavailable due to Force Majeure, then such month shall be excluded from the LD Period and the LD Period shall be extended back in time to include the next previous month during which there was no such unavailability of the Inverter System or a portion thereof due to Force Majeure. This means the Inverter System Equivalent Availability Factor would not change from that determined in the month directly preceding a month containing Force Majeure.

EXAMPLE: The following is an example of an Inverter System Equivalent Availability Factor calculation and is included for illustrative purposes only. Assume the following:

1. Inverter System has 10 inverters and the Facility has a Contract Capacity of 30 MWs.

2. LD Period = first 12 calendar months of the Agreement (non-leap year).
3. Inverter System was online and converting electric energy for 8,015 hours and was available but not producing electric energy due to lack of sufficient irradiance and BESS SOC for production for 500 hours.
4. 3 Inverters were offline for 100 hours due to a Planned Derating while not otherwise in RSH.
5. 2 Inverters were offline for 50 hours due to an Unplanned Derating while not otherwise in RSH.
6. The Inverter System had a 3 MW derating for 100 hours due to Seller-Attributable Non-Generation while not otherwise in RSH.

The Inverter System Equivalent Availability Factor would be calculated as follows:

$$PH = 8,760 \text{ hours in 12 calendar months}$$

$$SH = 8,015 \text{ hours}$$

$$RSH = 500 \text{ hours}$$

$$AH = SH + RSH = 8,015 \text{ hours} + 500 \text{ hours} = 8,515 \text{ hours}$$

$$ESADH = 100 \text{ hours} \times \left(\frac{3 \text{ MW}}{30 \text{ MW}} \right) = 10 \text{ hours}$$

$$EPDH = 100 \text{ hours} \times \left(\frac{3 \text{ inverters}}{10 \text{ inverters}} \right) = 30 \text{ hours}$$

$$EUDH = 50 \text{ hours} \times \left(\frac{2 \text{ inverters}}{10 \text{ inverters}} \right) = 10 \text{ hours}$$

$$EDH = ESADH + EPDH + EUDH = 10 \text{ hours} + 30 \text{ hours} + 10 \text{ hours} = 50 \text{ hours}$$

$$EAF = 100\% \times \frac{8,515 - 50}{8,760} = 96.6\%$$

- (b) Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages. For each LD Period, a Inverter System Equivalent Availability Factor shall be calculated as provided in accordance with Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor) of this Agreement. In the event the Inverter System Equivalent Availability Factor is less than 98% (the "Inverter System Equivalent Availability Factor Performance Metric") for any LD Period, Seller shall be subject to liquidated damages as set forth in this Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages). For avoidance of doubt, because the Inverter System Equivalent Availability Factor is calculated over an LD Period of 12 calendar months, the first month for which liquidated damages would be calculated under this Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages) would be the last calendar month of the initial Contract Year. If the Inverter System Equivalent Availability Factor for a LD Period is less than the Inverter System Equivalent Availability Factor Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the Inverter System Equivalent Availability Factor Performance Metric for such LD Period, an amount calculated in accordance with the following formula:

<u>Inverter System Equivalent Availability Factor</u>	<u>Amount of Liquidated Damages Per Calendar Month</u>
---	--

97.9% and below For each one-tenth of one percent (0.001) by which the Inverter System Equivalent Availability Factor for such LD Period falls below the PV

System Equivalent Availability Factor Performance Metric, an amount equal to 0.001917 of the Applicable Period Lump Sum Payment for the last calendar month of such LD Period.

For purposes of determining liquidated damages under the preceding formula, the amount by which the Inverter System Equivalent Availability Factor for the LD Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the Inverter System Equivalent Availability Factor Performance Metric for a LD Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

EXAMPLE: The following is an example calculation of liquidated damages for the Inverter System Equivalent Availability Factor Performance Metric and is included for illustrative purposes only. Assume the monthly Lump Sum Payment is \$1,000,000 and the Inverter System Equivalent Availability Factor is 96.6% as calculated in the example in Section 2.5(a) (Calculation of the Inverter System Equivalent Availability Factor) above.

The liquidated damages would be calculated as follows:

Applicable Period Lump Sum Payment = \$1,000,000

\$1,000,000 x .001917 = \$1,917

98.0% - 96.6% = 1.4%

1.4%/0.1% = 14

\$1,917 x 14 = \$26,838

- (c) Inverter System Equivalent Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.5(b) (Inverter System Equivalent

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

2.6 Measured Performance Ratio; Liquidated Damages; Termination Rights.

(a) Calculation of Measured Performance Ratio.

- (i) The Measured Performance Ratio ("MPR") represents the PV System's measured power output compared to its theoretical DC power output as adjusted for the plane of array irradiance and weather conditions measured at the Site. The net PV System output in MW will be measured at such points mutually agreed to by the Parties on the Facility's single-line diagram attached hereto as Attachment E (Single-Line Drawing and Interface Block Diagram).
- (ii) Following the end of each MPR Assessment Period, the MPR shall be calculated for such MPR Assessment Period (using the previous 12 months of data) as follows:

$$MPR_{corr} = \frac{\sum_i P_{AC_i} + \sum_i P_{DC_i}}{\sum_i \left[P_{DC_{STC}} \left(\frac{G_{POA_i}}{G_{STC}} \right) \left(1 - \frac{\delta}{100} (T_{cell_typ_avg} - T_{cell_i}) \right) \right]}$$

Where:

i = each 15-minute interval during the MPR Assessment Period where the conditions set forth in Section 2.6(a) (iii) are met.

P_{AC_i} is the active power output of the PV System measured at the POI averaged over time period i (MW).

P_{DC_i} is the measured DC power output of the PV System measured at the DC input to the BESS charging system averaged over time period i (MW).

G_{STC} = plane of array irradiance at the standard condition of 1,000 W/m^2 .

$P_{DC_{STC}}$ is the DC rated capacity of the PV System at the standard test conditions of 1,000 W/m^2 and 25°C (MW), (i.e., the DC power rating of the PV panels at standard test conditions multiplied by the number of PV panels in the Facility).

G_{POA_i} is the measured plane of array irradiance averaged over time period i (W/m^2).

T_{cell_i} = cell temperature (°C) computed from measured meteorological data averaged over time period I using the equation provided below.

$T_{cell_typ_avg}$ = annual average irradiance-weighted cell temperature ($^{\circ}\text{C}$) computed from one year of weather data using the GPR Performance Metric weather file and the equation below. Calculated once per GPR.

δ = temperature coefficient for power (%/ $^{\circ}\text{C}$, negative in sign) that corresponds to the installed photovoltaic modules.

$$= \frac{\sum_j [G_{POA_typ_j} \times T_{cell_typ_j}]}{\sum_j G_{POA_typ_j}}$$

Where:

j = each hour of the year in the GPR Performance Metric weather file (hours 1-8760).

$G_{POA_typ_j}$ = Plane of array irradiance (W/m^2) for each hour of the year determined from the GPR Performance Metric weather file and tracker orientation. This irradiance is zero (0) when the sun is not up.

$T_{cell_typ_j}$ = calculated cell operating temperature for each hour of the year. Computed using the equation for T_{cell_i} below but using the GPR Performance Metric weather file for the weather variables in the equation.

$$T_{cell_i} = G_{POA_i} \times e^{(a + b \times WS_i)} + T_{a_i} + \left(\frac{G_{POA_i}}{G_{STC}} \times dT_{cond} \right)$$

Where:

T_{a_i} = the measured ambient temperature [$^{\circ}\text{C}$] averaged over time period i.

WS_i = the measured wind speed corrected to a measurement height of 10 meters (using the anemometer height and proper Hellmann coefficient) averaged over time period i [m/s].

a = empirical constant reflecting the increase of module temperature with sunlight as presented in Table 2 below.

b = empirical constant reflecting the effect of wind speed on the module temperature as presented in Table 2 below [s/m].

e = Euler's constant and the base for the natural logarithm.

dT_{cond} = conduction temperature coefficient from module to cell as presented in Table 2 below.

Table 2. Empirical Convective Heat Transfer Coefficients Module Type

	Mount	a	b	dT_{cond}
Glass/cell/glass	Open rack	-3.47	-0.0594	3
Glass/cell/glass	Close-roof mount	-2.98	-0.0471	1
Glass/cell/polymer sheet	Open rack	-3.56	-0.0750	3
Glass/cell/polymer sheet	Insulated back	-2.81	-0.0455	0
Polymer/thin-film/steel	Open rack	-3.58	-0.1130	3

(iii) The time periods used in the foregoing calculation shall be only periods during which, for the entire 15-minute interval, the PV System output is allowed to convert all irradiance to gross DC power (whether directed to the BESS or to the POI) and the measured plane of array irradiance is not less than 600 W/m². Data points that will be excluded are limited to data points where: (A) the G_{POA} is

below 600 W/m²; (B) G_{POA} above the maximum threshold; (C) the Inverter System is in RSH; (D) when the Inverter System has a Planned or Unplanned Derating; (E) the PV System was not allowed to convert the full gross DC output to energy to deliver to the BESS and/or POI due to Company Dispatch or Inverter System rated power being less than the PV System DC output and the BESS reaching its maximum State of Charge; (F) there is an Inverter System Outage; (G) the BESS is discharging; or (H) there is a Force Majeure affecting the PV System. The aforementioned 15-minute intervals are fixed intervals that commence, in sequence, at the top of each hour and at 15, 30 and 45 minutes past the hour. At the end of each month, Seller shall provide Company a report that lists all hours when such excluded data points occur (from the Facility's SCADA system as necessary) to validate the exclusion of any data points from the calculation set forth in Section 2.6(a)(ii) above. This information shall be validated on a monthly basis.

The effect of Force Majeure is taken into account in calculating the MPR for the MPR Assessment Period as follows: When an MPR Assessment Period contains any hours in a month during which the PV System or a portion of the PV System is unavailable due to Force Majeure, then such month shall be excluded from the MPR Assessment Period and the MPR Assessment Period shall be retroactively extended to include the next previous month during which there was no such unavailability of the PV System or a portion thereof due to Force Majeure. This means the MPR would not change from that determined in the month directly preceding a month containing Force Majeure.

- (iv) MPR Test. In the event that the set of operational data points under Section 2.6(a)(iii) that is available for any month to calculate the MPR cannot be validated to Company's reasonable satisfaction or in the event there were not at least 16 such data points during such month that could be used to calculate the MPR, the Company shall have the right

to perform a test ("MPR Test") to collect the data points for such month to be used to calculate the MPR in lieu of the use of operational data for such month. The Company shall retain sole discretion as to when to conduct the MPR Test and the MPR Test may be conducted at any point during the month following the month for which Company was either unable to validate the set of operational data points for such month or there were not at least 16 data points available during such month, provided that Company will provide Seller three (3) Business Days' notice prior to conducting the MPR Test. The MPR Test shall have a minimum duration of three (3) Days and shall run until at least 48 data points are collected that meet the criteria set forth in Section 2.6(a)(iii), subject to the limitation set forth in the last sentence of this Section 2.6(a)(iv). To the extent possible, the Company shall schedule the MPR Test for a period where the Inverter System and BESS are fully available and weather conditions are expected to be optimum allowing the PV System to generate at full capacity for the duration of the MPR Test (if possible). However, if Company chooses a period where some of the Facility is unavailable, $P_{bc_{src}}$ shall be adjusted to account for any reduction in capability to accept energy from the PV System due to the unavailable equipment.

- (v) For each MPR Assessment Period that includes one or more months for which a MPR Test was performed, the data points collected during said MPR Test for such month(s) shall be used together with the data points for months for which an MPR Test was not conducted to calculate the MPR for the MPR Assessment Period in question using the formula set forth in Section 2.6(a)(ii) above. The result of the calculation based on the MPR Test shall be the MPR for the MPR Assessment Period in question.
- (vi) EXAMPLE: The following is an example of a Measured Performance Ratio calculation and is included for illustrative purposes only. Assume the following:

1. Facility with 120,000 panels with a standard test condition rating of 300 W
2. $P_{DCSTC} = 120,000 \times 300 \text{ W} = 36 \text{ MW}$
3. For illustrative purposes only, 4 hours of data which met the criteria specified in Section 2.6(a)(iii) have been recorded over the MPR Assessment Period. It should be noted that all available operational data that meets the criteria specified in Section 2.6(a)(iii) shall be included in the actual calculation:

Time Period	Average Measured Plane of Array Irradiance (W/m ²)	Average Measured Active Power at POI (MW)	Average Measured DC Power at BESS Charging Input (MW)	Average Measured Ambient Temperature (°C)	10 Meter Elevation Average Measured Wind Speed (m/s)
1	690	16	0	27	3
2	850	21	21	26	8
...
i	750	19	1	29	7

$$MPR_{corr} = \frac{\sum_i P_{AC,i} + \sum_i P_{DC,i}}{\sum_i \left[P_{DCSTC} \left(\frac{G_{POA_i}}{G_{STC}} \right) \left(1 - \frac{\delta}{100} (T_{cell_typ_avg} - T_{cell,i}) \right) \right]}$$

where:

$$T_{cell,i} = G_{POA_i} \times e^{(a + b \times WS_i)} + T_{a,i} + \left(\frac{G_{POA_i}}{G_{STC}} \times dT_{cond} \right)$$

Assuming:

The temperature coefficient (δ) of the installed modules is $-0.4\%/\text{°C}$

The average irradiance-weighted cell temperature ($T_{cell_typ_avg}$) has been calculated as 28°C

The installed modules are a glass/cell/polymer sheet module type using an open rack mount. (a = -3.56; b = -0.0750) ; $dT_{cond} = 3$)

$$\sum_i S_{AC_i} = 16 \text{ MW} + 2 \text{ MW} + \dots + 19 \text{ MW} = \mathbf{255 \text{ MW}}$$

$$\sum_i P_{DC_i} = 0 \text{ MW} + 22 \text{ MW} + \dots + 10 \text{ MW} = \mathbf{50 \text{ MW}}$$

$$\begin{aligned} \sum_i \left[P_{DC_{STC}} \left(\frac{G_{POA_i}}{G_{STC}} \right) \left(1 - \frac{\delta}{100} (T_{cell_type_avg} - T_{cell_i}) \right) \right] &= 36 \text{ MW} \times \\ &[(690/1000) \times (1 - (0.4/100) \times (28 - ((690) \times e^{(-3.56 - 0.075 \times 3)} \\ &+ 27) + ((690/1000) \times 3))) + \\ &(850/1000) \times (1 - (0.4/100) \times (28 - ((850) \times e^{(-3.56 - 0.075 \times 8)} \\ &+ 26) + ((850/1000) \times 3))) + \\ &\dots + \\ &(750/1000) \times (1 - (0.4/100) \times (28 - ((750) \times e^{(-3.56 - 0.075 \times 7)} \\ &+ 29) + ((750/1000) \times 3)))] \\ &= \mathbf{374.76 \text{ MW}} \end{aligned}$$

$$MPR = (255 \text{ MW} + 50 \text{ MW}) / 374.76 \text{ MW} = \mathbf{0.814}$$

(b) Determination of GPR Performance Metric.

- (i) Upon Commencement of Commercial Operations. If a copy of the IE Energy Assessment Report together with the supporting Year 1 P-Value of 50 8760 data (plane of array irradiance, ambient temperature, windspeed, and corresponding power output) is not provided to Company in accordance with Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential), the GPR Performance Metric for the period commencing on the Commercial Operations Date through the end of the calendar month during which the Initial OEPR is issued shall be **0.85**. If a copy of the IE Energy Assessment Report together with the supporting data (plane of array irradiance, ambient temperature windspeed, and corresponding power output) is

provided to Company in accordance with Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of Attachment U (Calculation and Adjustment of Net Energy Potential), the GPR Performance Metric shall be the GPR set forth in the IE Energy Assessment Report and based on the Year 1 P-Value of 50 8760 data, provided that such GPR is justified by such supporting data and consistent with the minimum irradiance level and points of power measurements specified in Section 2.6(a)(i), (ii), & (iii). In the event that the IE Assessment Report includes the supporting data (plane of array irradiance, ambient temperature, windspeed, and corresponding power output) relied upon in arriving at the NEP IE Estimate, but does not set forth a GPR, the GPR Performance Metric shall be calculated using such supporting data and the Measured Performance Ratio formula in Section 2.6(a)(ii) of this Agreement. Within 30 Days of Company's receipt of the IE Energy Assessment Report together with the aforementioned supporting data, Company shall provide written notice to Seller of either (aa) the GPR Performance Metric derived from such supporting data or (bb) Company's inability to reasonably derive a GPR Performance Metric from such supporting data, in which case the GPR Performance Metric shall be **0.85**.

- (ii) Commencing With Initial OEPR. For the period commencing with the first Day of the calendar month following the establishment of the NEP OEPR Estimate for the Initial OEPR (as provided in Section 2 (Initial OEPR) and Sections 4(g) (Review of the First OEPR Evaluator Report) and (h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement) through the end of the calendar month during which the NEP OEPR Estimate for the first Subsequent OEPR is established as provided in Section 3 (Subsequent OEPRs) and Sections 4(g) (Review of the First OEPR Evaluator Report) and (h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, the GPR Performance Metric shall be the

GPR as established through the Initial OEPR process as aforementioned. If no GPR has been established through the Initial OEPR process, the GPR Performance Metric shall be **0.85**.

(iii) Commencing With the First Subsequent OEPR and Thereafter. Commencing with the establishment of the NEP OEPR Estimate for the first Subsequent OEPR as provided in Section 3 (Subsequent OEPRs) and Sections 4(g) (Review of the First OEPR Evaluator Report) and (h) (Review of the Second OEPR Evaluator Report) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, for each period commencing with the first Day of the calendar month following the establishment of the NEP OEPR Estimate for a Subsequent OEPR (including but not limited to the first Subsequent OEPR) through the end of the calendar month during which the NEP OEPR Estimate is established for the next Subsequent OEPR, the GPR Performance Metric shall be the GPR established for the applicable Subsequent OEPR. If no GPR has been established through the then applicable Subsequent OEPR process, the GPR Performance Metric shall be **0.85**.

(c) GPR Performance Metric and Liquidated Damages. For each MPR Assessment Period, a Measured Performance Ratio shall be calculated as provided in Section 2.6(a) (Calculation of Measured Performance Ratio) of this Agreement. In the event the MPR is less than **95%** of the GPR Performance Metric as adjusted by the degradation factor set forth below, Seller shall pay, and Company shall accept, as liquidated damages for Seller's failure to achieve the GPR Performance Metric for such MPR Assessment Period, an amount calculated in accordance with the following formula:

<u>Tier</u>	<u>Measured Performance Ratio</u>	<u>Amount of Liquidated Damages Per MPR Assessment Period</u>
1	GPR Performance Metric x DF x	For each one-tenth of one percent (0.001) by which the Measured Performance

	0.95 > Measured Performance Ratio ≥ GPR Performance Metric x DF x 0.90	Ratio for such MPR Assessment Period falls below the upper limit of the bandwidth specified in this subparagraph, an amount equal to one-tenth of one percent (0.001) of the MPR Assessment Period Lump Sum Payment. The upper end of the aforementioned bandwidth is equal to the product of the GPR Performance Metric, the applicable degradation factor (DF), and 95%. The lower limit of the aforementioned bandwidth consists of and includes the product of the GPR Performance Metric, the applicable degradation factor (DF), and 90%; plus
Tier 2	GPR Performance Metric x DF x 0.90 > Measured Performance Ratio ≥ GPR Performance Metric x DF x 0.80	For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such MPR Assessment Period falls below the upper limit of the bandwidth specified in this subparagraph, an amount equal to two-tenths of one percent (0.002) of the MPR Assessment Period Lump Sum Payment. The upper end of the aforementioned bandwidth is equal to the product of the GPR Performance Metric, the applicable degradation factor (DF), and 90%. The lower limit of the aforementioned bandwidth consists of and includes the product of the GPR

	Performance Metric, the applicable degradation factor (DF), and 80%; plus
Measured Performance Ratio < GPR Performance Metric x DF x 0.80	For each one-tenth of one percent (0.001) by which the Measured Performance Ratio for such MPR Assessment Period falls below the product of the GPR Performance Metric, the applicable degradation factor (DF), and 80%, an amount equal to four-tenths of one percent (0.004) of the MPR Assessment Period Lump Sum Payment.

For purposes of the foregoing calculations under this Section 2.6(c) (GPR Performance Metric and Liquidated Damages), the degradation factor (DF) is calculated for each Contract Year (e.g., second Contract Year, third Contract Year, fourth Contract Year, etc.) as follows:

$DF = 1 - 0.006 * (\text{Applicable Contract Year} - 1)$. For purposes of the foregoing formula, the "Applicable Contract Year" is the Contract Year within which the calendar month in question falls. If all of the months of an MPR Assessment Period fall within the same Contract Year, the Contract Year is the "Applicable Contract Year." For example, if all of the months of MPR Assessment Period fall within the third Contract Year, the value assigned to the "Applicable Contract Year" would be "3"

and the formula for calculating the DF for such LD Period would be: $DF = 1 - 0.006 * (3 - 1)$. However, because the MPR Assessment Period is a rolling 12-month period, the MPR Assessment Period will often straddle two consecutive Contract Years. In such cases, all of the months falling within the same Contract Year will be assigned the value for such Contract Year and the value assigned to the "Applicable Contract Year" for purposes of the foregoing formula shall be the average of the assigned monthly values for such 12-month MPR Assessment Period. For example, for an MPR Assessment Period which has four months in the third Contract Year and eight months in the fourth Contract Year, the value assigned

to the "Applicable Contract Year" for such MPR Assessment Period would be 3.67, as calculated as follows:

$$\frac{(3 \times 4) + (4 \times 8)}{12}$$

and the formula for calculating the DF for such MPR Assessment Period would be : $DF = 1 - 0.006 * (3.67 - 1)$. For purposes of determining liquidated damages under this Section 2.6(c) (GPR Performance Metric and Liquidated Damages), the amount by which the Measured Performance Ratio for the MPR Assessment Period in question falls below the applicable threshold shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the GPR Performance Metric for a MPR Assessment Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

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

The MPR Assessment Period has five months in the second Contract Year and seven months in the third Contract Year.

The GPR for the Facility as determined by the OEPR is 0.9.

The MPR has been calculated to be 0.694.

Applicable Contract Year = $[(5 \times 2) + (7 \times 3)]/12 = 2.58$

$DF = 1 - 0.006 * (2.58 - 1) = 0.9905$

Upper limit of the Tier 1 bandwidth = $0.9 \times 0.9905 \times 0.95 = 0.847$

Lower limit of the Tier 1 bandwidth/Upper limit of the Tier 2 bandwidth = $0.9 \times 0.9905 \times 0.9 = 0.802$

Lower limit of the Tier 2 bandwidth = $0.8 \times 0.9905 \times 0.9$
= 0.713

$LD = [(0.847 - 0.802) \times 1] + [(0.802 - 0.713) \times 2] +$
 $[(0.713 - 0.694) \times 4]$ x MPR Assessment Period Lump Sum
Payment
= 0.299 x MPR Assessment Period Lump Sum Payment

- (d) MPR Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.6(c) (GPR Performance Metric and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the GPR Performance Metric for a MPR Assessment Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the Facility is likely to continue to substantially underperform the GPR Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.6(c) (GPR Performance Metric and Liquidated Damages) for those MPR Assessment Periods during which the Seller failed to achieve the GPR Performance Metric, the failure of the PV System to achieve, for each of three consecutive Contract Years, a Measured Performance Ratio of not less than the Tier 2 Bandwidth for such Contract Year shall constitute an Event of Default under Section 15.1(c) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.7 BESS Capacity Test; Liquidated Damages; Termination Rights.

- (a) BESS Capacity Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a BESS Capacity Test, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the BESS Capacity Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, the

amount set forth in the following table (on a progressive basis) upon proper demand at the end the BESS Measurement Period in question:

BESS Capacity Ratio	Liquidated Damage Amount
Tier 1 95.0% - 99.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 100% and is above 94.9%, an amount equal to one-tenth of one percent (0.001) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 2 85.0% - 94.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 95% and is above 84.9%, an amount equal to one and a half-tenths of one percent (0.0015) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 3 75.0% - 84.9%	For each one-tenth of one percent (0.001) that the BESS Capacity Ratio is below 85% and is above 74.9%, an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question; plus
Tier 4 60.0% - 74.9%	For each one-tenth of one percent (0.001) that the

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

For purposes of determining liquidated damages under this Section 2.7(a) (BESS Capacity Test and Liquidated Damages), the starting and end points for the duration of the period that the BESS discharges shall be rounded to the nearest MWh. Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

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

The Maximum Rated Output for the BESS is 25 MW.

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

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

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

- (b) BESS Capacity Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.7(a) (BESS Capacity Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric during a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section 2.7(a) (BESS Capacity Test and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the BESS Capacity Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.7(b) (BESS Capacity Test Termination Rights). If the BESS is in the Lowest BESS Capacity Bandwidth for any two BESS Measurement Periods during a 12-month period, an 18-month cure period (the "BESS Capacity Cure Period") will commence on the Day

following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such BESS Capacity Cure Period, BESS Capacity Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as set forth in Section 2.7(a) (BESS Capacity Test and Liquidated Damages); provided, however, that if the Seller fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period, such failure shall constitute an Event of Default under Section 15.1(d) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

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

- (a) BESS Annual Equivalent Availability Factor and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, a BESS Annual Equivalent Availability Factor shall be calculated as set forth in Attachment X (BESS Annual Equivalent Availability Factor). If the BESS Annual Equivalent Availability Factor for such BESS Measurement Period is less than **97%** (the "BESS EAF Performance Metric"), Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, the amount set forth in the following table (on a progressive basis):

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

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

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

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

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

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

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

	Measurement Period in question; plus
Tier 4 Below 75.0%	For each one-tenth of one percent (0.001) by which the BESS Annual Equivalent Availability Factor falls below 75%, an amount equal to four-tenths of one percent (0.004) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

For purposes of determining liquidated damages under this Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), the BESS Annual Equivalent Availability Factor for the BESS Measurement Period in question shall be rounded to the nearest one-tenth of one percent (0.001). Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (b) BESS Annual Equivalent Availability Factor Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) is to compensate Company for the damages that Company would incur if the Seller fails to achieve the BESS EAF Performance Metric for a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the BESS EAF Performance Metric. Accordingly, and without limitation to Company's rights under said Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) for those BESS Measurement Periods during which the Seller failed to achieve the BESS EAF

Performance Metric, the failure of the Seller to achieve, for each of six consecutive BESS Measurement Periods, a BESS Annual Equivalent Availability Factor of not less than **75%** shall constitute an Event of Default under Section 15.1(e) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company); provided, however, that if a BESS Measurement Period for which the aforementioned 75% threshold is not achieved falls within a BESS Capacity Cure Period, such BESS Measurement Period shall be excluded from the calculation of the aforementioned "six consecutive BESS Measurement Periods" if the failure to achieve the aforementioned 75% threshold was the result of unavailability caused by the process of carrying out the repairs to or replacements of the BESS necessary to remedy the failure of the BESS to achieve the BESS Capacity Performance Metric.

2.9 BESS Annual Equivalent Forced Outage Factor; Liquidated Damages.

For each BESS Measurement Period following the Commercial Operations Date, the BESS shall maintain a BESS Annual Equivalent Forced Outage Factor of not more than 4% (the "BESS EFOF Performance Metric") as calculated as set forth in Attachment Y (BESS Annual Equivalent Forced Outage Factor). If the BESS Annual Equivalent Forced Outage Factor for such BESS Measurement Period exceeds the BESS EFOF Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for exceeding the BESS EFOF Performance Metric, the amount set forth in the following table (on a progressive basis):

BESS Annual Equivalent Forced Outage Factor	Liquidated Damage Amount
0.0% - 4.0%	-0-
4.1% - 6.9%	For each one-tenth of one percent (0.001) that the BESS Annual Equivalent Forced Outage Factor is above 4.0% but less than 7.0%, an amount equal to

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

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

For example, if the BESS Equivalent Annual Forced Outage Factor was 4.1% as calculated in the example in Attachment Y (BESS Annual Equivalent Forced Outage Factor) attached hereto and the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question is \$1,000,000, the liquidated damages would be \$2,000, calculated as follows:

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

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

- (a) RTE Test and Liquidated Damages. For each BESS Measurement Period following the Commercial Operations Date, the BESS shall be required to complete a RTE Test or otherwise demonstrate satisfaction of the RTE Performance Metric, as more fully set forth in Attachment W (BESS Tests) to this Agreement. For each BESS Measurement Period for which the BESS fails to demonstrate that it satisfies the RTE Performance Metric, Seller shall pay, and Company shall accept, as liquidated damages for such shortfall, in the amount to be calculated as provided in this Section 2.10(a) (RTE Test and Liquidated Damages).

The RTE Performance Metric is 85%. The RTE Performance Metric represents the lowest acceptable efficiency of the BESS for a full charge and discharge cycle if all energy to achieve the full cycle was taken from the BESS DC input and delivered to the Point of Interconnection.

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

The Selected RTE Test is the highest RTE Test during the BESS Measurement Period in question.

Seller shall be liable for liquidated damages if:

$$(PM - RTE\ Ratio) * 100 > 2\%$$

Where:

PM = RTE Performance Metric stated as percentage

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

For each percentage point by which the RTE Ratio is below the LDT, Seller shall pay, and Company shall accept, liquidated damages in an amount equal to two-tenths of one percent (0.002) of the BESS Allocated Portion of the Lump Sum Payment for the BESS Measurement Period in question.

Each Party agrees and acknowledges that (i) the damages that Company would incur if the Seller fails to achieve

the RTE Performance Metric for a BESS Measurement Period would be difficult or impossible to calculate with certainty and (ii) the aforesaid liquidated damages are an appropriate approximation of such damages.

- (b) RTE Test Termination Rights. The Parties acknowledge that, although the intent of the liquidated damages payable under Section 2.10(a) (RTE Test and Liquidated Damages) is to compensate Company for the damages that Company would incur if the BESS fails to demonstrate satisfaction of the RTE Performance Metric during a BESS Measurement Period, such liquidated damages are not intended to compensate Company for the damages that Company would incur if a pattern of underperformance establishes a reasonable expectation that the BESS is likely to continue to substantially underperform the Company's expectations. Accordingly, and without limitation to Company's rights under said Section 2.10(a) (RTE Test and Liquidated Damages) for those BESS Measurement Periods during which the BESS fails to demonstrate satisfaction of the RTE Performance Metric, substantial underperformance shall give rise to a termination right as set forth in this Section 2.10(b) (RTE Test Termination Rights). If the RTE Ratio for the Selected RTE Test for the BESS Measurement Period in question is more than 15 percentage points below the RTE Performance Metric for any two BESS Measurement Periods during a 12-month period, an **18-month** cure period (the "RTE Cure Period") will commence on the Day following the close of the second such BESS Measurement Period. For each BESS Measurement Period during such RTE Cure Period, RTE Tests shall continue to be conducted as set forth in Attachment W (BESS Tests) and liquidated damages paid and accepted as set forth in Section 2.10(a) (RTE Test and Liquidated Damages); provided, however, that if the Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period, such failure shall constitute an Event of Default under Section 15.1(g) of this Agreement for which Company shall have the rights (including but not limited to the termination rights) set forth in Article 15 (Events of Default) and Article 16 (Damages in the Event of Termination by Company).

2.11 [Reserved]

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

- (a) Payment of Liquidated Damages. With respect to the liquidated damages payable under Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages), Section 2.6(c) (GPR Performance Metric and Liquidated Damages), Section 2.7(a) (BESS Capacity Test and Liquidated Damages), Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages), Section 2.9 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), and Section 2.10 (BESS Round Trip Efficiency; Liquidated Damages; Termination Rights) (collectively, the "Performance Metrics LDs"), Company shall have the right, at any time on or after the LD Assessment Date for the liquidated damages in question, at Company's option, to set-off such liquidated damages from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or, to draw such liquidated damages from the Operating Period Security, as follows:
- (i) if the BESS fails to achieve the BESS Capacity Performance Metric for a BESS Measurement Period, the Company shall have the right to set-off or draw the amount owed for such failure as calculated as provided in Section 2.7(a) (BESS Capacity Test and Liquidated Damages); and
- (ii) if the Monthly Report for the calendar month, MPR Assessment Period, or BESS Measurement Period in question, as applicable, shows a failure to achieve one or more of the Performance Metrics required for the LD Period in question, the MPR Measurement Period in question, or the BESS Measurement Period in question, as applicable, and Company does not submit a Notice of Disagreement with respect to such Monthly Report, the Company shall have the right to set-off or draw the amount of liquidated damages owed for such failure as calculated as provided in Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages), Section 2.6(c) (GPR Performance Metric and Liquidated Damages), Section 2.8(a) (BESS Annual Equivalent Availability Factor

and Liquidated Damages), Section 2.9 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), and Section 2.10 (BESS Round Trip Efficiency Test; Liquidated Damages; Termination Rights), as applicable;

- (iii) in all cases in which Company submits a Notice of Disagreement for a given Monthly Report, Company shall have the right to set-off or draw all or any portion of the amount of liquidated damages for the calendar month in question, MPR Assessment Period in question, or BESS Measurement Period in question, as applicable, as calculated on the basis of the shortfall(s) in the achievement of the Performance Metric(s) in question, as shown in such Notice of Disagreement; and
- (iv) in the event of any disagreement as to the liquidated damages owed under clause (i) and (iii) above:
 - (aa) if the amount set-off or drawn by the Company exceeds the amount of liquidated damages for such calendar month, BESS Measurement Period or MPR Assessment Period that are eventually found to be payable for the LD Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Company shall promptly (and in no event more than forty-five (45) Business Days from the date of such determination) repay such excess to Seller together with, unless the Parties otherwise agree in writing, interest from the date of Company's set-off or draw until the date that such excess is repaid to Seller at the average Prime Rate for such period; and
 - (bb) if Company does not exercise its rights to set-off or draw liquidated damages for such calendar month, BESS Measurement Period or MPR Assessment Period, or does not set-off or draw the full amount of the liquidated damages for such calendar month, BESS Measurement Period or MPR Assessment Period that are eventually

found to be payable for the LD Period, BESS Measurement Period or MPR Assessment Period in question as determined under Section 2 (Monthly Report Disagreements) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement, Seller shall promptly, upon such determination as aforesaid, pay to Company the amount of liquidated damages that are found to be owing together with, unless otherwise agreed by the Parties in writing, interest on the amount of such liquidated damages that went unpaid from the applicable LD Assessment Date for such liquidated damages until the date such liquidated damages are paid to Company in full at the average Prime Rate for such period, and Company shall have the right, at its option, to set-off such interest for the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or to draw from the Operating Period Security.

Any delay by Company in exercising its rights to set-off liquidated damages and/or interest from the amounts to be paid to Seller under Section 2.3 (Lump Sum Payment) of this Agreement or to draw such liquidated damages and/or interest from the Operating Period Security shall not constitute a waiver by Company of its right to do so.

- (b) Limitation on Liquidated Damages. Notwithstanding any other provision of this Agreement to the contrary, the aggregate liquidated damages paid by Seller during each Contract Year for the Performance Metrics LDs, such payments by Seller to include but not be limited to any set-offs or draws made by Company during such Contract Year pursuant to Section 2.12(a) (Payment of Liquidated Damages), shall not exceed the total of the twelve (12) monthly Lump Sum Payments payable during such Contract Year pursuant to Section 2.3 (Lump Sum Payment) and Section 2.17 (Payment Procedures). For avoidance of doubt: A monthly Lump Sum Payment that is invoiced by Seller to Company pursuant to Section 2.16 (Seller's Preparation of the Monthly Invoice) for, e.g., the twelfth (12th) calendar month of Contract Year N but is paid during Contract Year N+1 as provided in Section

2.17 (Payment Procedures) shall, for purposes of determining the limitation on Performance Metrics LDs under this Section 2.12(b) (Limitation on Liquidated Damages), be included in the total of the twelve (12) monthly Lump Sum Payments payable during Contract Year N+1. As a result of the foregoing, the total of the monthly Lump Sum Payments used to establish the limitation on Performance Metrics LDs for the initial Contract Year under this Section 2.12(b) (Limitation on Liquidated Damages) will be less than twelve (12). The Parties acknowledge that, because the monthly Lump Sum Payment is subject to adjustment (including downward adjustment) as provided in Section 2.3 (Lump Sum Payment), it is possible that a downward adjustment in some or all of the monthly Lump Sum Payments payable during a Contract Year might cause the Performance Metrics LDs paid by Seller during the course of such Contract Year to exceed the limitation on the Performance Metrics LDs for such Contract Year established at the close of such Contract Year pursuant to the first sentence of this Section 2.12(b) (Limitation on Liquidated Damages). In such case, Company shall promptly upon the determination that the Performance Metrics LDs paid during the course of such Contract Year exceeded the limitation on Performance Metrics LDs for such Contract Year (and in no event more than forty-five (45) Business Days from the end of such Contract Year) repay such excess amount to Seller without interest.

- 2.13 No Payments Prior to Commercial Operations Date. Prior to the Commercial Operations Date, Company may accept test energy delivered by Seller in accordance with Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Company shall not be obligated to pay for any test energy accepted prior to the Commercial Operations Date.
- 2.14 Sales of Electric Energy by Company to Seller. Sales of electric energy by Company to Seller shall be governed by an applicable rate schedule filed with the PUC and not by this Agreement, except with respect to the reactive amount adjustment (if any) referred to in Attachment B (Facility Owned by Seller).

- 2.15 [Reserved]
- 2.16 Seller's Preparation of the Monthly Invoice. By the tenth (10th) Business Day of each calendar month, Seller shall submit to Company an invoice that separately states the following for the preceding month: (i) the Actual Output during this period; (ii) the monthly Lump Sum Payment for this period; and (iii) the monthly metering charge as set forth in Article 7 (Seller Payments) of this Agreement.
- 2.17 Payment Procedures. By the twentieth (20th) Business Day of each calendar month following the month during which the invoice was submitted (i.e., by the twentieth (20th) Business Day of the second calendar month following the calendar month covered by the invoice in question), (but, except as otherwise provided in the following sentence, no later than the last Business Day of that month if there are less than twenty (20) Business Days in that month), Company shall, subject to Company's right to set-off liquidated damages as provided in Section 2.12 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages) of this Agreement, make payment on such invoice, or provide to Seller an itemized statement of its objections to all or any portion of such invoice and pay any undisputed amount. Notwithstanding the foregoing, the Day by which the Company shall make payment to Seller hereunder shall be increased by one (1) Day for each Day that Seller is delinquent in providing to the Company either: (i) the Monthly Report for the calendar month in question pursuant to Section 1 (Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement; or (ii) the information required under Section 2.16 (Seller's Preparation of the Monthly Invoice) of this Agreement.
- 2.18 Late Payments. Notwithstanding all or any portion of such invoice in dispute, and subject to the provisions of Section 2.12(a)(iii) of this Agreement (to the extent applicable), interest shall accrue on any invoiced amount that remains unpaid following the twentieth (20th) Business Day of each calendar month (or the last Business Day of that month if there are less than twenty Business Days in that month), or following the due date for such payment if extended pursuant to Section 2.17 (Payment Procedures), at the average daily Prime Rate for the period commencing on the Day following

the Day such payment is due until the invoiced amounts (or amounts due to 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.

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

ARTICLE 3
FACILITY OWNED AND/OR OPERATED BY SELLER

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

but in no event more than 90 Days after Seller's receipt of such request (or such other period of time as Company and Seller may agree in writing) reasonable measures to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" ("Seller's RPS Modifications Proposal").

- (b) Seller's RPS Modifications Proposal. Upon receipt of Seller's RPS Modifications Proposal, Company will evaluate Seller's RPS Modifications Proposal. Seller shall assist Company in performing such evaluation as and to the extent reasonably requested by Company (including, but not limited to, providing such additional information as Company may reasonably request and participating in meetings with Company as Company may reasonably request).
- (c) RPS Modifications Document. If, following Company's evaluation of Seller's RPS Modifications Proposal, Company desires to consider the implementation by Seller of the changes recommended in Seller's RPS Modifications Proposal, Company shall provide Seller with written notice to that effect, such notice to be issued to Seller within 180 Days of receipt of Seller's RPS Modifications Proposal, and Company and Seller shall proceed to negotiate in good faith a document setting forth the specific changes to the Agreement that are necessary to implement such RPS Modifications Proposal (the "RPS Modifications Document"). A decision by Company to initiate negotiations with Seller as aforesaid shall not constitute an acceptance by Company of any of the details set forth in Seller's RPS Modifications Proposal, including but not limited to the RPS Modifications and the RPS Pricing Impact. Any adjustment to the Contract Pricing pursuant to such RPS Modifications Document shall be limited to the RPS Pricing Impact. The time periods set forth in such RPS Modifications Document as to the effective date for the RPS Modifications shall be measured from the date the PUC order with respect to such RPS Modifications becomes non-appealable as provided in Section 3.4(e) (PUC RPS Order).

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

initiate dispute resolution under Section 3.4(h) (Dispute), as a result of a failure to agree upon and execute any RPS Modifications Document.

- (g) Limited Purpose. This Section 3.4 (Renewable Portfolio Standards) is intended to specifically address the implementation of reasonable measures to cause the electric energy delivered from the Facility to come within the revised definition of "renewable electrical energy" under any RPS Amendment and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to this Agreement in accordance with the provisions of this Section 3.4 (Renewable Portfolio Standards) are not intended to increase Seller's risk of non-performance or default. For avoidance of doubt, if the electric energy delivered from the Facility no longer qualifies as "renewable electrical energy" as a result of any RPS Amendment, such disqualification shall not, by itself, constitute an Event of Default; provided, however, a Party's failure to comply with the provisions of this Section 3.4 (Renewable Portfolio Standards) following such disqualification shall constitute an Event of Default.
- (h) Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a RPS Modifications Document pursuant to Section 3.4(d) (Failure to Reach Agreement), it shall provide written notice to that effect to Seller. Within 20 Days of delivery of such notice Seller and Company shall agree upon an Independent Evaluator to resolve the dispute regarding a RPS Modifications Document. The Independent Evaluator shall be reasonably qualified and expert in renewable energy power generation, matters relating to the Performance Standards, financing, and power purchase agreements. If the Parties are unable to agree upon an Independent Evaluator within such 20-Day period, Company shall apply to the PUC for the appointment of an Independent Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the

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

- (1) Promptly upon appointment, the Independent Evaluator shall request the Parties to address the following matters within the next 15 Days:

The reasonable measures required to be taken by Seller to cause the electric energy delivered from the Facility to come within such revised definition of "renewable electrical energy" under the RPS Amendment in question;

How Seller would implement such measures;

Reasonably expected net costs and/or lost revenues associated with such measures so the energy delivered by the Facility complies with such revised definition of "renewable electrical energy" under the RPS Amendment in question;

The appropriate level, if any, of RPS Pricing Impact in light of the foregoing; and

Contractual consequences for non-performance that are commercially reasonable under the circumstances.

- (2) Within 90 Days of appointment, the Independent Evaluator shall render a decision unless the Independent Evaluator determines it needs to have additional time, not to exceed 45 Days, to render a decision.
- (3) The Parties shall assist the Independent Evaluator throughout the process of preparing its review, including making key personnel and records available to the Independent Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties

may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

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

over the other Party, or that neither Party prevailed over the other.

ARTICLE 4
COMPANY-OWNED INTERCONNECTION FACILITIES

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

ARTICLE 5
MAINTENANCE RECORDS AND SCHEDULING

5.1 Operating Records.

- (a) Seller's Logs. Seller shall maintain, at least daily, a log in which it shall record all pertinent data that will indicate whether the Facility is being operated in accordance with Good Engineering and Operating Practices. These data logs shall include, but not be limited to, all maintenance and inspection work performed at the Facility, circuit breaker trip operations, relay operations including target indications, megavar and megawatt recording charts (and/or equivalent computer records), all unusual conditions experienced or observed and any reduced capability and the reasons therefor and duration thereof. For each inverter, the data reported shall include planned derated hours, unplanned derated hours, average derated kW during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, hours on-control and hours on-line. Company shall have the right, upon reasonable notice and during regular Business Day hours to review and copy such data logs; provided, that if such logs reveal any inconsistency with Company's records, Company may request and review Seller's supporting records, correspondence, memoranda and other documents or electronically recorded data associated with such logs related to the operation and maintenance of the Facility in order to resolve such inconsistency.
- (b) Company Access to Seller's Logs. Seller shall provide Company access to Seller's records which identify the priority, as internally assigned by Seller, of specific preventive or corrective maintenance activities. These records shall include items for which Seller has deferred the inspection or corrective action to a future scheduled plant outage.
- (c) Time Period for Maintaining Records. Any and all records, correspondence, memoranda and other documents or electronically recorded data related to the operation and maintenance of the Facility shall be maintained by Seller for a period of not less than six (6) years.

5.2 Maintenance Records.

- (a) Seller's Summary of Maintenance and Inspection Performed. Prior to February 1 of each calendar year, Seller shall submit to Company for inspection at the Site, a summary in a format similar to the example provided in Attachment V (Summary of Maintenance and Inspection Performed in Prior Calendar Year) of all material maintenance and inspection work performed in the prior calendar year, and of all conditions experienced or observed during such calendar year that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement. The summary shall present the requested data in a meaningful and informative manner consistent with the cooperative exchange of information between the Parties. If available and practicable, such summary shall be provided in electronic format with sufficient software so that Company can group activities for specific process areas of the Facility and be able to view the maintenance history of a specific equipment item. Such summary shall also include Seller's proposals for correcting or preventing recurrences of identified equipment problems and for performing such other maintenance and inspection work as is required by Good Engineering and Operating Practices.
- (b) Company's Written Recommendations. Within sixty (60) Days of receiving such summary, and after any reasonable inspection desired by Company of the Facility and consultation with Seller, in the event there are issues identified that may have a material adverse effect on or may materially impair the short-term or long-term operation of the Facility at the operational levels contemplated by this Agreement, for purposes of addressing such issues, Company may provide written recommendations for specific operation or maintenance actions or for changes in the operation or maintenance program of the Facility. Company's making or failing to make such recommendations shall not be construed as endorsing the operation and maintenance thereof or as any warranty of the safety, durability or reliability of the Facility nor as a waiver of any Company right. If Seller agrees with Company, Seller shall, within a

reasonable time after Company makes such recommendations, not to exceed ninety (90) Days (or such longer period as reasonably agreed to by the Parties), implement Company's recommendations. If Seller disagrees with Company, it shall within ten (10) Days inform Company of alternatives it will take to accomplish the same intent, or provide Company with a reasonable explanation as to why no action is required by Good Engineering and Operating Practices. If Company disagrees with Seller's position, and if, for each of the three preceding Contract Years, the Inverter System Equivalent Availability Factor was less than **94%** and/or the MPR was less than the Tier 1 Bandwidth for such Contract Year, then the parties shall commission a study by a Qualified Independent Consultant selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement and the Qualified Independent Consultant will make a recommendation to remedy the situation. Seller shall abide by the Qualified Independent Consultant's recommendation contained in such study. Both Parties shall equally share in the cost for the Qualified Independent Consultant. However, Seller shall pay all costs associated with implementing the recommendation contained in the Independent Consultant's report. Notwithstanding the foregoing, Seller shall not be required to comply with any recommendations that, in Seller's reasonable judgment, will violate or void any warranties of equipment that is a part of, or used in connection with, the Facility or violate any long-term service agreement, or conflict with any written requirements, specifications or operating parameters of the manufacturer, with respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question.

- 5.3 Seller's Quarterly Maintenance Schedule. By each March 1st, June 1st, September 1st and December 1st (as applicable, subsequent to the Commercial Operations Date), Seller shall provide to Company in writing a projection of maintenance outages and reductions in capacity for the next calendar quarter, including the estimated MW that is anticipated to

be off-line for each projected maintenance event. Seller shall provide Company with prompt written notice of any deviation from its quarterly maintenance schedule, but in any case Seller shall provide such written notice not less than one (1) week prior to commencing any such rescheduled maintenance event. During any scheduled or rescheduled maintenance event, Seller shall provide updates to Company's operating personnel in the event there are any delays or changes to the proposed schedule, and shall promptly respond to any requests from Company for updates regarding the status of such maintenance event.

- 5.4 Seller's Annual Maintenance Schedule. In addition, Seller shall submit to Company a written schedule of maintenance outages which will reduce the capacity of the Facility by five (5) MW or more for the next two-year period, beginning with January of the following year, in writing to Company each year by June 30. The schedule shall state the proposed dates and durations of scheduled maintenance, including the scope of work for the maintenance requiring shutdown or reduction in output of the Facility and the estimated MW that is anticipated to be off-line for each projected maintenance event. Company shall review the maintenance schedule for the two-year period and inform Seller in writing no later than December 1 of the same year of Company's concurrence or requested revisions; provided, however, that Seller shall not be required to agree to any proposed revisions that, in Seller's judgment, will void or violate any warranties of equipment that is part of, or used in connection with, the Facility or violate any long-term service agreement with respect to such equipment, in which case Seller shall promptly notify Company thereof, and Seller and Company shall endeavor to reach a mutually satisfactory resolution of the matter in question. With respect to such agreed upon revisions, Seller shall revise its schedule for timing and duration of scheduled shutdowns and scheduled reductions of output of the Facility to accommodate Company's revisions, unless such revisions would not be consistent with Good Engineering and Operating Practices, and make all commercially reasonable efforts, consistent with Good Engineering and Operating Practices, to accommodate any subsequent changes in such schedule reasonably requested by Company.

- 5.5 Seller's Notification Obligations. When Seller learns that any of its equipment will be removed from or returned to service, and any such removal or return may affect the ability of the Facility to deliver electric energy of 500 kW_s or more to Company or otherwise materially affects the availability or performance of the Facility, Seller shall notify Company as soon as practicable. This requirement to notify shall include, but not be limited to, notice to Company of Seller's intention to shut down any inverter unit. Any unit shut-down shall be coordinated with Company in advance to the extent practicable to allow a reasonable amount of time for Company to make generation adjustments required by the loss of availability from a unit shut-down.
- 5.6 Operating and Maintenance Manuals. Not later than the Commercial Operation Date, Seller shall provide Company with (i) any and all manufacturer's equipment manuals and recommendations for maintenance and with any updates or supplements thereto within three (3) Business Days after Seller's receipt of same and (ii) a copy of the operating and maintenance manual and shall thereafter provide Company with any amendments thereto within three (3) Business Days after such amendment is adopted.

ARTICLE 6
FORECASTING

- 6.1 Data for Company Forecasts and Monitoring. Seller shall provide to Company the meteorological and production data and the Site description information required by Company in order for Company to (i) provide situational awareness to Company System Operator, (ii) monitor equipment availability and performance, (iii) produce a real-time forecast for operations as well as a Day-ahead forecast and hourly forecasts for all variable generation facilities on the Company System and (iv) monitor Seller's compliance with the Performance Standards set forth in Section 3 (Performance Standards) of the Attachment B (Facility Owned by Seller).
- 6.2 Monitoring and Communication Equipment. Seller shall install and maintain appropriate equipment (the "Monitoring and Communication Equipment") for the purposes of (i) measuring the meteorological and production data required under Section 6.1 (Data for Company Forecasts and Monitoring) with an accuracy of not less than that specified for each such data parameter in Section 8 (Data and Forecasting) of Attachment B (Facility Owned by Seller) and, if the monitoring equipment is part of the Company-Owned Interconnection Facilities, as set forth in Attachment G (Company-Owned Interconnection Facilities), and (ii) recording and transferring such data to Company in real time. Seller shall maintain at the Site sufficient replacement parts to avoid or otherwise minimize any shutdown of the Facility pursuant to Section 6.4 (Shutdown For Lack of Reliable Real Time Data) of this Agreement while any of the Monitoring and Communication Equipment is being repaired, replaced or re-calibrated.
- 6.3 Calibrations, Maintenance and Repairs.
- (a) Documentation Requirement. Seller shall provide to Company (i) the manufacturer's recommended schedule for the calibration and maintenance of each component of the Monitoring and Communication Equipment and (ii) subject to the limitation set forth in Section 1(a)(ii) (As-Builts) of Attachment B (Facility Owned by Seller) of this Agreement, documentation of the performance of all such calibration and maintenance per manufacturer specifications. Although Company is to receive from Seller the aforesaid recommended schedules for

calibration and maintenance, as well documentation of the performance of all such calibration and maintenance, Company shall have no responsibility to monitor Seller's compliance with such calibration and maintenance schedules. Accordingly, any failure by Company to bring Seller's attention any apparent failure by Seller to perform such recommended calibration and maintenance shall neither relieve Seller of its obligations under this Agreement to perform such calibration and maintenance nor constitute a waiver of Company's rights under this Agreement with respect to such failure in performance by Seller.

- (b) Corrective Measures. In the event of a pattern of material inconsistencies in the data stream provided by the Monitoring and Communication Equipment, Seller shall perform, at Seller's expense, such corrective measures as Company may reasonably require, such as the recalibration of all field measurement device components of the Monitoring and Communication Equipment.
 - (c) Repairs. In the event of any failure in the Monitoring and Communication Equipment, Seller shall use commercially reasonable efforts to repair or replace such equipment within fifteen (15) Days of such failure, or within such longer period as would be expected of an experienced independent power producer that is willing and able to exert commercially reasonable efforts to take such corrective action.
- 6.4 Shutdown For Lack of Reliable Real Time Data. Because the availability to the Company System Operator of reliable meteorological and production information in real time via SCADA is necessary in order for Company to effectively optimize the benefit of its right of Company Dispatch, Company shall have the right to direct Seller to shutdown the Facility due to the unavailability of such reliable real time meteorological and/or production data. In addition, in the event of the performance of corrective measures (including recalibration) and/or repairs to any Monitoring and Communication Equipment pursuant to Section 6.3(b) (Corrective Measures) or Section 6.3(c) (Repairs), Company shall have the right to direct Seller to shutdown the Facility and the Facility shall remain shutdown until such corrective action is completed. In the event the cause for

any shutdown in this Section 6.4 (Shutdown For Lack of Reliable Real Time Data) falls within the definition of Seller-Attributable Non-Generation, such period of time shall be allocated as such for purposes of calculating the Inverter System Equivalent Availability Factor under Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor) of this Agreement until such time as the successful completion of such corrective measures and/or repairs has been communicated by Seller to Company. If, after such communication, Company attempts to dispatch the Facility and determines that such corrective measures and/or repairs were not successfully completed, all time from the notice of successful completion to actual successful completion shall be revised as continuance of the deration or outage. Notwithstanding the foregoing, if Seller requests in writing for confirmation that the Facility's data is available to Company, then Company shall use reasonable efforts to respond to such request within three (3) Business Days in writing (with email being acceptable) confirming that either (1) the Facility's data is available to Company (at which point no additional time after such request shall count as Seller-Attributable Non-Generation), or (2) the Facility's data is not available so that Seller can take further appropriate corrective actions.

6.5 Seller Day-Ahead Forecasts of Actual Output.

- (a) Forecasts. Each Day during the Term commencing on the Commercial Operations Date, Seller shall submit to Company Seller's Day-ahead hourly forecasts of the Facility's Actual Output produced by a commercially available forecasting service or by the Seller's documented methodology (*i.e.*, climatology, persistence forecasting) for providing a forecast for the Facility's Actual Output for the next 24 hour period. Hourly Day-ahead forecasts shall be submitted to Company by 1200 Hawai'i Standard Time on each Day immediately preceding a Day on which electric energy from the Facility is to be delivered. Seller shall provide Company with an hourly forecast of Actual Output for each hour of the next Day. Seller shall update such forecast and provide unit availability updates any time information becomes available indicating a change in the forecast of Actual Output from the Facility. The forecasts called for by this Agreement shall be

substantially in the form reasonably requested by Company.

- (b) Accuracy of Forecasts. Company acknowledges that the Seller's Day-ahead forecasts are based on forecast estimates and not guarantees. Such limitation notwithstanding, Seller shall exercise commercially reasonable efforts to ensure the accuracy of the Day-ahead forecasts required hereunder for validation purposes and to support Company's forecasts. This includes a detailed description of the methodology used by Seller for forecasting. For example, Seller shall prepare such forecasts and updates by utilizing a solar power forecast or other service that is (i) commercially available or proprietary to Seller, (ii) comparable in accuracy to models or services commonly used in the solar energy industry and that reflect equipment availability, and (iii) is satisfactory to Company in the exercise of its reasonable discretion.
- (c) Company's Forecasting System. Company currently subscribes to a forecasting service. Seller, may, if it chooses, subscribe to the same forecasting service that Company does, at Seller's cost. If Seller so chooses to subscribe to such forecasting service and elects to use such service in lieu of creating its own forecast, Seller shall not be required to provide Day-ahead forecasts pursuant to this Section 6.5 (Seller Day-Ahead Forecasts of Actual Output). If Company changes its forecasting service and Seller elects not to subscribe to the same forecasting service, then the provisions of Section 6.5(a) (Forecasts) and Section 6.5(b) (Accuracy of Forecasts) shall apply.
- 6.6 Reports, Studies and Assessment. Prior to the Execution Date, Seller has provided Company with Seller's explanation of the methodology and underlying information used to derive the NEP RFP Projection, including the preliminary design of the Facility and the typical meteorological year file used to estimate the Renewable Resource Baseline. The independent consultant was selected from among the entities listed in Section 4(j) (Acceptable Person and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. Throughout the Term, Seller shall, for purposes of facilitating Company's forecasting, deliver to Company,

promptly upon Seller's receipt of same, any reports, studies or assessments prepared for the benefit of the Seller by an independent engineer of (i) the electric energy producing potential of the Site or (ii) the Facility.

ARTICLE 7
SELLER PAYMENTS

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

ARTICLE 8
COMPANY DISPATCH

- 8.1 General. Company shall have the right to dispatch all available real and reactive power delivered from the Facility to the Company System and to start up and shut down Seller's generating units, as it deems appropriate in its reasonable discretion, subject only to and consistent with Good Engineering and Operating Practices, the requirements set forth in Section 3 (Performance Standards) of Attachment B (Facility Owned by Seller) of this Agreement and Seller's maintenance schedule determined in accordance with Article 5 (Maintenance Records and Scheduling). Company shall not pay for reactive power.
- 8.2 Company Dispatch. Dispatch will either be by Seller's manual control under the direction of the Company System Operator or by remote computerized control by the EMS provided in Section 1(g) (Active Power Control Interface) of Attachment B (Facility Owned by Seller), in each case at Company's reasonable discretion. Notwithstanding anything to the contrary, the power produced by the Facility and/or stored in the BESS shall always be subject to dispatch by Company.
- 8.3 Company Rights of Dispatch. Company may require derating or outage in response to the Facility's failure to comply with Company Dispatch or to any conditions of Seller-Attributable Non-Generation. A derating or outage required by Company pursuant to the preceding sentence shall be considered "Seller-Attributable Non-Generation" and, until the conditions that led to the derating or outage are resolved by Seller and Seller notifies Company of the same, any such derating shall "count against" Seller for purposes of calculating the Measured Performance Ratio, and any such derating or outage shall "count against" Seller for the purpose of calculating the Inverter System Equivalent Availability Factor. If, after such notification, Company attempts to dispatch the Facility and determines that such conditions that led to the derating or outage are not resolved, all time from the notice of resolution to actual resolution shall be revised as continuance of the derating or outage until the conditions that led to such outage or derating are resolved by Seller to Company's reasonable satisfaction. If Seller requests confirmation from Company

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

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

ARTICLE 9
PERSONNEL AND SYSTEM SAFETY

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

ARTICLE 10
METERING

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

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

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

ARTICLE 11

GOVERNMENTAL APPROVALS, LAND RIGHTS AND COMPLIANCE WITH LAWS

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

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

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

provided, however, that under no circumstance shall Seller commence any construction, operation or maintenance activity of the Facility or interconnection activity of the Facility to the Company System, or require or permit Company to commence any such construction, without Seller first obtaining the required, applicable Land Rights, and in the case where Seller has satisfied the requirements of Section 11.2(a) by way of an option agreement or binding letter of intent, Seller shall have: (i) affirmatively exercised such option agreement or fulfilled the requirements of such binding letter of intent, and (ii) delivered to Company the fully executed option agreement or binding letter of intent with the requisite attached final form of the lease, easement agreement or purchase and sale agreement, within thirty (30) Days of Seller's execution of said option agreement or binding letter of intent, and (iii) provided Company with the completed Land Rights resulting therefrom, no less than fifteen (15) Days prior to Seller's requirement or permitting of Company to commence any such construction activity.

Seller shall bear complete responsibility for all delays in construction, operation and maintenance of the Facility or the interconnection of the Facility to the Company System resulting from Seller's failure to identify and/or timely obtain necessary Land Rights, except as permitted under Section 21.3(d). In each case, such Land Rights documents may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of

Seller or the counterparty to such agreement. Under no circumstances shall such redactions conceal information that is necessary for the Company to determine whether such documents establish the Land Rights of Seller to construct, own, operate and maintain the Facility on the Site and the interconnection of the Facility to the Company System in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

- (a) The Parties shall, no later than the PPA Amendment Deadline, execute a formal amendment to this Agreement substituting new versions of Attachment B (Facility Owned by Seller), Attachment E (Single-Line Drawing and Interface Block Diagram), Attachment F (Relay List and Trip Scheme), Attachment G (Company-Owned Interconnection Facilities), Attachment K (Guaranteed Project Milestones), Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and Attachment L (Reporting Milestones) (the "Interconnection Requirements Amendment") to reflect the results of the IRS, provided that the Interconnection Requirements Amendment shall include commercially reasonable dates to be agreed upon by the Parties following the completion of the IRS, including, as may be necessary, the Guaranteed Commercial Operations Date; provided, however that for the Guaranteed Commercial Operations Date, such milestone shall be adjusted only (i) in the sole event that the IRS results show that achieving the Guaranteed Commercial Operations Date is commercially unreasonable; and (ii) the reason that achieving the Guaranteed Commercial Operations Date is commercially unreasonable is not due to Seller's unexecuted failure to provide requested materials and information within the time period(s) specified for such request(s) under the IRS Letter Agreement; provided, further, that insignificant delays by Seller shall not be grounds for Company to disallow an adjustment to the Guaranteed Commercial Operations Date. If the Interconnection Requirements Amendment is not executed by the PPA Amendment Deadline, either Party may, by written notice delivered to the other Party, declare the Agreement null and void; provided that the party making such declaration used commercially reasonable efforts to negotiate and execute such amendment by the PPA Amendment Deadline; or
- (b) If Seller is dissatisfied with the results of the IRS, Seller shall have the option, by written notice delivered to Company no later than the Termination Deadline, to declare this Agreement null and void.

Failure of Seller to declare this Agreement null and void pursuant to the preceding sentence shall not obligate Seller to execute the Interconnection Requirements Amendment.

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

- (a) Seller implements a material change to the Facility without following the requirements of Section 5(g) of Attachment A (Description of Generation, Conversion and Storage Facility).
- (b) Seller is in material breach of any of its representations, warranties and covenants under the Agreement, including, but not limited to, (i) the provisions of Section 22.2(c) and Section 22.2(d) requiring Seller to have all Land Rights and Governmental Approvals as provided therein; and (ii) the provisions of Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of the amounts specified within the time periods provided therein.
- (c) Seller, subsequent to making the payment to Company required under Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of Attachment G (Company-Owned Interconnection Facilities), or subsequent to making the payment to Company to pay for the IRS, requests in writing that Company stop or otherwise delay the performance of the work for which Company received such payment.
- (d) Any of the IRS Letter Agreements are terminated pursuant to the terms thereof prior to the completion of the Interconnection Requirements Study.

12.6 Time Periods for PUC Submittal Date and PUC Approval.

- (a) Time Period for PUC Submittal Date. If the PUC Submittal Date has not occurred within 120 Days of the Execution Date, or such longer period as Company and Seller may agree to by a subsequent written agreement,

Company may, by written notice delivered within thirty (30) Days of the expiration of such period, declare the Agreement null and void if the reason the application has not been filed is (i) any one or more of the conditions set forth in Section 12.5 (Prior to Effective Date) or (ii) Seller's failure to provide in a timely manner information reasonably requested by Company to support such application.

- (b) Time Period for PUC Approval. If the Commission issues an Unfavorable PUC Order or if a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a written agreement ("PUC Approval Time Period"), then Company or Seller may, by written notice delivered within one hundred and eighty (180) Days of (i) in the case that an Unfavorable PUC Order has been issued, the date the Unfavorable PUC Order becomes non-appealable or (ii) in the case that a PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date, or the expiration of the PUC Approval Time Period, as applicable, declare this Agreement null and void. If a PUC Approval Order or an Unfavorable PUC Order is issued within the PUC Approval Time Period but that order is appealed, and a Non-appealable PUC Approval Order is not obtained within twenty-four (24) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a subsequent written agreement (the "PUC Order Appeal Period"), then Company or Seller may, by written notice delivered within ninety (90) Days after the expiration of the PUC Order Appeal Period, declare this Agreement null and void.

- 12.7 Agreement Null and Void. If the Agreement is declared null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential), the Parties hereto shall thereafter be free of all obligations hereunder except as set forth in this Section 12.7 (Agreement Null and Void) and Section 14.3 (Return of Development Period Security), and shall pursue no further

remedies against one another; provided, however, that if in response to Seller's request and Seller's offer of adequate assurance of reimbursement, Company agrees in writing to incur costs associated with Company-Owned Interconnection Facilities prior to the Non-appealable PUC Approval Order Date or completion of the IRS, Seller shall pay Company the actual costs and cost obligations incurred by Company as of the date the Agreement is declared null and void for Company-Owned Interconnection Facilities and any reasonable costs incurred thereafter and Company shall refund to Seller any amounts advanced by Seller in excess of such costs. A declaration that this Agreement is null and void pursuant to Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of said Attachment U (Calculation and Adjustment of Net Energy Potential), shall not affect the following provisions, which shall remain in full force and effect: Section 12.2 (Effectiveness of Obligations), this Section 12.7 (Agreement Null and Void), Section 24.2 (Confidentiality), Article 28 (Dispute Resolution), Section 29.3 (Notices), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.14 (Settlement of Disputes), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), and Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities).

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

ARTICLE 13
GUARANTEED PROJECT MILESTONES
INCLUDING COMMERCIAL OPERATIONS

- 13.1 Time is of the Essence. Time is of the essence of this Agreement, and Seller's ability to achieve the Construction Milestones is critically important.
- 13.2 Failure to Meet Reporting Milestones. If Seller does not meet a Reporting Milestone, in each case as set forth in Attachment L (Reporting Milestones), Seller shall submit to Company, within ten (10) Business Days of any such missed Reporting Milestone, a remedial action plan which shall provide a detailed description of Seller's course of action and plan to achieve (i) the missed Reporting Milestone date within ninety (90) Days of the missed Reporting Milestone and (ii) all subsequent Construction Milestones, provided that delivery of any remedial action plan shall not relieve Seller of its obligation to meet any subsequent Construction Milestones.
- 13.3 Guaranteed Project and Reporting Milestone Dates. Seller shall achieve each Guaranteed Project Milestone Date or Reporting Milestone Date, subject (to the extent applicable) to the following extensions:
- (a) if the PUC Approval Order Date occurs more than one hundred eighty (180) Days after the Execution Date, Seller and Company shall be entitled to an extension of the Guaranteed Project Milestone Dates, Reporting Milestone Dates, Seller's Conditions Precedent and Company Milestone Dates equal to the number of Days that elapse between the end of the aforesaid 180-Day period and the PUC Approval Order Date; provided, that in no event will the Guaranteed Commercial Operations Date be extended beyond December 1, 2025; or
- (b) if the failure to achieve a Construction Milestone by the applicable Guaranteed Project Milestone Date or Reporting Milestone Date is the result of Force Majeure (which, for purposes of this Section 13.3(b) excludes any delay in obtaining the PUC Approval Order because that contingency is addressed in Section 13.3(a) above), and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, such Guaranteed Project Milestone Date or

Reporting Milestone Date shall be extended by a period equal to the lesser of eighteen (18) months or the duration of the delay caused by the Force Majeure; or

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

13.4 Damages and Termination.

(a) Daily Delay Damages.

- (1) If a Guaranteed Project Milestone (other than Commercial Operations) has not been achieved by the applicable Guaranteed Project Milestone Date as

extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall collect and Seller shall pay liquidated damages in the amount of \$8,333.33 for each Day ("Daily Delay Damages") following the tenth (10th) Day after the applicable Guaranteed Project Milestone Date, as extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates); provided, however, that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for a failure to achieve a Guaranteed Project Milestone by the Guaranteed Project Milestone Date shall not exceed sixty (60) Days for each such missed Guaranteed Project Milestone Date (the "Construction Delay LD Period").

- (2) If the Commercial Operations Date has not been achieved by the Guaranteed Commercial Operations Date as extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), in addition to any Daily Delay Damages collected pursuant to Section 13.4(a)(1), Company shall collect and Seller shall pay Daily Delay Damages following the tenth (10th) Day after the Guaranteed Commercial Operations Date, as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates), provided that the number of Days for which Company shall collect and Seller shall pay Daily Delay Damages for failing to achieve the Guaranteed Commercial Operations Date shall not exceed three hundred sixty five (365) Days (the "COD Delay LD Period").
- (b) Termination and Termination Damages for Failure to Achieve a Guaranteed Project Milestone Date. If, upon the expiration of the Construction Delay LD Period or the COD Delay LD Period, as applicable, Seller has not achieved the applicable Guaranteed Project Milestone, Company shall have the right, notwithstanding any other provision of this Agreement to the contrary, to terminate this Agreement with immediate effect by issuing a written termination notice to Seller designating the Day such termination is to be effective,

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

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

- 13.7 Monthly Progress Reports. Commencing upon the Execution Date of this Agreement, Seller shall submit to Company, on the tenth (10th) Business Day of each calendar month until the Commercial Operations Date is achieved, a progress report for the prior month in a form set forth on Attachment S (Form of Monthly Progress Report) (the "Monthly Progress Report"). These progress reports shall notify Company of the current status of each Construction Milestone. Seller shall include in such report a list of all letters, notices, applications, filings and Governmental Approvals sent to or received from any Governmental Authority and shall provide any such documents as may be reasonably requested by Company. In addition, Seller shall advise Company as soon as reasonably practicable of any problems or issues of which it is aware which may materially impact its ability to meet the Construction Milestones. Seller shall provide Company with any requested documentation to support the achievement of Construction Milestones within ten (10) Business Days of receipt of such request from Company. Upon the occurrence of a Force Majeure, Seller shall also comply with the requirements of Section 21.4 (Satisfaction of Certain Conditions) to the extent such requirements provide for communications to Company beyond those required under this Section 13.7 (Monthly Progress Reports).
- 13.8 Company Milestones. Company's obligation to achieve the Company Milestones is contingent upon Seller completing the Seller's Conditions Precedent set forth in Attachment K-1 (Company Milestones and Seller's Conditions Precedent). Company shall achieve each of the Company Milestones by the date set forth for such Company Milestones in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) of this Agreement (each such date, a "Company Milestone Date"), as such date may be extended in accordance with Section 13.3 (Guaranteed Project and Reporting Milestone Dates) and this Section 13.8 (Company Milestones); provided, however in the event Seller does not complete a Seller's Condition Precedent on or before the applicable date set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones), subject to the extensions set forth in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), Company shall be entitled to an extension as follows: (i) for the commencement of Acceptance Testing, the new Company Milestone Date shall be as set forth in clause "(gg)" of Section 2(f)(i) of Attachment G (Company-Owned

Interconnection Facilities); and (ii) for any other Company Milestone Date, the extension shall be for the period of time reasonably necessary to meet any such Company Milestone Date adversely affected by Seller's failure but no shorter than a day-for-day extension.

ARTICLE 14
CREDIT ASSURANCE AND SECURITY

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

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

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

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

- 14.6 Security Funds. The Development Period Security and Operating Period Security, including L/C Proceeds therefrom (collectively referred to as the "Security Funds") established, funded, and maintained by Seller pursuant to the provisions of this Article 14 (Credit Assurance and Security) shall provide security for the performance of Seller's obligations under this Agreement and shall be available to be drawn on by Company as provided in Section 14.7 (Company's Right to Draw from Security Funds). Seller shall maintain the Security Funds at the contractually-required level throughout the Term of this Agreement. Seller shall replenish the Security Funds to such required level within fifteen (15) Business Days after any draw on the Security Funds by Company or any reduction in the value of Security Funds below the required level for any other reason. Notwithstanding the foregoing, Seller's obligation to replenish the Development Period Security shall not exceed in total four (4) times the original amount of the Development Period Security required under Section 14.2 (Development Period Security) of this Agreement.
- 14.7 Company's Right to Draw from Security Funds. In addition to any other remedy available to it, Company may, before or after termination of this Agreement, draw from the Security Funds such amounts as are necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and

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

- 14.8 Failure to Renew or Extend Letter of Credit. If the letter of credit is not renewed or extended at least thirty (30) Days prior to its expiration or earlier termination, Company shall have the right to draw immediately upon the full amount of the letter of credit and to place the proceeds of such draw (the "L/C Proceeds"), at Seller's cost, in an escrow account in accordance with Section 14.9 (L/C Proceeds Escrow), until and unless Seller provides a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security).
- 14.9 L/C Proceeds Escrow. If Company draws on the letter of credit pursuant to Section 14.8 (Failure to Renew or Extend Letter of Credit), and so long as a substitute letter of credit meeting the requirements of this Article 14 (Credit Assurance and Security) is not obtained and provided to Company, Company shall, in order to avoid comingling the L/C Proceeds, have the right but not the obligation to place the L/C Proceeds in an escrow account as provided in this Section 14.9 (L/C Proceeds Escrow) with a reputable escrow agent acceptable to Company ("Escrow Agent"). Without limitation to the generality of the foregoing, a federally-insured bank shall be deemed to be a "reputable escrow agent." Company shall have the right to apply the L/C Proceeds as necessary to recover amounts Company is owed pursuant to this Agreement or the IRS Letter Agreements, including, without limitation, any damages due Company, any interconnection costs owed pursuant to Attachment G (Company-Owned Interconnection Facilities) and any amounts for which Company is entitled to indemnification under this Agreement. To that end, the documentation governing such escrow account shall be in form and content satisfactory to Company and shall give Company the sole authority to draw from the account. Seller shall not be a party to such

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

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

ARTICLE 15
EVENTS OF DEFAULT

- 15.1 Events of Default by Seller. The occurrence of any of the following shall constitute an Event of Default by Seller:
- (a) if at any time during the Term, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement electric energy that was not generated or stored by the Facility;
 - (b) if at any time subsequent to the Commercial Operations Date, the Inverter System Equivalent Availability Factor is less than **84%** for each of three consecutive Contract Years;
 - (c) if at any time subsequent to the Commercial Operations Date, the Measured Performance Ratio for each of three consecutive Contract Years falls below the Tier 2 Bandwidth for such Contract Year;
 - (d) if at any time subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the BESS Capacity Performance Metric prior to the expiration of the BESS Capacity Cure Period;
 - (e) if at any time subsequent to the Commercial Operations Date, the Seller fails to achieve a BESS Annual Equivalent Availability Factor of not less than **75%** for each of six (6) consecutive BESS Measurement Periods as provided in Section 2.8(b) (BESS Guaranteed Availability Termination Date);
 - (f) if at any time subsequent to the Commercial Operations Date, the Seller fails to demonstrate satisfaction of the RTE Performance Metric prior to the expiration of the RTE Cure Period;
 - (g) if at any time subsequent to the Commercial Operations Date, the Facility is unavailable to provide electric energy in response to Company Dispatch for a period of three hundred sixty-five (365) or more consecutive Days;
 - (h) if at any time during the Term, Seller fails to satisfy the requirements of Article 14 (Credit Assurance and Security) of this Agreement;

- (i) if at any time during the Term, Seller fails to comply with the requirements of Section 19.1 (Sale of Facility) and Attachment P (Sale of Facility by Seller); or
 - (j) if at any time subsequent to the Commercial Operations Date, Seller fails to install, operate, maintain, or repair the Facility in accordance with Good Engineering and Operating Practices if such failure is not cured within thirty (30) Days after written notice of such failure from Company unless such failure cannot be cured within said thirty (30) Day period and Seller is making commercially reasonable efforts to cure such failure, in which case Seller shall have a cure period of three hundred sixty-five (365) Days after Company's written notice of such failure.
- 15.2 Events of Default by a Party. The occurrence of any of the following during the Term of the Agreement shall constitute an Event of Default by the Party responsible for the failure, action or breach in question:
- (a) The failure to make any payment required pursuant to this Agreement when due if such failure is not cured within ten (10) Business Days after written notice is received by the Party failing to make such payment;
 - (b) Any representation or warranty made by such Party herein is false and misleading in any material respect when made;
 - (c) Such Party becomes insolvent, or makes an assignment for the benefit of creditors (other than an assignment to a Facility Lender pursuant to the Financing Documents) or fails generally to pay its debts as they become due; or such Party shall have an order for relief in an involuntary case under the bankruptcy laws as now or hereafter constituted entered against it, or shall commence a voluntary case under the bankruptcy laws as now or hereafter constituted, or shall file any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled under any present or future statute, law or regulation, or shall file any answer admitting the material allegations of any petition filed against it in such proceeding; or such Party seeks or consents to or acquiesces in the

appointment of or taking possession by, any custodian, trustee, receiver or liquidator of it or of all or a substantial part of its properties or assets; or such Party takes action looking to its dissolution or liquidation; or within ninety (90) Days after commencement of any proceedings against such Party seeking any arrangement, composition, adjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed; or within ninety (90) Days after the appointment of, or taking possession by, any custodian, trustee, receiver or liquidator of any or of all or a substantial part of the properties or assets of such Party, without the consent or acquiescence of such Party, any such appointment or possession shall not have been vacated or terminated;

- (d) Such Party engages in or is the subject of a transaction requiring the prior written consent of the other Party under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable) without having obtained such consent; provided that executing an agreement for such a transaction, the closing of which is conditioned on the receipt of such consent, shall not trigger an Event of Default;
- (e) Such Party fails to comply with either (i) decision under Article 28 (Dispute Resolution), (ii) or an Independent Evaluator's decision under Article 23 (Process for Addressing Revisions to Performance Standards), in either case within thirty (30) Days after such decision becomes binding on the Parties in accordance with Article 28 (Dispute Resolution) or within thirty (30) Days of the issuance of such decision under Article 23 (Process for Addressing Revisions to Performance Standards), as applicable, or, if such decision cannot be complied with within thirty (30) Days, such Party fails to have commenced commercially reasonable efforts designed to achieve compliance within such thirty (30) Days and diligently continue such commercially reasonable efforts until compliance is attained; or
- (f) A Party, by act or omission, materially breaches or defaults on any material covenant, condition or other

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

15.3 Cure/Grace Periods. Before becoming an Event of Default, the occurrences set forth in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) are subject to the following cure/grace periods:

- (a) If the occurrence is not the result of Force Majeure, the Non-performing Party shall be entitled to a cure period to the limited extent expressly set forth in the

applicable provision of Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party); or

- (b) If the occurrence is the result of Force Majeure, and if and so long as the conditions set forth in Section 21.4 (Satisfaction of Certain Conditions) are satisfied, the Non-performing Party shall be entitled to a grace period as provided in Section 21.6 (Termination for Force Majeure), which shall apply in lieu of any cure periods provided in Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party).

- 15.4 Rights of the Non-defaulting Party; Forward Contract. If an Event of Default shall have occurred and be continuing, the Party who is not the Defaulting Party ("Non-defaulting Party") shall have the right (i) to terminate this Agreement by sending written notice to the Defaulting Party as provided in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract); (ii) to withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and (iv) exercise any other right or remedy available at law or in equity to the extent permitted under this Agreement. A notice terminating this Agreement pursuant to this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) shall designate the Day such termination is to be effective which Day shall be no later than thirty (30) Days after such notice is deemed to be received by the Defaulting Party and not earlier than the first to occur of the Day such notice is deemed to be received by the Defaulting Party or the Day following the expiration of any period afforded the Defaulting Party under Section 15.1 (Events of Default by Seller) and Section 15.2 (Events of Default by a Party) to cure the default in question. If the Agreement is terminated by Company because of one or more of the Events of Default by Seller, Company shall have the right, in addition to the rights set forth above in this Section 15.4 (Rights of the Non-defaulting Party; Forward Contract), to collect Termination Damages, in accordance with Article 16 (Damages in the Event of Termination by Company). Without limitation to the generality of the foregoing provisions of this Section 15.4 (Rights of the Non-Defaulting Party; Forward Contract), the Parties agree that, under 11 U.S.C. §362(b)(6), this Agreement is a "forward contract" and the Company is a

"forward contract merchant" such that upon the occurrence of an Event of Default by Seller under Section 15.1 (Events of Default by Seller) or Section 15.2 (Events of Default by a Party), this Agreement may be terminated by Company as provided in this Agreement notwithstanding any bankruptcy petition affecting Seller.

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

ARTICLE 16
DAMAGES IN THE EVENT OF TERMINATION BY COMPANY

- 16.1 Termination Due to Failure to Meet a Guaranteed Project Milestone Date. If the Agreement is terminated by Company pursuant to Section 13.4 (Damages and Termination), Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$50/kW.
- 16.2 Termination Due to an Event of Default. If the Agreement is terminated by Company in accordance with this Agreement after the Commercial Operations Date due to an Event of Default where Seller is the Defaulting Party, Company shall be entitled to Termination Damages calculated by multiplying the Contract Capacity by \$75/kW.
- 16.3 Liquidated Damages Appropriate. Each Party agrees and acknowledges that (i) the damages that Company would incur due to early termination of the Agreement pursuant to either Section 13.4 (Damages and Termination) or Section 15.4 (Rights of the Non-defaulting Party; Forward Contract) would be difficult or impossible to calculate with certainty, (ii) the Termination Damages are an appropriate approximation of such damages, and (iii) payment of Termination Damages does not relieve Seller of liability for costs and balances incurred prior to the effective date of such termination. The Termination Damages are the sole and exclusive remedy for Company's losses arising out of the termination of this Agreement. The Termination Damages are not intended to limit Company's rights or remedies, or Seller's liabilities or duties, with respect to losses arising independent of the termination of this Agreement, including, without limitation, Company's right to recover under Section 17.1 (Indemnification of Company).
- 16.4 Consequential Damages. Neither Party shall be liable for damages incurred by the other Party for any loss of profit or revenues, loss of product, loss of use of products or services or associated equipment, interruption of business, cost of capital, downtime costs, increased operating costs, or for any special, consequential, incidental, indirect or punitive damages; provided, however, that nothing in this Section 16.4 (Consequential Damages) shall limit any of (i) the indemnification obligations of either Party under Article 17 (Indemnification) of this Agreement, (ii) the liability of either Party for liquidated damages as set

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

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification of Company.

- (a) Indemnification Against Third Party Claims. Seller shall indemnify, defend, and hold harmless Company, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Company Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Company Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by, or under common ownership and/or control with, Company relating to (i) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Facility and Company-Owned Interconnection Facilities (excluding, (A) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, or (B) if Company constructs the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities); or (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Seller Party, except as and to the extent that such Loss is attributable to the negligence or willful misconduct of an Indemnified Company Party.
- (b) Compliance with Laws. Any Losses incurred by an Indemnified Seller Party for noncompliance by Seller or an Indemnified Seller Party with applicable Laws shall not be reimbursed by Company but shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold harmless each Indemnified Company Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Seller to comply with any Laws.
- (c) Notice. If Seller shall obtain knowledge of any Claim subject to Section 17.1(a) (Indemnification Against

Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, Seller shall give prompt notice thereof to Company, and if Company shall obtain any such knowledge, Company shall give prompt notice thereof to Seller.

(d) Indemnification Procedures.

- (1) In case any Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims) or Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, shall be brought against an Indemnified Company Party, Company shall notify Seller of the commencement thereof and, provided that Seller has acknowledged in writing to Company its obligation to an Indemnified Company Party under this Section 17.1 (Indemnification of Company), Seller shall be entitled, at its own expense, acting through counsel acceptable to Company, to participate in and, to the extent that Seller desires, to assume and control the defense thereof; provided, however, that Seller shall not compromise or settle a Claim against an Indemnified Company Party without the prior written consent of Company which consent shall not be unreasonably withheld or delayed.
- (2) Seller shall not be entitled to assume and control the defense of any such Claim subject to Section 17.1(a) (Indemnification Against Third Party Claims), Section 17.1(b) (Compliance with Laws) or otherwise under this Agreement, if and to the extent that, in the sole opinion of Company, such Claim involves the potential imposition of criminal liability on an Indemnified Company Party or a conflict of interest between an Indemnified Company Party and Seller, in which case Company shall be entitled, at its own expense, acting through counsel acceptable to Seller to participate in any Claim, the defense of which has been assumed by Seller. Company shall supply, or shall cause an Indemnified Company Party to supply, Seller with such information and documents requested by Seller as are necessary or advisable for Seller to possess in connection with its participation in any Claim

to the extent permitted by this Section 17.1(d)(2). Company shall not enter, and shall restrict any Indemnified Company Party from entering, into any settlement or other compromise with respect to any Claim without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

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

17.2 Indemnification of Seller.

- (a) Indemnification Against Third Party Claims. Company shall indemnify, defend, and hold harmless Seller, its successors, permitted assigns, affiliates, controlling persons, directors, officers, employees, servants and agents, contractors, subcontractors and the employees of any of them (collectively referred to as an "Indemnified Seller Party"), from and against any Losses suffered, incurred or sustained by any Indemnified Seller Party due to any Claim (whether or not well founded, meritorious or unmeritorious) by a third party not controlled by or under common ownership and/or control with Seller relating to (i) (a) if Seller constructs the Company-Owned Interconnection Facilities, the ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities following the Transfer Date, or (b) if Company constructs the Company-Owned Interconnection Facilities, the construction, ownership, operation and/or maintenance of the Company-Owned Interconnection Facilities, and (ii) any actual or alleged personal injury or death or damage to property, in any way arising out of, incident to, or resulting directly or indirectly from the acts or omissions of any Indemnified Company Party, except to the extent that any

such Loss is attributable to the negligence or willful misconduct of an Indemnified Seller Party.

- (b) Compliance with Laws. Any Losses incurred by an Indemnified Company Party for noncompliance by Company or an Indemnified Company Party with applicable Laws shall not be reimbursed by Seller but shall be the sole responsibility of Company. Company shall indemnify, defend and hold harmless each Indemnified Seller Party from and against any and all Losses in any way arising out of, incident to, or resulting directly or indirectly from the failure of Company to comply with any Laws.
- (c) Notice. If Company shall obtain knowledge of any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws) or otherwise under this Agreement, Company shall give prompt notice thereof to Seller, and if Seller shall obtain any such knowledge, Seller shall give prompt notice thereof to Company.
- (d) Indemnification Procedures.
 - (1) In case any Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or otherwise under this Agreement, shall be brought against an Indemnified Seller Party, Seller shall notify Company of the commencement thereof and, provided that Company has acknowledged in writing to Seller its obligation to an Indemnified Seller Party under this Section 17.2 (Indemnification of Seller), Company shall be entitled, at its own expense, acting through counsel acceptable to Seller, to participate in and, to the extent that Company desires, to assume and control the defense thereof; provided, however, that Company shall not compromise or settle a Claim against an Indemnified Seller Party without the prior written consent of Seller which consent shall not be unreasonably withheld or delayed.
 - (2) Company shall not be entitled to assume and control the defense of any such Claim subject to Section 17.2(a) (Indemnification Against Third Party Claims), Section 17.2(b) (Compliance with Laws), or

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

- (3) Upon payment of any Losses by Company pursuant to this Section 17.2 (Indemnification of Seller) or other similar indemnity provisions contained herein to or on behalf of Seller, Company, without any further action, shall be subrogated to any and all claims that an Indemnified Seller Party may have relating thereto.
- (4) Seller shall fully cooperate and cause all Seller Indemnified Parties to fully cooperate, in the defense of, or response to, any Claim subject to Section 17.2 (Indemnification of Seller).

ARTICLE 18
INSURANCE

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

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

- 18.5 Deductibles. Company acknowledges that any policy required herein may contain reasonable deductibles or self-insured retentions, the amounts of which will be reviewed for acceptance by Company. Acceptance will not be unreasonably withheld. Any deductible shall be the responsibility of Seller.
- 18.6 Application of Proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance. Seller shall use commercially reasonable efforts to obtain provisions in the Financing Documents, on reasonable terms, providing for the insurance proceeds from All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance to be applied to repair of the Facility.
- 18.7 Annual Review by Company. The coverage limits shall be reviewed annually by Company and if, in Company's discretion, Company determines that the coverage limits should be increased, Company shall so notify Seller. The amount of any increase of the coverage limits, when considered as a percentage of the then existing coverage limits, shall not exceed the cumulative amount of increase in the Consumer Price Index occurring after the coverage limits herein were last set. Seller shall, within thirty (30) Days of notice from Company, increase the coverage as directed in such notice and the costs of such increased coverage limits shall be borne by Seller.
- 18.8 No Representation of Coverage Adequacy. By requiring insurance herein, Company does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a

limitation on Seller's liability under the indemnities granted to Company in this Agreement.

18.9 EPC Contractor. Seller shall ensure that its EPC Contractor is either (a) named as an additional insured under the insurance policies procured by Seller; or (b) separately covered by insurance policies equivalent in type and monetary limits as those required of Seller. All such insurance shall be provided at the sole cost of Seller or EPC Contractor.

18.10 General Insurance Requirements.

- (a) Each policy shall be specifically endorsed by blanket or otherwise to provide that Seller's insurance is primary. Any other insurance carried by Company will be excess only and not contribute with this insurance.
- (b) Each policy is to be written by an insurer with a rating by A.M. Best Company, Inc. of "A-VII" or better, or by S&P Global "A" or better.
- (c) If any policy required herein is written on a claims-made basis, the Seller warrants that any retroactive date applicable to coverage under the policy precedes the Execution Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the end of Term.
- (d) If the limits of available liability coverage required herein become substantially reduced as a result of claim payments, Seller shall promptly, and in no event later than thirty (30) Days after such substantial reduction, at its own expense, purchase additional liability insurance (if such coverage is available at commercially reasonable rates) to increase the amount of available coverage to the limits of liability coverage required herein.

ARTICLE 19
TRANSFERS, ASSIGNMENTS, AND FACILITY DEBT

- 19.1 Sale of the Facility. Seller shall comply with the requirements of Attachment P (Sale of Facility by Seller) before Seller's right, title or interest in the Facility, in whole or in part, including a Change in Control, may be disposed of (other than the disposition of equipment in the ordinary course of operating and maintaining the Facility). Any attempt by Seller to make any such disposition or Change in Control without fulfilling the requirements of Attachment P (Sale of Facility by Seller) shall be deemed null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).
- 19.2 Assignment by Seller. This Agreement may not be assigned by Seller without the prior written consent of Company (such consent not to be unreasonably withheld, conditioned or delayed), provided that Seller shall have the right, without the consent of Company, to assign its interest in this Agreement (i) to a wholly-owned subsidiary or to an affiliated company under common control with **The AES Corporation**, provided that such assignment does not impair the ability of Seller to perform its obligations under this Agreement; and (ii) as collateral security for purposes of arranging or rearranging debt and/or equity financing for the Facility, or for sale-leaseback financing, to assign all or any part of its rights or benefits, but not its obligations, to any lender providing debt financing for the Facility. Seller shall promptly provide written notice to Company of any assignment of all or part of this Agreement and Seller shall provide to Company information about the assignee and the assignee's operational experience reasonably requested by Company. Company shall not be required to incur any duty or obligation as a result of, or in connection with, such assignment made without its consent beyond those duties and obligations set forth in this Agreement, unless otherwise agreed to by Company in writing.
- 19.3 Company's Acknowledgment. In connection with any assignment relating to the Facility Debt pursuant to Section 19.2 (Assignment by Seller), Company shall, if requested by Seller and if its costs (including reasonable attorneys' fees of outside counsel) in responding to such request are paid by Seller: (i) execute and/or provide such Hawai'i-law

governed documents as may be reasonably requested by the Facility Lender and reasonably acceptable to Company, including, (aa) to acknowledge (1) such assignment and/or pledge/mortgage, (2) the right of the Facility Lender to receive copies of notices of Events of Default where the Seller is the Defaulting Party and (3) the Facility Lender's reasonable opportunity to cure such Events of Default and to exercise remedies to assume Seller's obligations under this Agreement, and (bb) estoppel certificates as to Seller's and Company's compliance with the terms and conditions of this Agreement; and (ii) provide a legal opinion as to the due authorization of such Company acknowledgment and estoppels.

- 19.4 Financing Document Requirements. Seller shall include in the terms of the Financing Documents as provisions for Company's benefit that provide that as a condition to the Facility Lender, or any purchaser, successor, assignee and/or designee of the Facility Lender ("Subsequent Owner"), succeeding to ownership or possession of the Facility as a result of the exercise of remedies under the Financing Documents, and thereafter operating the Facility to generate electric energy, such Facility Lender or Subsequent Owner shall, prior to operating the Facility for such purpose, have provided to Company, evidence reasonably acceptable to Company that such Subsequent Owner has (a) the qualifications, or has contracted with an entity having the qualifications, to operate the Facility in a manner consistent with the terms and conditions of this Agreement; and (b) assumed all of Seller's rights and obligations under this Agreement.
- 19.5 [Reserved]
- 19.6 Reimbursement of Company Costs. Seller shall reimburse Company for costs and expenses incurred by Company (including reasonable attorneys' fees of outside counsel) in responding to Facility Lender's requests or as a result of any event of default by Seller under the Financing Documents, including but not limited to any assumption of Seller's obligations under Section 19.4 (Financing Document Requirements).
- 19.7 Assignment By Company. This Agreement shall not be assigned by Company without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that Company

shall have the right, without the consent of Seller, to assign its interest in this Agreement to any affiliated company owned in whole or in part by Hawaiian Electric Industries, Inc. ("HEI") so long as such assignee (a) shall have assumed all obligations of Company under this Agreement; (ii) at the effective date of the assignment, has a credit rating equal to or better than Company's credit rating at the Execution Date; and (iii) is a utility regulated by the PUC.

- 19.8 Consequences for Failure to Comply. Any attempt to make any pledge, mortgage, grant of a security interest or collateral assignment for which consent is required under Section 19.2 (Assignment by Seller) or Section 19.7 (Assignment By Company) (as applicable), without fulfilling the requirements of this Article 19 (Transfers, Assignments, and Facility Debt) shall be null and void and shall constitute an Event of Default pursuant to Article 15 (Events of Default).

ARTICLE 20
SALE OF ENERGY TO THIRD PARTIES

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ARTICLE 20

ARTICLE 21
FORCE MAJEURE

- 21.1 Definition of Force Majeure. The term "Force Majeure", as used in this Agreement, means any occurrence that:
- (a) In whole or in part delays or prevents a Party's performance under this Agreement;
 - (b) Is not the direct or indirect result of the fault or negligence of that Party;
 - (c) Is not within the control of that Party notwithstanding such Party having taken all reasonable precautions and measures in order to prevent or avoid such event; and
 - (d) The Party has been unable to overcome by the exercise of due diligence.
- 21.2 Events That Could Qualify as Force Majeure. Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to, the following:
- (a) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;
 - (b) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or
 - (c) except as set forth in Section 21.3(j), strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).
- 21.3 Exclusions From Force Majeure. Force Majeure does not include:
- (a) any acts or omissions of any Third Party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure;

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

other third party employed by Seller to work on the Project; or

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

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

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

- (d) the Non-performing Party exercises commercially reasonable efforts to remedy its inability to perform and provides written weekly progress reports to the other Party describing actions taken to end the Force Majeure; and
 - (e) when the condition or event of Force Majeure ends and the Non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.
- 21.5 Guaranteed Project Milestones Including Commercial Operations. The Parties shall have the rights and obligations set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) in the event a condition or event of Force Majeure affects the achievement of a Guaranteed Project Milestone Date, including the Guaranteed Commercial Operations Date.
- 21.6 Termination for Force Majeure. If Force Majeure delays or prevents a Party's performance for more than eighteen (18) months from the occurrence or inception of the Force Majeure, as stated in the Force Majeure Notice, and such delay or failure of performance would have otherwise constituted an Event of Default under Article 15 (Event of Default), the other Party shall have the right to terminate this Agreement by written notice. Such notice shall designate the date such termination is to be effective, which date shall be no later than thirty (30) Days after such notice is deemed to be received by the Party whose performance has been delayed or prevented. In the event of termination pursuant to this Section 21.6 (Termination for Force Majeure), neither Party shall be liable for any damages or have any obligations to the other, except as provided in Section 29.25 (Survival of Obligations) other than as provided in Section 29.25(b).
- 21.7 Effect of Force Majeure. Other than as provided in Section 21.5 (Guaranteed Project Milestones Including Commercial Operations) and Section 21.6 (Termination for Force Majeure), neither Party shall be responsible or liable for any delays or failures in its performance under this Agreement as and to the extent (i) such delays or failures are substantially caused by conditions or events of Force

Majeure, and (ii) the conditions of Section 21.4 (Satisfaction of Certain Conditions) are satisfied.

- 21.8 No Relief of Other Obligations. Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.
- 21.9 No Extension of the Term. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term.
- 21.10 COVID-19 Acknowledgment. For purposes of this Agreement, the Parties acknowledge the existence of the COVID-19 pandemic and that governments and businesses globally are making efforts and enacting measures to contain the COVID-19 virus and to protect the health and safety of their personnel. For purposes of establishing a Force Majeure in accordance with this Agreement, the Parties acknowledge and agree that such efforts and measures taken in response to the COVID-19 virus may prevent a Party from performing its obligations hereunder. Accordingly, for purposes of claiming Force Majeure under this Agreement based on the COVID-19 pandemic occurring prior to the Effective Date, the Parties acknowledge and agree that they will not object to a Force Majeure notice being untimely under Section 21.4(a) because the COVID-19 pandemic commenced prior to the Effective Date. For the avoidance of doubt, any claim by a Party for Force Majeure must otherwise satisfy the conditions set forth in this Article 21, including the obligation to mitigate the impacts of any such event.

ARTICLE 22
WARRANTIES AND REPRESENTATIONS

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

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

22.2 By Seller. Seller represents, warrants, and covenants that:

- (a) As of the Execution Date and for the extent of the Term, it is an entity in good standing with the Hawai'i Department of Commerce and Consumer Affairs and shall provide Company with a certified copy of a certificate of good standing by the Execution Date.
- (b) As of the Execution Date, Seller is an indirect, wholly-owned subsidiary of The AES Corporation, a company that has extensive experience developing, constructing, owning and operating utility-scale renewable energy generation facilities.
- (c) As of the Execution Date and for the extent of the Term, Seller has obtained or will obtain Land Rights within the time periods set forth in Section 11.2 (Land Rights for Facility) and Section 11.3 (Company-Owned Interconnection Facilities).

- (d) At the time legally required, Seller shall have obtained
 - (i) all Governmental Approvals for the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities and (ii) all Governmental Approvals necessary for the construction, ownership, operation and maintenance of the Facility.
- (e) As of the Commercial Operations Date, the Facility will be a qualified renewable resource under RPS in effect as of the Effective Date.

ARTICLE 23
PROCESS FOR ADDRESSING
REVISIONS TO PERFORMANCE STANDARDS

- 23.1 Revisions to Performance Standards. The Parties acknowledge that, during the Term, certain Performance Standards and Telemetry and Control interfaces may be revised or added to facilitate necessary improvements in integrating intermittent variable energy resources and/or energy storage resources into the Company System and operations. Such revisions or additions may be attributable to, without limitation, the following: changes in penetration levels of intermittent renewable resources on the Company System, changes in the Company System, changes in communications and control platforms, changes in system protection requirements, changes to the state of commercially available technology, changes to Company-owned generation resources, changes in customer electrical usage (such as changes in average hourly load profiles), and changes in Laws (e.g., new environmental constraints, which may limit Company's ability to start/stop its generators in response to integration of intermittent generation, or constraints impacting the power quality standards for the Company System, such as constraints imposed by HERA or by the PUC under the HERA Law). Changes in Facility characteristics achieved through existing control system configuration, updating settings, or other tunable parameters shall not be considered a revision to performance standards. These types of changes should be implemented by the Seller in response to Company request. If such changes to Facility characteristics (i) cannot be achieved through existing control system configuration, updating settings, or other tunable parameters, (ii) are not commercially reasonable or (iii) would materially and negatively impact the Seller's ability to meet its obligations under this Agreement, such changes shall be considered revisions to the Performance Standards.
- 23.2 Performance Standards Information Request. If Company concludes that a Performance Standards Revision is necessary or important for the operation of the Company System and is capable of being complied with by 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.

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

Revision Order becomes non-appealable as provided in Section 23.6 (PUC Performance Standards Revision Order).

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

- 23.7 Company's Rights. The rights granted to Company under Section 23.4 (Performance Standards Revision Document) and Section 23.5 (Failure to Reach Agreement) above are exclusive to Company. Seller shall not have a right to initiate negotiations of a Performance Standards Revision Document or to initiate dispute resolution under Section 23.10 (Dispute), as a result of a failure to agree upon and execute any Performance Standards Revision Document.
- 23.8 Seller's Obligation. Notwithstanding any provision of this Article 23 (Process for Addressing Revisions to Performance Standards) to the contrary, Seller shall have no obligation to respond to more than one Performance Standards Information Request during any 12-month period.
- 23.9 Limited Purpose. This Article 23 (Process for Addressing Revisions to Performance Standards) is intended to specifically address necessary revisions to the Performance Standards and Telemetry and Control interfaces to enhance integration of intermittent resources and energy storage resources onto Company System, or to comply with future Laws which may be driven in part by higher integration of intermittent resources and/or energy storage resources, and is not intended for either Party to provide a means for renegotiating any other terms of this Agreement. Revisions to the Performance Standards in accordance with the provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are not intended to materially increase Seller's risk of non-performance or default.
- 23.10 Dispute. If Company decides to declare a dispute as a result of the failure to reach agreement and execute a Performance Standards Revision Document pursuant to Section 23.5 (Failure to Reach Agreement), it shall provide written notice to that effect to 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, Company shall apply to the PUC for the appointment of an Independent

Evaluator. If an Independent Observer retained under the Competitive Bidding Framework is qualified and willing and available to serve as Independent Evaluator, the PUC shall appoint one of the persons or entities qualified to serve as an Independent Observer to be the Independent Evaluator; if not, the PUC shall appoint another qualified person or entity to serve as Independent Evaluator. In its application, Company shall ask the PUC to appoint an Independent Evaluator within 30 Days of the application.

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

records. However, the Independent Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. The Parties may meet with each other during the review process to explore means of resolving the matter on mutually acceptable terms.

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

23.11 HERA Law. The provisions of this Article 23 (Process for Addressing Revisions to Performance Standards) are without

limitation to the obligations of the Parties under the HERA Law and the reliability standards and interconnection requirements developed and adopted by the PUC pursuant to the HERA Law.

ARTICLE 24
FINANCIAL COMPLIANCE

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

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

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

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

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

basis. Notwithstanding the foregoing requirement that Seller provide audited financial statements to Company, the Parties will take all commercially reasonable steps, which may include modification of this Agreement to eliminate the consolidation treatment, while preserving the economic "benefit of the bargain" to both Parties. If the Parties are unable to eliminate the consolidation treatment by other means, the Parties shall effectuate a sale of the Facility to Company at (i) if the sale occurs before the end of the thirteenth (13th) Contract Year, the greater of the Make Whole Amount determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility of Seller) or the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), or (ii) if the sale occurs on or after the beginning of the fourteenth (14th) Contract Year, the fair market value determined pursuant to Section 3 (Procedure to Determine Fair Market Value of the Facility) of Attachment P (Sale of Facility by Seller), but not less than the Financial Termination Costs determined pursuant to Section 6 (Make Whole Amount) of Attachment P (Sale of Facility by Seller), in either case under a Purchase and Sale Agreement to be negotiated based on the terms and conditions set forth in Section 4 (Purchase and Sale Agreement) of Attachment P (Sale of Facility by Seller).

- (b) [Reserved]
- (c) [Reserved]

ARTICLE 25
GOOD ENGINEERING AND OPERATING PRACTICES

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

ARTICLE 26
EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 27
SET OFF

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

ARTICLE 28
DISPUTE RESOLUTION

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

Independent AF Evaluator) or (iii) an OEPR Evaluator under Attachment U (Calculation and Adjustment of Net Energy Potential).

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

ARTICLE 29
MISCELLANEOUS

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

Company:

By Mail:

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

Delivered By Hand or Overnight Delivery:

Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, Suite 2100
Honolulu, Hawai'i 96813
Attn: Manager, Energy Contract Management

By E-mail:

Hawaiian Electric Company, Inc.
Manager, Energy Contract Management
ppanotices@hawaianelectric.com

With a copy to:

By Mail:

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

By E-mail:

Hawaiian Electric Company, Inc.
Legal Department
Email: legalnotices@hawaianelectric.com

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

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

by the recipient, and the effective date of such notice shall be the date of receipt, provided such receipt has been confirmed by the recipient.

- (d) The Parties may agree in writing upon additional means of providing notices, consents and waivers under this Agreement in order to adapt to changing technology and commercial practices.
- 29.4 Effect of Section and Attachment Headings. The Table of Contents and paragraph headings of the various sections and attachments have been inserted in this Agreement as a matter of convenience for reference only and shall not modify, define or limit any of the terms or provisions hereof and shall not be used in the interpretation of any term or provision of this Agreement.
- 29.5 Non-Waiver. Except as otherwise provided in this Agreement, no delay or forbearance of Company or 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.
- 29.6 Relationship of the Parties. Nothing in this Agreement shall be deemed to constitute either Party hereto as partner, agent or representative of the other Party or to create any fiduciary relationship between the Parties. Seller does not hereby dedicate any part of Facility to serve Company, Company's customers or the public.
- 29.7 Entire Agreement. This Agreement and the IRS Letter Agreements (together with any confidentiality or non-disclosure agreements entered into by the Parties during the process of negotiating this Agreement and/or discussing the specifications of the Facility) constitutes the entire agreement between the Parties relating to the subject matter hereof, superseding all prior agreements, understandings or undertakings, oral or written. Each of the Parties confirms that in entering into this Agreement, it has not relied on any statement, warranty or other representations (other than those set out in this Agreement) made or information supplied by or on behalf of the other Party.
- 29.8 Governing Law, Jurisdiction and Venue. Interpretation and performance of this Agreement shall be in accordance with,

and shall be controlled by, the laws of the State of Hawai'i, other than the laws thereof that would require reference to the laws of any other jurisdiction. By entering into this Agreement, Seller submits itself to the personal jurisdiction of the courts of the State of Hawai'i and agrees that the proper venue for any civil action arising out of or relating to this Agreement shall be Honolulu, Hawai'i.

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

- 29.13 Severability. If any term or provision of this Agreement, or the application thereof to any person, entity or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the Parties will take all commercially reasonable steps, including modification of the Agreement, to preserve the economic "benefit of the bargain" to both Parties notwithstanding any such aforesaid invalidity or unenforceability.
- 29.14 Settlement of Disputes. Except as otherwise expressly provided, any dispute or difference arising out of this Agreement or concerning the performance or the non-performance by either Party of its obligations under this Agreement shall be determined in accordance with the dispute resolution procedures set forth in Article 28 (Dispute Resolution) of this Agreement.
- 29.15 Environmental Credits and RPS. To the extent not prohibited by law, Company shall have the sole and exclusive right to use the electric energy purchased hereunder to meet RPS and any Environmental Credit shall be the property of Company; provided, however, that such Environmental Credits shall be to the benefit of Company's ratepayers in that the value must be credited "above the line". Seller shall use all commercially reasonable efforts to ensure such Environmental Credits are vested in Company, and shall execute all documents, including, but not limited to, documents transferring such Environmental Credits, without further compensation; provided, however, that Company agrees to pay for all reasonable costs associated with such efforts and/or documentation.
- 29.16 Schedule of Defined Terms and Attachments. The Schedule of Defined Terms and each Attachment to this Agreement constitute essential and necessary parts of this Agreement.
- 29.17 Proprietary Rights. Seller agrees that in fulfilling its responsibilities under this Agreement, it will not use any process, program, design, device or material that infringes on any United States patent, trademark, copyright or trade secret ("Proprietary Rights"). Seller agrees to indemnify,

defend and hold harmless the Indemnified Company Party from and against all losses, damages, claims, fees and costs, including but not limited to reasonable attorneys' fees and costs, arising from or incidental to any suit or proceeding brought against the Indemnified Company Party for infringement of Third Party Proprietary Rights arising out of Seller's performance under this Agreement, including but not limited to patent infringement due to the use of technical features of the Facility to meet the Performance Standards specified in the Agreement.

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

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

29.20 PUC Approval.

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

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

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

29.20(c) (Company's Written Statement) to the effect that the conditions referred to in Section 29.20(a) (PUC Approval Order) have been satisfied, the term "Non-appealable PUC Approval Order Date" shall be defined as follows:

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

(excluding from consideration those terms and conditions that apply solely to the Seller and have no impact on Company), and therefore does not meet the definition of a PUC Approval Order as set forth in Section 29.20(a) (PUC Approval Order).

29.21 Community Outreach.

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

satisfactory PUC Approval Order. Seller shall collect all public comments, and then provide Company copies of all comments received in their original, unedited form, along with copies of all comments with personal information redacted and ready for filing. Seller agrees that Company may submit any and all public comments (presented in its original, unedited form) as part of its PUC application for this Project.

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

Facility during the Project planning and development process through the Term of this Agreement, and shall timely inform Company of its plans and activities in this regard.

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

Name: Kirstin Punu

Contact Information: kirstin.punu@aes.com

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

29.22 Change in Standard System or Organization.

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

- 29.23 No Third Party Beneficiaries. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties and their successors and permitted assigns.
- 29.24 Hawai'i General Excise Tax. Seller shall, when making payments to Company under this Agreement, pay such additional amount as may be necessary to reimburse Company for the Hawai'i general excise tax on gross income and all other similar taxes imposed on Company by any Governmental Authority with respect to payments in the nature of gross receipts tax, sales tax, privilege tax or the like (including receipt of any payment made under this Section 29.24 (Hawai'i General Excise Tax)), but excluding federal or state net income taxes. By way of example and not limitation, as of the Execution Date, all payments subject to the Hawai'i general excise tax plus surcharge on O'ahu (totaling 4.5% as of the Execution Date) would include an additional 4.712% so that the underlying payment will be net of such tax liability.
- 29.25 Survival of Obligations. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or Company's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:
- (a) The obligation to pay Daily Delay Damages under Section 13.4 (Damages and Termination);
 - (b) The obligation to pay Termination Damages under Article 16 (Damages in the Event of Termination by Company);
 - (c) The indemnity obligations under Article 17 (Indemnification) and Section 29.17 (Proprietary Rights);

- (d) The dispute resolution provisions of Article 28 (Dispute Resolution);
- (e) Section 29.3 (Notices), Section 29.5 (Non-Waiver), Section 29.8 (Governing Law, Jurisdiction and Venue), Section 29.9 (Limitations), Section 29.13 (Severability), Section 29.14 (Settlement of Disputes), Section 29.15 (Environmental Credits and RPS), Section 29.17 (Proprietary Rights), Section 29.19 (Computation of Time), Section 29.23 (No Third Party Beneficiaries), Section 29.24 (Hawai'i General Excise Tax), Section 29.25 (Survival of Obligations), Section 7 (Land Restoration) of Attachment G (Company-Owned Interconnection Facilities) and Section 1(d) (Seller's Right to Transfer) and Section 2(d) (Right of First Refusal) of Attachment P (Sale of Facility by Seller); and
- (f) Seller's obligations under Section 3 (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of Attachment G (Company-Owned Interconnection Facilities) to pay interconnection costs and Section 4 (Ongoing Operation and Maintenance Charges) of Attachment G (Company-Owned Interconnection Facilities) to pay operation and maintenance costs incurred up to the date of termination of the Agreement.

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

- (a) "Including" and any other words or phrases of inclusion will not be construed as terms of limitation, so that references to "included" matters will be regarded as non-exclusive, non-characterizing illustrations.
- (b) "Copy" or "copies" means that the copy or copies of the material to which it relates are true, correct and complete.
- (c) When "Article," "Section," "Schedule," or "Attachment" is capitalized in this Agreement, it refers to an article, section, schedule or attachment to this Agreement.

- (d) "Will" has the same meaning as "shall" and, thus, connotes an obligation and an imperative and not a futurity.
- (e) Titles and captions of or in this Agreement, the cover sheet and table of contents of this Agreement, and language in parenthesis following Section references are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.
- (f) Whenever the context requires, the singular includes the plural and plural includes the singular, and the gender of any pronoun includes the other genders.
- (g) Any reference to any statutory provision includes each successor provision and all applicable Laws as to that provision.

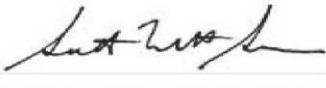
29.27 Agreement is Not a Design or Construction Contract. This Agreement is not a design or construction contract. The Parties acknowledge and agree that Seller will finance and develop the Facility for Seller to own and operate. Seller is not a design professional or a contractor. Seller is not hereby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

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

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

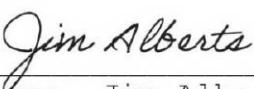
HAWAIIAN ELECTRIC COMPANY, INC.

By



Name: Scott W. H. Seu
Its: President & CEO

By



Name: Jim Alberts
Its: Senior Vice President,
Business Development &
Strategic Planning

("Company")

WAIAWA PHASE 2 SOLAR, LLC

By



Name: Woody Rubin
Its: President

("Seller")

SCHEDULE OF DEFINED TERMS

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

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

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

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

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

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

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

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

"Applicable Period Lump Sum Payment": For each applicable period, the total amount of Lump Sum Payment payable during such period, as such amount may be calculated and adjusted from time to time as set forth in Section 2.3 (Lump Sum Payment) of this Agreement and/or Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement, including but not limited to any downward adjustment made pursuant to Section 3.iv of said Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), but excluding any set-off of liquidated damages under Section 2.11 (Payment of Liquidated Damages for Failure to Achieve Performance Metrics; Limitation on Liquidated Damages). For purposes of calculating liquidated damages under Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payment payable for the last calendar month of the LD Period in question. For purposes of calculating liquidated damages under Section 2.6(c) (GPR Performance Metric and Liquidated Damages), the "Applicable Period Lump Sum Payment" is the monthly Lump Sum Payments payable for the last calendar month of the MPR Assessment Period in question. For purposes of calculating liquidated damages under Section 2.7(a) (BESS Capacity Test and Liquidated Damages), Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages) and Section 2.9 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages), the "Applicable Period Lump Sum Payment" is the total of the monthly Lump Sum Payments payable for the three months of the BESS Measurement Period in question.

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

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

"Battery Energy Storage System" or "BESS": The battery energy storage system as described in Section 5 (Equipment) of Attachment A (Description of Generation, Conversion and Storage Facility) to this Agreement, together with all other equipment, devices, and associated appurtenances owned, controlled, operated and managed

by Seller in connections, with or to facilitate, the storage, transmission, delivery or furnishing by Seller to Company of the electric energy stored in the BESS.

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

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

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

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

"BESS Capacity Cure Period": Shall have the meaning set forth in Section 2.7(b) (BESS Capacity Test Termination Rights).

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

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

"BESS Contract Capacity": The storage capacity, in MWh, of the BESS, or 240 MWh.

"BESS EAF Performance Metric": Shall have the meaning set forth in Section 2.8(a) (BESS Annual Equivalent Availability Factor and Liquidated Damages).

"BESS EFOF Performance Metric": Shall have the meaning set forth in Section 2.9 (BESS Annual Equivalent Forced Outage Factor; Liquidated Damages).

"BESS Measurement Period": Shall mean, in any Contract Year, the following periods of three calendar months each: (i) the period beginning on the first day of the first calendar month of such Contract Year and extending through the last day of the third

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

calendar month of such Contract Year; (ii) the period beginning on the first day of the fourth calendar month of such Contract Year and extending through the last day of the sixth calendar month of such Contract Year; (iii) the period beginning on the first day of the seventh calendar month of such Contract Year and extending through the last day of the ninth calendar month of such Contract Year; and (iv) the period beginning on the first day of the tenth calendar month of such Contract Year and extending through the last day of the twelfth calendar month of such Contract Year.

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

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

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

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

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

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

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

"Commercial Operations": Upon satisfaction of the following conditions, the Facility shall be considered to have achieved Commercial Operations on the Day specified in Seller's written notice described below: (i) the Acceptance Test has been passed, (ii) all generating units have passed Control System Acceptance Tests, (iii) the Transfer Date has occurred, (iv) Seller has (1)

provided to Company the Required Models (as defined in Section 6(a) (Seller's Obligation to Provide Models) of Attachment B (Facility Owned by Seller)) in the form of Source Code, (2) placed the current version of the Source Code for the Required Models with the Source Code Escrow Agent as required in Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller), or (3) if Seller is unable to arrange for the placement of the appropriate Source Code into the Source Code Escrow account, placed the required funds with the Monetary Escrow Agent as required in Section 6(b)(ii)(A) (Establishment of Monetary Escrow) of Attachment B (Facility Owned by Seller), and (v) Seller provides Company with written notice that (aa) Seller is ready to declare the Commercial Operations Date and (bb) the Commercial Operations Date will occur within 24 hours (i.e., the next Day).

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

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

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

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

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

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

"Contract Pricing": The total of the Energy Payment and the Lump Sum Payment.

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

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

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

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

Examples of the Control System Telemetry and Control List include:

- Seller's substation/equipment status - breaker open/closed status, equipment normal/alarm operating status, etc.

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

- Seller's generation data (analog values) - number of generators available/online, voltage, current, MW, MVAR, etc.
- Seller's generation performance (status and/or analog values) - ramp rate, generator frequency, etc.
- Active Power control interface - dispatch MW setpoint, etc.
- Voltage control interface - voltage kV setpoint, etc.
- Power factor control interface - power factor setpoint, etc.

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

"Day": A calendar day.

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

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

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

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

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

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

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

"EMS" or "Energy Management System": The real-time, computer-based control system, or any successor thereto, used by Company to

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

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

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

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

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

"Environmental Credits": Any environmental credit, offset, or other benefit allocated, assigned or otherwise awarded by any Governmental Authority, international agency, or non-governmental renewable energy certificate accounting and verification organization to Company or Seller based in whole or in part on the fact that the Facility is a non-fossil fuel facility. Such Environmental Credits shall include, without limitation, the non-energy attributes of renewable energy including, but not limited to, any avoided emissions of pollutants to the air, soil, or water such as sulfur dioxide, nitrogen oxides, carbon monoxide, particulate matter, and hazardous air pollutants; any other pollutant that is now or may in the future be regulated under the pollution control laws of the United States; and avoided emissions of carbon dioxide and any other greenhouse gas, along with the renewable energy certificate reporting rights to these avoided emissions, but in all cases shall not mean tax credits.

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

"Forced Outage": A start failure or unplanned outage reported consistently with the principles in the NERC GADS REPORTING INSTRUCTIONS for SF, U1, U2 and U3 events. This may be a startup failure, a condition resulting in immediate shutdown or trip, or an outage which requires removal from the in-service state before the end of the next weekend (Sunday at 2400 or before Sunday turns into Monday). This type of outage can only occur while the resource is in service.

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

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

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

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

- (c) 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.
- (d) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and reasonably foreseeable abnormal conditions.
- (e) Equipment is operated in a manner safe to workers, the general public and the environment and in accordance with equipment manufacturer's specifications, including, without limitation, defined limitations such as temperature, current, frequency, polarity, synchronization, control system limits, etc.

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

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

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

"GPR Performance Metric": Shall be as determined under Section 2.6(b) (Determination of GPR Performance Metric) of this Agreement.

"Guaranteed Commercial Operations Date": The date specified as such in Attachment K (Guaranteed Project Milestones) of this

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

Agreement, by which Seller guarantees that it will achieve the Commercial Operations Date.

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

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

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

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

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

"Independent AF Evaluator": A person empowered, pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to resolve disagreements due to failure of the Parties to resolve a Monthly Report Disagreement.

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

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

"Initial NEP Verification Date": The first Day of the calendar month following the fifteenth (15th) calendar month after the Commercial Operations Date.

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

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

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

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

"Interconnection Requirements Study" or "IRS": A study, performed in accordance with the terms of the IRS Letter Agreements to determine, among other things, (a) the system requirements and

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

equipment requirements to interconnect the Facility with the Company System, (b) the Performance Standards for the Facility, and (c) an estimate of interconnection costs and project schedule for interconnection of the Facility.

"Inverter System": The electric DC to AC and AC to DC power conversion equipment as more particularly described in Attachment A (Description of Generation, Conversion and Storage Facility).

"Inverter System Equivalent Availability Factor Performance Metric": Shall have the meaning set forth in Section 2.5(b) (Inverter System Equivalent Availability Factor Performance Metric and Liquidated Damages).

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

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

"kV": Kilovolt.

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

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

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

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

"LD Assessment Date": For the last month of each LD Period, the Day following the expiration of the 10-Business Day period provided for Company to submit a Notice of Disagreement pursuant

to Section 2(a) (Notice of Disagreement With Monthly Report) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

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

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

"Lowest BESS Capacity Bandwidth": Shall have the meaning set forth in Section 2.7(a) (BESS Capacity Test and Liquidated Damages).

"Lump Sum Payment": The payment to be made by Company to Seller in exchange for (i) the Actual Output produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch of the Facility; (ii) the availability of the Facility's Net Energy Potential for Company Dispatch in accordance with this Agreement; and (iii) the availability of the BESS. When necessary to account for the availability of some but not all inverters, the amount of the monthly Lump Sum Payment is to be allocated pro rata to each inverter and shall be calculated and adjusted as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

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

"Malware": means computer software, code or instructions that: (a) intentionally, and with malice intent by a third party, adversely affect the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including without limitation, other programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) without functional purpose, self-replicate without manual intervention; (c) purport to perform a useful function but which actually

performs either a destructive or harmful function, or perform no useful function other than utilize substantial computer, telecommunications or memory resources with the intent of causing harm; or (d) without authorization collect and/or transmit to third parties any information or data; including such software, code or instructions commonly known as viruses, Trojans, logic bombs, worms, adware and spyware.

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

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

"Measured Performance Ratio" or "MPR": Shall have the meaning set forth in Section 2.6(a) (Calculation of Measured Performance Ratio) of this Agreement.

"MMS": Meteorological monitoring station.

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

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

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

"Monthly Report Disagreement": Any disagreement arising out of the same Monthly Report.

"Most Recent Prior NEP Benchmark": In the event a Subsequent OEPR is prepared for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year, the "Most Recent

Prior NEP Benchmark" shall be (i) for the first such Subsequent OEPR, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last month of the Second Benchmark Period pursuant to Section 3.iii.a of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement and (ii) for all Subsequent OEPRs prepared after the aforementioned first Subsequent OEPR, the NEP OEPR Estimate obtained from the immediately preceding Subsequent OEPR.

"MPR": Shall have the meaning set forth in Section 2.6(a)(i) of this Agreement.

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

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

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

"MW

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

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

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

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

"Net Amount": Shall mean, with respect to any Hawai'i Renewable Tax Credit, the amount remaining after deducting any documented and reasonable financial, legal, administrative and other costs and expenses of applying for, pursuing, monetizing and receiving the applicable Hawai'i Renewable Tax Credit, payments by (or reserves established for the payment by) Seller and/or its investors on account of federal or state income taxes (at the highest applicable marginal corporate rate) payable with respect to receipt of such Hawai'i Renewable Tax Credit, and all payments to or reserves required by Seller's lenders or other financing parties in connection with the application for or receipt of such Hawai'i Renewable Tax Credit.

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

"Net Energy Potential": The estimated single number with a P-Value of 95 for the annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a ten-year period. The Net Energy Potential is subject to adjustment as provided in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, but in no circumstances shall the Net Energy Potential exceed the NEP RFP Projection.

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

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

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

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

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

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

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

"OEPR Consultants List": The engineering firms listed in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement, as such list may be expanded or contracted by the Parties as provided in Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of said Attachment U (Calculation and Adjustment of Net Energy Potential) or Section 2(f) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement.

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

"P-Value": The probability of exceedance.

"Parties": Seller and Company, collectively.

"Party": Each of Seller or Company.

"Performance Metrics": Each of the Inverter System Equivalent Availability Factor Performance Metric, the GPR Performance Metric, the BESS Capacity Performance Metric, the BESS EAF Performance Metric, the BESS EFOF Performance Metric, and the RTE Performance Metric.

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

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

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

"Performance Standards Modifications": For each Performance Standards Revision, any capital improvements, additions, enhancements, replacements, repairs or other operational modifications to the Facility and/or to changes in Seller's operations or maintenance practices necessary to enable the Facility to achieve the performance requirements of such Performance Standards Revision.

"Performance Standards Pricing Impact": Any reimbursement, adjustment in Contract Pricing and/or the calculation of Performance Metrics LDs, as may be necessary to specifically

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

"Performance Standards Proposal": A written communication from Seller to Company detailing the following with respect to a proposed Performance Standards Revision: (i) a statement as to whether Seller believes that it is technically feasible to comply with the Performance Standards Revision and the basis therefor; (ii) the Performance Standards Modifications proposed by Seller to comply with the Performance Standards Revision; (iii) the capital and incremental operating costs of any necessary technical improvements, and any other incremental net operating or maintenance costs associated with any necessary operational changes, and any expected lost revenues associated with expected reductions in electric energy delivered to Company; (iv) the Performance Standards Pricing Impact of such costs and/or lost revenues; (v) information regarding the effectiveness of such technical improvements or operational modifications; (vi) proposed contractual consequences for failure to comply with the Performance Standard Revision that would be commercially reasonable under the circumstances; and (vii) such other information as may be reasonably required by Company to evaluate Seller's proposals. A Performance Standards Proposal may be issued either in response to a Performance Standards Information Request or on Seller's own initiative.

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

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

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

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

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

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

"Prime Rate": The "prime rate" of interest, as published from time to time by The Wall Street Journal in the "Money Rates" section of its Western Edition Newspaper (or the average prime rate if a high

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

and a low prime rate are therein reported). The Prime Rate shall change without notice with each change in the prime rate reported by The Wall Street Journal, as of the date such change is reported. Any such rate is a general reference rate of interest, may not be related to any other rate, may not be the lowest or best rate actually charged by any lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by lenders or market rates in general.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"PV System": The photovoltaic solar electric generating project as more particularly described in Attachment A (Description of Generation, Conversion and Storage Facility).

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

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

"Renewable Portfolio Standards" or "RPS": The Hawai'i law that mandates that Company and its subsidiaries generate or purchase certain amounts of their net electricity sales over time from qualified renewable resources. The RPS requirements in Hawai'i are currently codified as Hawai'i Revised Statutes (HRS) 269-91 through 269-95.

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

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

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

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

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

"RFP": Company's Request for Proposals for Variable Renewable Dispatchable Generation and Energy Storage, Island of O'ahu, issued on August 22, 2019.

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

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

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

"Second Benchmark Period": The period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues the Initial OEPR and ending with the expiration of the third (3rd) Contract Year. For avoidance of doubt, the effect of the foregoing definition is that the Second Benchmark Period will follow immediately upon the expiration of the First Benchmark Period.

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

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

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

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

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

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

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

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

- (i) The Facility's failure to comply with any of the Performance Standards, Good Engineering and Operating Practices, Governmental Approvals, applicable Laws or Seller's other obligations under this Agreement;
- (ii) Seller-Attributable System Conditions;
- (iii) Conditions at or on either side of the Point of Interconnection arising from the acts or omissions of Seller or any of its affiliates, employees, agents, contractors, vendors, materialmen, independent contractors or suppliers of Seller, acting in such capacity for the benefit of Seller ("Seller Representatives"), unless such acts or omissions are themselves excused by reasons of Force Majeure pursuant to Article 21 (Force Majeure) of this Agreement;
- (iv) A disconnection initiated by the Company pursuant to Article 9 (Personnel and System Safety) of this Agreement) that is caused by Seller or any Seller Representatives;
- (v) The Company has reasonably decided that it is inadvisable for such inverter (or the Facility as a whole) to continue normal operations without a further Control System Acceptance Test as provided in Section 7(a) (Testing Requirements) of Attachment B (Facility Owned by Seller);
- (vi) The Facility is deemed to be in Seller-Attributable Non-Generation status under any of the following Sections of Attachment B (Facility Owned by Seller): Section 1(b)(iii)(H)(i); Section 1(g)(vi), Section 1(j) (Demonstration of Facility) or Section 4(e); and

- (vii) The Facility is shutdown at the direction of Company as provided in Section 6.4 (Shutdown For Lack of Reliable Real Time Data), and such shutdown is caused by Seller or any Seller Representatives.

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

"Seller-Attributable System Conditions": Conditions on the Company System:

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

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

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

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

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

"Site": The parcel of real property on which the Facility will be constructed and located, together with any Land Rights reasonably necessary for the construction, ownership, operation and maintenance of the Facility. The Site is identified in Attachment

A (Description of Generation, Conversion and Storage Facility) to this Agreement.

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

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

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

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

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

"Source Code Owner": Shall mean the developer and/or owner of the Required Models utilizing Source Code authorized to deposit the Source Code with the Source Code Escrow Agent upon the terms of the Source Code Escrow Agreement.

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

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

"Unit Price": \$124.196794 per MWh of Net Energy Potential annually.

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ATTACHMENT A
DESCRIPTION OF GENERATION, CONVERSION AND STORAGE FACILITY

1. Name of Facility: Waiawa Phase 2 Solar
 - (a) Location: Pearl City, Waipio Village (TMK No. 9-6-004:024, 9-6-004:025, 9-6-004:026, 9-4-006:036)
 - (b) Telephone number (for system emergencies): 855-679-3553
 - (c) E-mail Address: ControlCenter@spower.com
 - (d) Contact Information for notices pursuant to Section 29.3 (Notices) of the Agreement:

Mailing Address:

Waiawa Phase 2 Solar, LLC
c/o AES Distributed Energy, Inc.
282 Century Pl, Suite 2000
Louisville, CO 80027
Attention: Legal Department

Address for Delivery by Hand or Overnight Delivery:

Waiawa Phase 2 Solar, LLC
c/o AES Distributed Energy, Inc.
282 Century Pl, Suite 2000
Louisville, CO 80027
Attention: Legal Department

Email Address: DELegalNotices@aes.com

2. Owner (If different from Seller): N/A

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

3. Operator: AES DE Manager, LLC
4. Name of person to whom payments are to be made: Waiawa Phase 2 Solar, LLC

(a) Mailing address:

Waiawa Phase 2 Solar, LLC
C/O AES Distributed Energy, Inc.
282 Century Pl, 2000
Louisville, CO 80027

(b) Hawai'i Gross Excise Tax License number: GE-033-183-1808-01

5. Equipment:

(a) Type of facility and conversion equipment:

Solar Photovoltaic facility combined with a Battery Energy Storage System with DC:AC inverters

(b) Design and capacity

Total Facility Capacity ("Contract Capacity"):

30 MW total for all hours other than daytime hours (6a-5p). During daytime hours (6a-5p), the Contract Capacity is 15.5 MW Total.

Two points of interconnection, each with a 15 MW Contract Capacity for all hours other than daytime hours. During daytime hours, point of interconnection #1 has an 8.5 MW Contract Capacity and point of interconnection #2 has a 7 MW Contract Capacity.

Energy Storage Capacity: 30 MW / 240 MWh total.

Total Number of Generators:

Solar PV Panels: (133,336) - 450Wdc solar PV panels

Inverters: (12) - 2.86 MW Central Inverters and (2) - 1.43 MW Central Inverters each with DC/DC converter

Description of Equipment:

Solar PV Panels mounted on single axis tracker racking to convert sunlight to DC electricity

Inverters convert DC electricity from solar PV panels and/or BESS to AC electricity

Lithium-ion battery energy storage system stores energy from the solar PV panels

Individual Unit:

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

Generator:

Type	multi-level 3-phase inverter
Rated Power	2,858 / 1,429 kW
Voltage	690 V, 3 phase
Frequency	60 Hz
Class of Protection	
Number of Poles	
Rated Speed	N/A rpm
Rated Current	2,391 / 1,196 A
Rated Power Factor	See Exhibit B-2

Batteries: Containerized Lithium-ion

Total Number of Energy Storage Units: (52) Battery Containers

(c) Single or 3 phase: 3 phase

(d) Name of manufacturer:

PV Modules: Astronergy (or equivalent from Jinko or Longi)

Inverters: GPTech

Batteries: Samsung (or equivalent from LG Chem)

(e) Description of Facility SCADA and control system(s)

(f) The "Allowed Capacity" of this Agreement shall be the lower of (i) Contract Capacity or (ii) the net nameplate capacity (net for export) of the Facility installed by the Commercial Operations Date.

(g) Seller may propose revisions to this Section 5 (Equipment) of Attachment A (Description of Generation, Conversion and Storage Facility) ("Section 5") for Company's approval prior to commencement of construction, provided, however, that (i) no such revision to this Section 5 shall change the type of Facility or conversion equipment deployed at the Facility from a solar energy conversion facility using photovoltaic equipment; (ii) Seller shall be in compliance with all other terms and conditions of this Agreement; and (iii) such revision(s) shall not change the characteristics of the Facility equipment or the specifications used in the IRS. Any revision to this Section 5 complying with items (i) through (iii) above shall be subject to Company's prior approval, which approval shall not be unreasonably withheld. If Seller's proposed revision(s) to this Section 5 otherwise satisfies items (i) and (ii) above but not item (iii) such that Company, in its reasonable discretion, determines that a re-study or revision to all or any part of the IRS is required to accommodate Seller's proposed revision(s), Company may, in its sole and absolute discretion, conditionally approve such revision(s) subject to a satisfactory re-study or revision to the IRS and Seller's payment and continued obligation to be liable and responsible for all costs and expenses of re-studying or revising such portions of the IRS and for modifying and paying for all costs and expenses of modification to the Facility, the Company-Owned Interconnection Facilities based on the results of

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

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

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

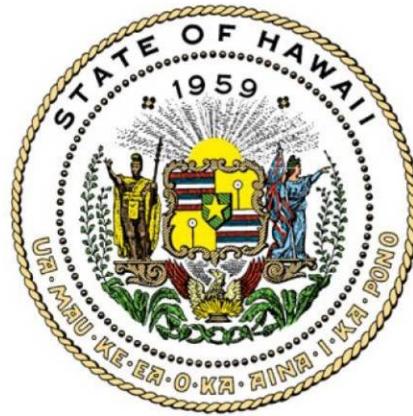
6. Insurance carrier(s): Seller shall provide written notice of selected carrier(s) prior to commencement of construction.
7. If Seller is not the operator, Seller shall provide a copy of the agreement between Seller and the operator which requires the operator to operate the Facility and which establishes the scope of operations by the operator and the respective rights of Seller and the operator with respect to the sale of electric energy from Facility no later than the Commercial Operations Date. In addition, Seller shall provide a certified copy of a certificate warranting that the operator is a corporation, partnership or limited liability company in good standing with the Hawai'i Department of Commerce and Consumer Affairs no later than the Commercial Operations Date.
8. Seller shall provide a certified copy of a certificate warranting that Seller is a corporation, partnership or limited liability company in good standing with the Hawai'i

Department of Commerce and Consumer Affairs which shall be attached hereto as Exhibit A-1 (Good Standing Certificates).

9. Seller, owner and operator shall provide Company a certificate and/or description of their ownership structures which shall be attached hereto as Exhibit A-2 (Ownership Structure).
10. In the event of a change in ownership or identity of Seller, owner or operator, such entity shall provide within 30 Days thereof, a certified copy of a new certificate and a revised ownership structure.

EXHIBIT A-1
GOOD STANDING CERTIFICATES

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.



Department of Commerce and Consumer Affairs

CERTIFICATE OF GOOD STANDING

I, the undersigned Director of Commerce and Consumer Affairs of the State of Hawaii, do hereby certify that

WAIAWA PHASE 2 SOLAR, LLC

organized under the laws of Delaware

was duly registered to do business in Hawaii as a foreign limited liability company on 06/08/2020 , and that, as far as the records of this Department reveal, has complied with all of the provisions of Chapter 428, Hawaii Revised Statutes, regulating foreign limited liability companies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, Hawaii.

Dated: July 29, 2020

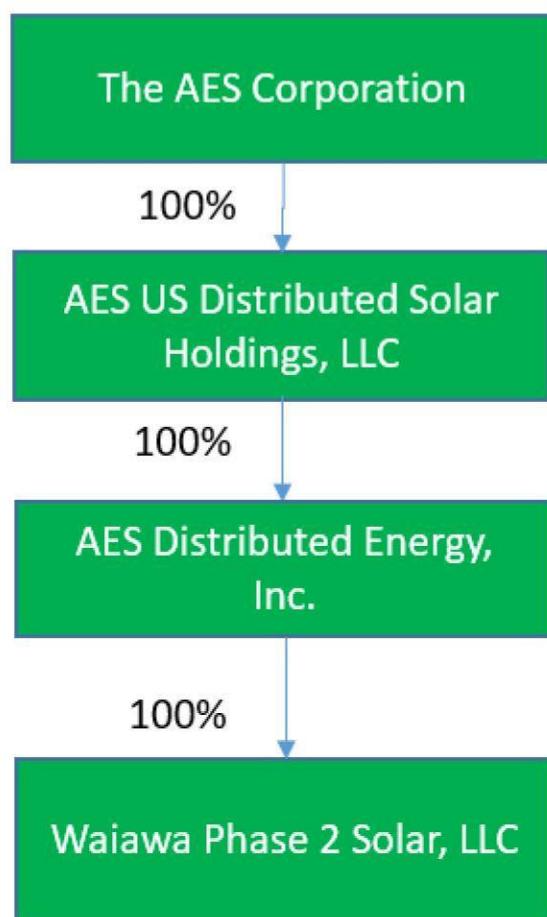
A handwritten signature in black ink, appearing to read "Catherine P. Ovalle-Cohen".

Director of Commerce and Consumer Affairs



EXHIBIT A-2
OWNERSHIP STRUCTURE

Legal Organizational Chart
for Waiawa Phase 2 Solar, LLC



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

ATTACHMENT B
FACILITY OWNED BY SELLER

1. The Facility.

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

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

(b) Certain Specifications for the Facility.

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

(ii) The Facility shall include:

[LIST OF THE FACILITY]

Examples may include, but are not limited to:

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

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

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

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

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

loss of communication link, Telemetry and Control failure, or other event resulting in loss of the remote control by Company, provision must be made for Seller to be able to institute via local controls, within 30 minutes (or such other period as Company accepts in writing) of the verbal directive by the Company System Operator, such change in voltage regulation target as directed by the Company System Operator;

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

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

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

G. Cybersecurity and Critical Infrastructure Protection.

- (i) Security Policies and Documentation.
Seller shall implement and document security policies and standards in accordance with industry best practices (e.g., aligned with the intent of NERC CIP-003-8 R2) and consistent with Company's security policies and standards. Seller shall submit documentation describing the approach, methodology and design to provide physical and cyber security (i.e., aligned with the intent of NERC CIP-003-8 R2) with its submittal of the design drawings pursuant to Section 1(c) (Design Drawings, Bill of Materials, Relay Settings and Fuse Selection) of Attachment B (Facility Owned by Seller) which shall be at least sixty (60) Days prior to the Acceptance Test.
- The design shall meet industry standards and best practices, consistent with the National Institute of Standards and Technology ("NIST") guidelines as indicated in Special Publication 800-53 Rev. 4 "Security and Privacy Controls for Federal Information Systems and Organizations" and Special Publication 800-82 Rev. 2 "Guide to Industrial Control Systems (ICS) Security". The system shall be designed with the criteria to meet applicable compliance requirements and identify areas that are not consistent with NIST guidelines and recommendations.
 - The cybersecurity documentation shall include a block diagram of the control system with all external connections clearly described.

- Seller shall provide such additional information as Company may reasonably request as part of a security posture assessment.
- Company shall be notified in advance when there is any condition that would compromise physical or cyber security.
- Seller shall, at the request of Company or, in the absence of any request from Company, at least annually, provide Company with updated documentation and diagrams including a record of changes.

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

- Segment and segregate networks and functions, including physical and logical separation between business networks and control system networks (i.e., aligned with the intent of NERC CIP-005-5 R1).
- Limit unnecessary lateral communications (i.e., aligned with the intent of NERC CIP-005-05 R1).
- Harden network devices (i.e., aligned with the intent of NERC CIP-07-6 R1).
- Secure access to infrastructure devices (i.e., aligned with the intent of NERC CIP-004-6 R4).

- Perform out-of-band (OoB) network management (i.e., aligned with the intent of NERC CIP-005-5 R2).
- Validate integrity of hardware and software (i.e., aligned with the intent of NERC CIP-010-3 R1 and NERC CIP-006-6 R1 Part 10).

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

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

devices (i.e., aligned with the intent of NERC CIP-011-2 R1 and NERC CIP-005-5 R2).

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

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

800-30 Rev. 1 "Guide for Conducting Risk Assessments".

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

In the event that Seller discovers or is notified of a breach, potential breach of security, or security incident at Seller's Facility or of Seller's systems, Seller shall immediately (aa) notify Company of such potential, suspected or actual security breach, whether or not such breach has compromised any of Company's confidential information; (bb) investigate and promptly remediate the effects of the breach, whether or not the breach was caused by Seller; (ccc) cooperate with Company with respect to any such breach or

unauthorized access or use; (dd) comply with all applicable privacy and data protection laws governing Company's or any other individual's or entity's data; and (ee) to the extent such breach was caused by Seller, provide Company with reasonable assurances satisfactory to Company that such breach, potential breach, or security incident shall not recur. Seller shall provide documentation to Company evidencing the length and impact of the breach. Any remediation of any such breach will be at Seller's sole expense.

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

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

- H. Because a reliable Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller) is necessary

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

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

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

- I. Seller shall reserve space within the Site for possible future installation of Company-owned meteorological equipment (such as SODAR and irradiance monitors) and AC and DC source lines for such equipment. In the event Company decides to install such meteorological

equipment: (i) Seller shall work with Company to determine an acceptable location for such equipment and any associated wiring, interface or other components; and (ii) Company shall pay for the needed equipment, and installation of such equipment, unless otherwise agreed to by the Parties. Company and Seller shall use commercially reasonable efforts to facilitate installation and minimize interference with the operation of the Facility.

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

- (c) Design Drawings, Bill of Material, Relay Settings and Fuse Selection. Seller shall provide to Company for its review the design drawings, Bill of Material, relay settings and fuse selection for the Facility and Company shall have the right, but not the obligation, to specify the type of electrical equipment, the interconnection wiring, the type of protective relaying equipment, including, but not limited to, the control circuits connected to it and the disconnecting devices, and the settings that affect the reliability and safety of operation of Company's and Seller's interconnected system. Seller shall provide the relay settings and protection coordination study, including fuse selection and AC/DC Schematic Trip Scheme (part of design drawings), for the Facility to Company during the 90% design. Company, at its option, may, with reasonable frequency, witness Seller's operation of control, synchronizing, and protection schemes and shall have the right to periodically re-specify the settings. Seller shall utilize relay settings prescribed by Company, which may be changed over time as Company System requirements change.
- (d) Disconnect Device. Seller shall provide a manually operated disconnect device which provides a visible break to separate Facility from Company System. Such disconnect device shall be lockable in the OPEN position and be readily accessible to Company personnel at all times.

- (e) Other Equipment. Seller shall install, own and maintain the infrastructure associated with the Revenue Metering Package, including but not limited to all enclosures (meter cabinets, meter pedestals, meter sockets, pull boxes, and junction boxes, along with their grounding/bonding connections), CT/PT mounting structures, conduits and ductlines, enclosure support structures, ground buses, pads, test switches, terminal blocks, isolation relays, telephone surge suppressors, and analog phone lines (one per meter), subject to Company's review and approval.
- (f) Maintenance Plan. Seller shall maintain Seller-Owned Interconnection Facilities in accordance with the following maintenance plan:

Transmission line: _____

____ kV Facility switching station: _____

Relay protection equipment: _____

Other equipment as identified: _____

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

- (g) Active Power Control Interface.

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

through control signals from the Company System Operations Control Center. The Facility will maintain the power level specified by the Company through the PV and BESS available energy, subject to the availability of resource and BESS State of Charge.

- (ii) Company shall review and provide prior written approval of the design for the Active Power Control Interface to ensure compatibility with Company's SCADA and EMS systems. In order to ensure such continued compatibility, Seller shall not materially change the approved design without Company's prior review and prior written approval.
- (iii) The Active Power Control Interface shall include, but not be limited to, a demarcation cabinet, ancillary equipment and software necessary for Seller to connect to Company's Telemetry and Control, located in Company's portion of the Facility switching station which shall provide the control signals to the Facility and send feedback status to the Company System Operations Control Center. The control type shall be analog output (set point) controls.
- (iv) The Active Power Control Interface shall also include provision for feedback points from the Facility indicating when the Company System Operator active power controls are in effect and the analog value of the controls received from the Company. The Facility shall provide the feedback to the Company SCADA system within 2 seconds of receiving the respective control signal from the Company.
- (v) Seller shall provide an analog input to the Telemetry and Control for the MW output of the individual generating units, and an analog signal for the total MW output at the Point of Interconnection.
- (vi) The Active Power Control Interface shall provide for remote control of the net real power input or output of the Facility by the Company at all

times. If the Active Power Control Interface is unavailable or disabled, the Facility shall not import or export net real power from or to Company, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, unless the Company, in its sole discretion, agrees to supply or accept net real power and Seller and Company agree on an alternate means of dispatch. Notwithstanding the foregoing, if Seller fails to provide such remote control features (whether temporarily or throughout the Term) and fails to discontinue importing or exporting electric energy to Company as required by this Section 1(g)(vi), then, notwithstanding any other provision of this Attachment B (Facility Owned by Seller), Company shall have the right to derate or disconnect the entire Facility during those periods that such control features are not provided and the Facility shall be deemed to be in Seller-Attributable Non-Generation status for such periods.

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

- (viii) The Active Power Control Interface shall accept the following active power control(s) from the Company SCADA and EMS systems:
- Maximum Power Import and Export Limits: The Facility is not allowed to exceed these settings under any circumstances. The primary frequency response control specified in Section 3(m) (Primary Frequency Response) of Attachment B (Facility Owned by Seller) is not allowed to increase the Facility's net real power import or export above the Import and Export limits, respectively.
 - Power Reference Set Point: The Facility is to import or export active power at this level to the extent allowed by the solar resource and energy storage and is not allowed to exceed this setting when system frequency is within the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller). When system frequency exceeds the deadband determined in Section 3(m)(iii) of Attachment B (Facility Owned by Seller), the Facility's net real power import or export is allowed to exceed this setting or be further reduced below this setting when commanded by the primary frequency response control specified in Section 3(m) of Attachment B (Facility Owned by Seller).
 - Inverter Enable/Disable Control: The Facility shall include an inverter Enable/Disable control. When Disable is selected, the Facility shall ramp down, shutdown, and leave offline its inverters. When Enable is selected, the Facility inverters can start up, ramp up, and remain in normal operations.
- (ix) Seller shall not override Company's active power controls without first obtaining specific approval to do so from the Company System Operator.

- (x) The requirements of the Active Power Control Interface may be modified as mutually agreed upon in writing by the Parties.
- (h) Control System Acceptance Test Procedures.
- (i) Conditions Precedent. The following conditions precedent must be satisfied prior to conducting the Control System Acceptance Test:
- Successful Completion of the Acceptance Test.
 - Facility has been successfully energized.
 - All of the Facility's generators have been fully synchronized.
 - The control system computer has been programmed for normal operations.
 - All equipment that is relied upon for normal operations (including ancillary devices such as capacitors/inductors, energy storage device, statcom, etc.) shall have been commissioned and be operating within normal parameters.
- (ii) Facility Generators. Unless all of the Facility's generators are available for the duration of the Control System Acceptance Test, the Control System Acceptance Test will have to be re-run from the beginning unless Seller demonstrates to the satisfaction of the Company that the test results attained with less than all of the Facility's generators are consistent with the results that would have been attained if all of the Facility's generators had been available for the duration of the test.
- (iii) Procedures. The Control System Acceptance Test will be conducted on Business Days during normal working hours on a mutually agreed upon schedule. No Control System Acceptance Test will be scheduled during the final 21 Days of a calendar year. No later than thirty (30) Days prior to conducting the Control System Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Control

System Acceptance Test. Attachment O (Control System Acceptance Test Criteria) provides general criteria to be included in the written protocol for the Control System Acceptance Test. Within fifteen (15) Business Days of completion of the Control System Acceptance Test, Company shall notify Seller in writing whether the Control System Acceptance Test(s) has been passed and, if so, the date upon which such Control System Acceptance Test(s) was passed. If any changes have been made to the technical specifications of the Facility or the design of the Facility in accordance with Section 5(f) of Attachment A (Description of Generation, Conversion and Storage Facility), such changes shall be reflected in an amendment to this Agreement, and the written protocol for the Control Systems Acceptance Test shall be based on the Facility as modified. Such amendment shall be executed prior to conducting the Control System Acceptance Test and Company shall have no obligation for any delay in performing the Control Systems Acceptance Test due to the need to complete and execute such amendment.

- (i) Facility Security and Maintenance. Seller is responsible for securing the Facility. Seller shall have personnel available to respond to all calls related to security incidents and shall take commercially reasonable efforts to prevent any security incidents. Seller is also responsible for maintaining the Facility, including vegetation management, to prevent security breaches. Seller shall comply with all commercially reasonable requests of Company to update security and/or maintenance if required to prevent security breaches.
- (j) Demonstration of Facility. Company shall have the right at any time, other than during maintenance or other special conditions, including Force Majeure, communicated by Seller, to notify Seller in writing of Seller's failure, as observed by Company and set forth in such written notice, to meet the operational and performance requirements specified in Section 1(g) (Active Power Control Interface) and Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and to require documentation or

testing to verify compliance with such requirements. Upon receipt of such notice, Seller shall promptly investigate the matter, implement corrective action and provide to Company, within thirty (30) Days of such notice or such longer time period that is commercially reasonable and agreed to in writing by Company, a written report of both the results of such investigation and the corrective action taken by Seller. If the Seller's report does not resolve the issues to Company's reasonable satisfaction, the Parties shall promptly commission a study to be performed by one of the engineering firms then included on the Qualified Independent Third-Party Consultants List attached to the Agreement as Attachment D (Consultants List) to evaluate the cause of the non-compliance and to make recommendations to remedy such non-compliance. Seller shall pay for the cost of the study. The study shall be completed within ninety (90) Days, unless the selected consultant determines that such study cannot reasonably be completed within ninety (90) Days, in which case, such longer commercially reasonable period of time as it takes the consultant to complete the study. The consultant shall send the study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall take such action as the study shall recommend with the objective of resolving the non-compliance. Such recommendations shall be implemented by Seller to Company's reasonable satisfaction no later than forty-five (45) Days from the Day the completed study is issued by the consultant unless the consultant determines that such recommendation cannot reasonably be implemented within forty-five (45) Days, in which case, such longer commercially reasonable period of time to implement such recommendation as determined by the consultant. Failure to implement such recommendations shall constitute a material breach of this Agreement. Company shall have the right to derate the Facility and the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the Seller's aforementioned written report has been completed, any subsequent study commissioned by the Parties has been completed and any recommendations to resolve the non-compliance have been implemented to Company's reasonable satisfaction.

2. Operating Procedures. [NOTE: NUMERICAL SPECIFICATIONS IN THIS SECTION 2 MAY VARY DEPENDING ON THE SPECIFIC PROJECT AND THE RESULTS OF THE PROJECT SPECIFIC INTERCONNECTION REQUIREMENT STUDY.]
- (a) Reviews of the Facility. Company may require periodic reviews of the Facility, maintenance records, available operating procedures and policies, and relay settings, and Seller shall implement changes Company deems necessary for parallel operation or to protect the Company System from damages resulting from the parallel operation of the Facility with the Company System.
 - (b) Separation. Seller must separate from Company System whenever requested to do so by the Company System Operator pursuant to Article 8 (Company Dispatch) and Article 9 (Personnel and System Safety) of the Agreement.
 - (c) Seller Logs. Logs shall be kept by Seller for information on unit availability including reasons for planned and forced outages; circuit breaker trip operations, relay operations, including target initiation and other unusual events. Company shall have the right to review these logs, especially in analyzing system disturbances. Seller shall maintain such records for a period of not less than six (6) years.
 - (d) Reclosing. Under no circumstances shall Seller, when separated from the Company System for any reason, reclose into the Company System without first obtaining specific approval to do so from the Company System Operator.
 - (e) [Reserved]
 - (f) [Reserved]
 - (g) Critical Infrastructure Protection. Seller shall comply with the critical infrastructure protection requirements set forth in Section 1(b)(iii)G of this Attachment B (Facility Owned by Seller).
 - (h) Allowed Operations. Facility shall be allowed to import or export net real power to the Company System

only when the [_____] circuit is in normal operating configuration served by breaker [_____] at [_____] Substation. **[TO BE DETERMINED BY COMPANY BASED ON THE RESULTS AND REQUIREMENTS OF THE IRS]**

3. Performance Standards.

- (a) Reactive Power Control. Seller shall control its reactive power by automatic voltage regulation control. Seller shall automatically regulate voltage at a point, the point of regulation, between the Seller's generator terminal and the Point of Interconnection to be specified by Company, to within 0.5% of a voltage specified by the Company System Operator to the extent allowed by the Facility reactive power capabilities as defined in Section 3(b) (Reactive Amount) of this Attachment B (Facility Owned by Seller). **[FOR FACILITIES CONNECTED TO THE DISTRIBUTION SYSTEM, THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**
- (b) Reactive Amount. **[THESE REQUIREMENTS MAY BE CHANGED BY COMPANY UPON COMPLETION OF THE IRS.]**
- (i) Seller shall install sufficient equipment so that each ____ kVA generator **inverter** and each kVA energy storage unit online at the Facility will have the ability to deliver or receive, at its terminal, reactive power as illustrated in the **[generator capability and energy storage unit]** curve[s] attached to this Agreement as Exhibit B-2 (Generator and Energy Storage Capability Curve(s)). **[NOTE: THE IRS WILL DETERMINE IF ANY ADDITIONAL REACTIVE POWER RESOURCES WILL BE REQUIRED.]**
- (ii) The Facility shall contain equipment able to continuously and actively control the output of reactive power under automatic voltage regulation control reacting to system voltage fluctuations. The automatic voltage regulation response speed at the point of regulation shall be such that at least 90% of the initial voltage correction needed to reach the voltage control target will be achieved within 1 second following a step change.
- (iii) If the Facility does not operate in accordance with Section 3(b)(i) of this Attachment B (Facility

Owned by Seller), Company may disconnect all or a part of Facility from Company System until Seller corrects its operation (such as by installing capacitors at Seller's expense).

(c) Ramp Rates.

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

(d) Ride Through Requirements.

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

(e) Undervoltage Ride-Through.

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

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

voltage remains in this range for more than 600 milliseconds.

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

- Normally cleared 138 kV transmission faults cleared after 5 cycles with one reclose attempt, cleared in 5 cycles, 30 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 30 cycles between the initial clearing time and the reclosing time.
- Normally cleared 46kV subtransmission faults cleared in 7 cycles with one reclose attempt, cleared in 7 cycles, 23 cycles after the initial fault was cleared. The voltage at the Point of Interconnection will recover above the 0.80 p.u. level for the 23 cycles between the initial clearing time and the reclosing time.

(f) Over Voltage Ride-Through.

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

1.00 pu < V ≤ 1.10 pu The Facility remains connected to the Company System.

$1.10 \text{ pu} < V \leq 1.20 \text{ pu}$

The Facility may initiate disconnection from the Company System if voltage remains in this range for more 0.92 seconds.

$V > 1.2 \text{ pu}$

The Facility may initiate disconnection from the Company System immediately.

(g) [Reserved]

(h) [Reserved]

(i) Underfrequency ride-through.

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

$57.0 \text{ Hz} \leq f \leq 60.0 \text{ Hz}$

The Facility remains connected to the Company System.

$56.0 \text{ Hz} \leq f \leq 57.0 \text{ Hz}$

The Facility may initiate disconnection from the Company System if frequency remains in this range for more than 20 seconds.

$f < 56.0 \text{ Hz}$

The Facility may initiate disconnection from the Company System immediately.

(j) Overfrequency ride-through.

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

$60.0 \text{ Hz} \leq f \leq 63.0 \text{ Hz}$

The Facility remains connected to the Company System.

$63.0 \text{ Hz} < f \leq 64.0 \text{ Hz}$

The Facility shall initiate disconnection from the Company System if frequency remains in

this range for more than 20 seconds.

$f > 64.0 \text{ Hz}$

The Facility shall initiate disconnection from the Company System immediately.

(k) Voltage Flicker.

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

(l) Harmonics.

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

(m) Primary Frequency Response.

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

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

Hz based on frequency deadband and frequency droop settings specified by the Company.

- (ii) The Facility primary frequency response control shall be allowed to increase the net real power import or export above the Power Reference Set Point set under Section 1(g)(viii) of this Attachment B (Facility Owned by Seller) or further decrease the net real power import or export from the Power Reference Set Point in its operations.
- (iii) The frequency deadband shall be +/- 0.02 Hz and the frequency droop shall be settable in the range of 0.1% to 10%.
- (iv) The Facility primary frequency response control shall be in continuous operation when the Facility is online and connected to the Company unless directed otherwise by the Company
- (v) The Facility primary frequency response shall perform to the Appendix A, Section 3, Active Power-Frequency Control specifications of the NERC "Reliability Guideline, BPS-Connected Inverter-Based Resource Performance" (September 2018) except when otherwise specified in Section 3(m) of this Attachment B (Facility Owned by Seller).

(n) Grid Forming.

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

- (i) Seller shall operate the Facility in grid forming mode only as directed by the System Operator, in its sole discretion.

- (ii) The Facility shall include safeguards to prevent the unintentional switching of the Facility into and out of grid forming mode. The safeguards shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT.
- (o) [Reserved]
- (p) Normal Operation Limits.

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

- **Waiau-Mililani 46kV Circuit:** 8.5 MWac export and 8.5 MWac import from 6 AM to 5 PM. All other hours (5 PM to 6 AM), the limit is 15 MWac.
- **Wahiawa-Waimano 46kV Circuit:** 7 MWac export and 7 MWac import from 6 AM to 5 PM. All other hours (5 PM to 6 AM) the limit is 15 MWac.

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

- (i) The Company in its sole discretion shall have the ability to adjust the Normal Operation Limits to the extent allowed by the Allowed Capacity.
- (ii) Seller shall account for the Normal Operation Limits in determination of the Power Possible value under Section 1(b)(iii)(E)(v) of this Attachment B (Facility Owned by Seller).
- (iii) The Normal Operation Limits shall not apply to net real power changes commanded by the Primary Frequency Response under Section 3(m) of this Attachment B (Facility Owned by Seller).
- (iv) Ramping of Facility's net real power due to the transition from one Normal Operation Limit to

another shall follow the Ramp Rates under Section 3(c) of this Attachment B (Facility Owned by Seller).

- (v) The Facility will telemetered to Company through SCADA the current Normal Operation Limits. The Company shall have the ability to adjust the Normal Operation Limits through the SCADA controls.

(q) Blackstart.

Seller Facility shall be able to blackstart, i.e., start and energize itself without support from the Company System, and energize a part of the Company System at the Company System Operator directions to the extent allowed by the operating limits of the Facility.

- (i) Facility shall blackstart and energize a part of the Company System only at the sole discretion of the Company System Operator.
- (ii) Facility upon blackstart and energization of a part of the Company System shall:
 - a. Regulate voltage according to Section 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of this Attachment B (Facility Owned by Seller).
 - b. Control frequency with an isochronous governor to a frequency initially set to 60 Hz and adjustable at the sole discretion of the Company System Operator to the extent supported by the Facility equipment.
 - c. Facility shall supply power to the part of the Company System the Facility has energized including supplying power to start

synchronous and other inverter-based generating resources.

- (iii) Facility shall seamlessly and bumplessly transition from blackstart mode to normal operating mode as directed at the sole discretion of the Company System Operator. The blackstart control mode status shall be telemetered to the Company through SCADA.
- (iv) Facility shall maintain a minimum level of energy in the Facility storage system for blackstart use to be specified by the Company in its sole discretion provided that such level energy required to be maintained shall be excluded from all calculations for the BESS Tests during Commercial Operations as described in Attachment W (BESS Tests). The BESS Tests prior to commercial operations as described in Attachment W (BESS Tests) shall apply to the entire BESS Contract Capacity.
- (v) Facility blackstart design and configuration including the isochronous governor shall be approved in writing by the Company and implemented by the Seller in the Facility prior to conducting the CSAT. The blackstart design and configuration can be modified by mutual agreement between Seller and Company.

4. Maintenance of Seller-Owned Interconnection Facilities.

- (a) Seller must address any Disconnection Event (as defined below) according to the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller). For this purpose, a "Disconnection Event" is a disconnection from Company System of at least MW **[TO BE DETERMINED BY COMPANY FOLLOWING THE IRS]** from the Facility over a "rolling 120-second period", (i) that is not the result of Company dispatch, frequency droop response, grid

disturbance event, or isolation of the Facility resulting from designed protection fault clearing, and (ii) for which Company does not issue for such disconnection the written notice for failure to meet operational and performance requirements as set forth in Section 1(j) (Demonstration of Facility) of this Attachment B (Facility Owned by Seller). A "rolling 120-second period" means a period that is comprised of 120 seconds and such rolling period will change as each new one (1) second elapses. With the elapse of each new one (1) second, the newest one (1) second would be added to the 120-second period, and the oldest one (1) second would no longer be included in the rolling 120-second period. Company's election to exercise its rights under Section 1(j) (Demonstration of Facility) shall not relieve Seller of its obligation to comply with the requirements of this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) for any future Disconnection Event during the pendency of such election or thereafter.

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

Recommendations, then the Parties shall follow the procedure set forth in Section 5 (Expedited Dispute Resolution) of this Attachment B (Facility Owned by Seller).

- (e) Upon the fourth (4th) Disconnection Event (and each subsequent Disconnection Event) within any Contract Year, the Parties shall follow the procedures set forth in Section 4(a) and Section 4(d) of Attachment B (Facility Owned by Seller), to the extent applicable. If after following the procedures set forth in this Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of Attachment B (Facility Owned by Seller), Seller and Company continue to have a disagreement as to (1) the probable cause of the Disconnection Event, (2) the Proposed Actions, (3) the Company's Recommendations, and/or (4) the time period to implement the Proposed Actions and/or the Company's Recommendations, then the Parties shall commission a study to be performed by a qualified independent Third-Party consultant ("Qualified Consultant") chosen from the Qualified Independent Third-Party Consultants List ("Consultants List") attached to the Agreement as Attachment D (Consultants List). Such study shall review the design of, review the operating and maintenance procedures dealing with, recommend modifications to, and determine the type of maintenance that should be performed on Seller-Owned Interconnection Facilities ("Study"). Seller and Company shall each pay for one-half of the total cost of the Study. The Study shall be completed within ninety (90) Days from such fourth Disconnection Event (and each subsequent Disconnection Event) within any Contract Year, unless the Qualified Consultant determines the Study cannot reasonably be completed within ninety (90) Days, in which case, such longer period of time as the Qualified Consultant determines is necessary to complete the Study shall apply. The Qualified Consultant shall send the Study to Company and Seller. Seller (and/or its Third-Party consultants and contractors), at Seller's expense, shall change the design of, change the operating and maintenance procedures dealing with, implement modifications to, and/or perform the maintenance on Seller-Owned Interconnection Facilities recommended by the Study. Such design changes, operating and maintenance procedure changes, modifications, and/or maintenance shall be completed no

later than forty-five (45) Days from the Day the completed Study is issued by the Qualified Consultant, unless such design changes, operating and maintenance procedure changes, modifications, and/or maintenance cannot be commercially reasonably completed within forty-five (45) Days, in which case, agreed to in writing by Company, such agreement not to be unreasonably withheld. Company shall have the right to derate the Facility to a level that maintains reliable operations in accordance with Good Engineering and Operating Practices, and the Facility shall be deemed to be in Seller-Attributable Non-Generation status, until the study has been completed and the study's recommendations have been implemented by Seller to Company's reasonable satisfaction. Nothing in this provision shall affect Company's right to dispatch the Facility as provided for in this Agreement.

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

5. Expedited Dispute Resolution.

If there is a disagreement between Company and Seller regarding (i) Seller's compliance with the standards set forth in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller), and/or (ii) Section 4 (Maintenance of Seller-Owned Interconnection Facilities) of

this Attachment B (Facility Owned by Seller) such as (aa) whether a Disconnection Event occurred, (bb) the sequence of events and/or probable cause of the Disconnection Event, (cc) the Proposed Actions, (dd) the Company's Recommendations, and (ee) the time period to implement the Proposed Actions and/or the Company's Recommendations, then authorized representatives from Company and Seller, having full authority to settle the disagreement, shall meet in Hawai'i (or by telephone conference) and attempt in good faith to settle the disagreement. Unless otherwise agreed in writing by the Parties, the Parties shall devote no more than five (5) Business Days to settle the disagreement in good faith. In the event the Parties are unable to settle the disagreement after the expiration of the time period, then such disagreement shall constitute a Dispute for which either Party may pursue the dispute resolution procedure set forth in Section 28.2 (Dispute Resolution Procedures, Mediation) of this Agreement.

6. Modeling.

- (a) Seller's Obligation to Provide Models. Within 30 Days of Company's written request, but no later than the Commercial Operations Date, Seller shall provide detailed data regarding the design and location of the Facility, in a form reasonably satisfactory to Company, to allow the modeling of the inverters and any other equipment within the Facility identified in the IRS which utilizes Source Code (such as energy storage system, STATCOM or DVAR equipment), including, but not limited to, integrated and validated power flow and transient stability models (such as PSS/E models), a short circuit model (such as an ASPEN model), and an electro-magnetic transient model (such as a PSCAD model) of the inverters and any additional equipment identified in the IRS as set forth above, applied assumptions, and pertinent data sets (each a "Required Model" and collectively, the "Required Models"). Thereafter, during the Term, Seller shall provide working updates of any Required Model within 30 Days of (i) Company's written request, or (ii) Seller obtaining knowledge or notice that any Required Model has been modified, updated or superseded by the Source Code Owner.
- (b) Escrow Establishment. If, pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this

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

(i) Source Code Escrow.

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

(B) Release Conditions. Company shall have the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models, under the following conditions upon Company's request:

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

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

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

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

(C) Remedies. If Company has the right to obtain from the Source Code Escrow Agent one copy of the escrowed Source Code for the Required Models pursuant to Section 6(b)(i)(B) (Release Conditions) of Attachment B (Facility Owned by Seller), and Company finds that Seller failed to arrange for and ensure the update the Source Code Escrow with the modified and/or updated Source Code and relevant documentation for Major Releases and Minor Releases of the Required Models as provided in Section 6(b)(i) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller) or that the Source Code for the Required Models is incomplete or otherwise unusable, Seller shall be liable to Company for liquidated damages in the amount of \$500 per Day for each Day Seller fails to provide such Source Code to Company or such update to the Source Code to Company from the date such Major Release or Minor Release was first made available by the Source Code Owner to customers of the Source Code Owner. Failure to provide the updated Source Code of the Required Models within 30 Days' notice from Company of a breach of Section 6(b)(i)(A) (Establishment of Source Code Escrow) of Attachment B (Facility Owned by Seller); provided, that Seller has also failed to provide a satisfactory Source Code LC as set forth in Section 6(b)(ii) (Source Code Security) of this Attachment B (Facility Owned by Seller) shall constitute an Event of Default pursuant to Section 15.2(f) under the Agreement.

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

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

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

(F) Confidentiality Obligations. Company shall keep the Source Code of the Required Models confidential pursuant to the confidentiality obligations of the Source Code Escrow Agreement. Company shall restrict access to the Source Code of the Required Models to those employees, independent contractors and consultants of Company who have agreed in writing to be bound by confidentiality and use obligations consistent with those specified in the Escrow Agreement, and who have a need to access the Source Code of the Required Models on behalf of Company to carry out their duties for the Authorized Use. Promptly upon Seller's request, Company shall provide Seller with the names and contact information of all individuals who have accessed the Source Code of the Required Models, and shall take all reasonable actions required to recover any such Source Code in the event of loss or misappropriation, or to otherwise prevent their unauthorized disclosure or use.

(ii) Source Code Security.

(A) Establishment of Source Code Security.

If the Required Models and their relevant Source Code are not provided to the Company in the form of Source Code pursuant to Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) and if the Seller is unable to arrange for and ensure the deposit of the Source Code into the Source Code Escrow established for the benefit of the Company pursuant to Section 6(b)(i) (Source Code Escrow) of this Attachment B (Facility Owned by Seller) then, no later than the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller) for delivery of the Required Models and Source Code, Seller shall provide an irrevocable standby letter of credit (the "Source Code LC") with no documentation requirement in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Required Model (and its relevant Source Code) substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better from Standard & Poor's or A3 or better from Moody's. Such letter of credit shall be issued for a minimum term of one (1) year. Furthermore, at the end of each year the security shall be renewed for an additional one (1) year term so that at the time of such renewal, the remaining term of any such security shall not be less than one (1) year. The letter of credit shall include a provision for at least thirty (30) Days' advance notice to Company of any expiration or earlier termination of the letter of credit so as to allow Company sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the letter of credit shall be borne by Seller.

(B) Release Conditions. Company shall have the right to draw on the letter of credit the funds necessary to develop and recreate the Required Model or Required Models upon Company's request if Seller fails to provide the Company the Required Models or updated Required Models within the time periods set forth in Section 6(a) (Seller's Obligation to Provide Models) or Section 6(b)(i)(C) (Remedies) of this Attachment B (Facility Owned by Seller), Company gives written notice of such failure to Seller, and Seller fails to

remedy such breach within five (5) Days following receipt of such notice (for a breach under Section 6(a) (Seller's Obligation to Provide Models), or within thirty (30) Days following receipt of such notice (for a breach under Section 6(b)(i)(C) (Remedies)).

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

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

Proceeds for any damages or other amounts due Company shall not prejudice Company's rights to recover such damages or amounts in any other manner.

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

(F) Model Verification. Seller shall work with the Company to validate the new Required Models developed by or on behalf of Company within sixty (60) Days of receiving such new Required Models. Seller shall also arrange for and ensure that Company may obtain new Required Models directly from the Source Code Owner in the event that Seller ceases to operate as a going concern or is subject to voluntary or involuntary bankruptcy and is unable or unwilling to obtain the new Required Models from the Source Code Owner.

(G) Certification. The terms of the letter of credit shall provide for a release of the funds, or in the event the funds have been placed into a Proceeds Escrow, the Escrow Agent shall release the necessary funds to Company upon receipt of a signed statement by a representative of Company that reads substantially as follows:

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

(H) Authorized Use. If Company becomes entitled to a draw of funds from the Source Code Security or a release of funds from the Proceeds Escrow, Company may thereafter use such funds to develop, recreate, correct, modify, update and enhance the Required Models for the sole purpose of providing itself the support and maintenance it

otherwise would have been entitled to if it had been provided the Required Models by Seller under Section 6(a) (Seller's Obligation to Provide Models) of this Attachment B (Facility Owned by Seller).

(iii) Supplementary Agreement. The parties stipulate and agree that the escrow provisions in this Section 6(b) (Escrow Establishment) of Attachment B (Facility Owned by Seller) and the Source Code Escrow Agreement and Proceeds Escrow Agreement are "supplementary agreements" as contemplated in Section 365(n)(1)(B) of the Code. In any voluntary or involuntary bankruptcy proceeding involving Seller, failure by Company to assert its rights to "retain its rights" to the intellectual property encompassed by the Source Code or the funds in the Proceeds Escrow, pursuant to Section 365(n)(1)(B) of the Code, under an executory contract rejected in a bankruptcy proceeding, shall not be construed as an election to terminate the contract by Company under Section 365(n)(1)(A) of the Code.

7. Testing Requirements.

- (a) Testing Requirements. Once the Control System Acceptance Test has been successfully passed, Seller shall not replace and/or change the configuration of the Facility Control, inverter control settings and/or ancillary device controls, without prior written notice to Company. In the event of any such replacement and/or change, the relevant test(s) of the Control System Acceptance Test shall be redone and must be successfully passed before the replacement or altered equipment is allowed to be placed in normal operations. In the event that Company reasonably determines that such replacement and/or change of controls makes it inadvisable for the Facility to continue in normal operations without a further Control Systems Acceptance Test, the Facility shall be deemed to be in Seller-Attributable Non-Generation status until the new relevant tests of the Control System Acceptance Test have been successfully passed.
- (b) Periodic Testing. Seller shall coordinate periodic testing of the Facility with Company to ensure that the Facility is meeting the performance standards specified under this Agreement.

8. Data and Forecasting.

Seller shall provide Site, meteorological and production data in accordance with the terms of Article 6 (Forecasting) of this Agreement and the following requirements:

- (i) Physical Site Data: Seller shall provide Company with an accurate description of the physical Site, including but not limited to the following, which may not be changed during the Term without Company's prior written consent:
- A. Location Facility Map showing the layout of the Facility (coverage area or footprint) and the coordinates (latitude and longitude), elevation (above ground), orientation angle and direction (north-east-south-west plane) of arrays/concentrators.
 - B. Location (latitude and longitude) and elevation (above ground) of each MMS and each field measurement device located on such MMS.
 - C. Inverter type, power rating, array configuration to inverters and DC rating of the Facility at the following standard test conditions: irradiance of 1000 W/m^2 , air mass 1.5, and cell temperature 25° C .
 - D. Solar generation technology employed at the Facility with temperature dependence, mounting and module type.
 - E. BESS technology , location and type.
- (ii) Meteorological and Production Data:
- A. Seller shall install and maintain a minimum of one MMS for facilities with a Contract Capacity of less than 5 MW and a coverage area of not more than one square kilometer.
 - B. Seller shall install and maintain a minimum of two MMS for facilities that have either (i) a DC rating of the Facility of 5 MW or greater

or (ii) a coverage area greater than one square kilometer.

- C. Placement of each MMS should account for the microclimate of the area and Facility coverage area and shall be oriented with respect to the primary wind direction.
- D. For purposes of calculating the Measured Performance Ratio, the Seller shall provide (i) Plane of Array irradiance, (ii) back of panel temperature at array height, and (iii) the power production at the transducer on the Seller's side of the Point of Interconnection.
- E. Seller shall provide to Company, via SCADA communication and protocol acceptable to Company to support operations and forecasting needs at a continuous scan, all meteorological and production data required under this Agreement updated every 15 minutes.
- F. For facilities with a Contract Capacity greater than 1 MW, Seller shall arrange for a dedicated 12 kV line to provide separate service from Company, or for such other independent, backup power source as approved by Company in writing, to temporarily store and record the meteorological data from the field measuring devices at the MMSs. Any such backup power source must be capable of providing power for the field measurement devices for a reasonable period of time until primary power is restored. The same backup power source can serve multiple MMSs as needed by the Facility.

(iii) Units and Accuracy:

- A. The Table below shows minimum required solar irradiance measurements for various types of solar generation technology. This value may not be derived.

Solar Technology	Direct Normal Irradiance	Global Irradiance (GHI)	Plane of Array Irradiance (POA)
Flat Plate (fixed horizontal, fixed angle, tracking, roof mounted)		X	X

- B. Units and accuracy of measured parameters to be provided to Company in real time shall be as shown in the Table below. These represent the minimum required accuracies.

Table of Units and Accuracy of Meteorological and Production Data (PV)

Parameter	Measurement Device (typical)	Unit	Range	Accuracy
Global Horizontal Irradiance at MMS	Pyranometer or equivalent	W/m ²	0 to 1500 W/m ²	Secondary standard per ISO 9060 or <= 3% from 100 W/m ² to 1500 W/m ² if using a PV Reference Cell
Plane of Array Irradiance on same axis as array	Pyranometer or equivalent	W/m ²	0 to 1500 W/m ²	Secondary standard per ISO 9060 or <= 3% from 100 W/m ² to 1500 W/m ² if using a PV Reference Cell
Back of Panel temperature at array height	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air temperature at MMS	Temperature probe	°C	-20 to +50 °C	+/-1 °C
Ambient air pressure at MMS	Piezoresistive transducer or equivalent	mbar	150 to 1150 mbar (0 to +50°C)	+/-60 mbar
Wind speed at MMS	Anemometer, sonic device or equivalent	mph	0 to 134 mph	+/-1 mph
Wind direction at MMS	Vane, sonic device or equivalent	Degrees (from True North)	360°	+/-5°
Set point for each inverter	Reported by Seller	MW	0 to inverter name plate	Not applicable

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

DC Power production of Facility at BESS Interface	Measured at Facility's analog transducer at the DC input to the BESS charging system	MW (deliveries to BESS is positive)	Up to Maximum Rated Input/Output	The lesser of the tolerances of the /telemetry equipment or 2% of measurement
Facility power production ratio	Ratio of Facility's power production (MW) / Allowed Capacity (MW)	%	0 to 100%	+/-0.1 %
Inverters Available	NA	NA	Up to the number installed inverters	
Facility Inverter Availability	Ratio of inverters online/number of inverters	%	0 to 100%	
Power Possible	Seller's Model	MW	0 to Allowed Capacity	+/-4%

(iv) Status of Inverters for Purposes of Calculating Facility Availability:

For each inverter, Seller shall, unless agreed otherwise by Company and Seller in writing, provide to Company, via SCADA communication and protocol acceptable to Company at a continuous scan updated not less frequently than every 15 minutes, a signal as to whether such inverter is available or unavailable.

9. Technology Specific Requirements.

- (a) [Reserved]
- (b) [Reserved]
- (c) Inverter Systems.

- (i) Direct current generators and non-power (i.e. other than 60 Hertz) alternating current generators can

only be installed in parallel with the Company System using a non-islanding synchronous inverter. The design shall comply with the requirements of IEEE Std 1547-2003 (or latest version), except as described in Section 3 (Performance Standards) of this Attachment B (Facility Owned by Seller).

- (ii) Self-commutated inverters of the Company-interactive type shall synchronize to the Company System. Line-commutated, thyristor-based inverters are not recommended and will require additional technical study to determine harmonic and reactive power requirements. All interconnected inverter systems shall comply with the harmonic current limits of IEEE Std 519-1992 (or latest version).

(d) Battery Energy Storage System.

The Battery Energy Storage System ("BESS") operational conditions ("Operational Conditions") shall be as follows:

- (i) No more than 0% of the BESS energy capacity can be charged from the grid prior to the fifth anniversary of the Commercial Operations Date. Thereafter, 100% of the BESS energy capacity can be charged from the grid. All charging from the grid will be at the direction of Company.
- (ii) For Contract Years that are non-leap years, the BESS shall be discharged no more than BESS Rating x 365 MWh in each Contract Year. For Contract Years that are leap years, the BESS shall be discharged no more than BESS Rating x 366 MWh in each Contract Year. Company Dispatch of the BESS is intended to utilize at most one full cycle per day (a discharge equal to the BESS Contract Capacity, and sufficient charging to return the BESS to 100% State of Charge), and the Company's typical operating profile will not consistently exceed the equivalent of one full cycle per day.
- (iii) The BESS will not be required to discharge more energy than available relative to the available state of charge.

(iv) The BESS may be called on to provide frequency droop response, frequency regulation response, and frequency regulation (AGC dispatch) under the following conditions:

- A. Dispatch to the grid is limited to the interconnection limit minus the generation from the PV system.

EXHIBIT B-1
REQUIRED MODELS

PSS/E

ASPEN

PSCAD

EXHIBIT B-2
GENERATOR AND ENERGY STORAGE CAPABILITY CURVE(S)

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

ATTACHMENT C
METHODS AND FORMULAS FOR MEASURING PERFORMANCE STANDARDS

1. Performance Standards as defined below shall be used, in part, to govern actions by Company to limit the Actual Output of the Facility for purposes of maintaining power quality on Company System. Specific standards are defined for:
 - Ramp Rate (RR)
2. Formulas for measuring the performance standards are presented below, and assume that the power fluctuations will be monitored on the Company's SCADA and EMS systems. These formulas are based on the periodicity at which analog data is retrieved from Telemetry and Control. This periodicity is called the "scan rate". Company presently uses a two-second analog scan rate. The formulas below are based on the two-second scans. The two-second scan rate, characteristics of transducers and Telemetry and Control reporting, and SCADA method of calculation, were considered and included in the proposed values for the performance standards.
3. Ramp Rate Calculation:

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

Where:

RR = Ramp Rate, may be calculated once every scan

MW_{s-30} = The instantaneous MW analog value 30 scans (60 seconds) prior the present scan

MW_s = The instantaneous MW analog value for the present scan

4. All changes in output shall be implemented as a ramp rate, and not with one or two step changes within the period. It is not acceptable, for example, for a two MW/minute ramp rate compliance, that all values be zero except for a 2 MW change in the last scan value.

ATTACHMENT D
CONSULTANTS LIST

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ATTACHMENT E
SINGLE-LINE DRAWING AND INTERFACE BLOCK DIAGRAM

(To be attached as per Section 1(a) of Attachment B)

ATTACHMENT F
RELAY LIST AND TRIP SCHEME

(To be attached as per Section 1(a) of Attachment B.)

**[ATTACHMENT G SHALL BE REVISED TO REFLECT
THE RESULTS OF IRS]**

ATTACHMENT G
COMPANY-OWNED INTERCONNECTION FACILITIES

1. Description of Company-Owned Interconnection Facilities.

- (a) General. Company shall furnish or construct (or may have Seller furnish or construct, in whole or in part), own, operate and maintain all Interconnection Facilities required to interconnect Company System with Facility at [REDACTED] volts, up to the Point of Interconnection (collectively, the "Company-Owned Interconnection Facilities").
- (b) Site. Where any Company-Owned Interconnection Facilities are to be located on the Site, Seller shall provide, at no expense to Company, a location and access acceptable to Company for all such Company-Owned Interconnection Facilities, as well as an easement, license or right of entry to access such Company-Owned Interconnection Facilities. If power sources (120/240VAC) are required, Seller shall provide such sources, at no expense to Company.
- (c) IRS. An IRS addressing Facility requirements was completed for the Project in accordance with the IRS Letter Agreements, and the results have been incorporated in Attachment B (Facility Owned by Seller) and this Attachment G (Company-Owned Interconnection Facilities) as appropriate.
- (d) Seller's Payment Obligations. Company-Owned Interconnection Facilities, for which Seller has agreed to pay, whether designed, engineered and constructed by Seller or Company, include **[ADD LIST OF COMPANY-OWNED INTERCONNECTION FACILITIES THAT ARE REQUIRED PURSUANT TO THE RESULTS OF THE IRS. THE FOLLOWING IS AN EXAMPLE OF THE TYPES OF FACILITIES THAT COULD BE LISTED]:**
 - (i) **[Line extension];**
 - (ii) A manually operated, lockable, group operated switch located on a pole prior to the Facility

switching station. Company will install a ____ kV drop into Seller-provided deadend structure.

- (iii) Substation additions and/or modifications of Company's existing structures as necessary. This would include but not be limited to protective relaying and setting changes;
 - (iv) Supervisory control and communications equipment (including but not limited to, SCADA/Telemetry and Control, microwave, satellite, dedicated phone line(s) and/or any other acceptable communications means (determined by Company), fiber optics, copper cabling, installation of batteries and charger system, etc.);
 - (v) Revenue Metering Package as provided in Section 10.1 (Meters) of the Agreement;
 - (vi) Any additional Interconnection Facilities needed to be installed as a result of final determination of Facility switching station site, final design of Facility to enable Company to complete the Interconnection Facilities and be compatible with Good Engineering and Operating Practices.
 - (vii) If equipment that is not standard to Company is utilized, Seller shall, at the discretion of Company, provide adequate spares.
- (e) Revisions to Costs. The list of Company-Owned Interconnection Facilities, and engineering and testing costs for Company-Owned Interconnection Facilities, for which Seller agrees to pay in accordance with this Attachment G (Company-Owned Interconnection Facilities), are subject to revision if (i) before approving this Agreement, the PUC approves a power purchase agreement for another non-Company owned electric generating facility ("Second NUG Contract") to supply electric energy to Company using the same line to which Facility is to be connected or (ii) the line to which Facility is to be connected and/or the related transformer(s) need(s) to be upgraded and/or replaced as a result of this Agreement and a Second NUG Contract, and the PUC, in approving this Agreement, determines that Seller should pay for all or part of the cost of such upgrade and/or replacement, provided, however, that if the

circumstances of this Section 1(e) (Revisions to Costs) of this Attachment G (Company-Owned Interconnection Facilities) are otherwise met, Seller may, in its sole discretion in order to avoid paying for such costs, within thirty (30) Days of the PUC's order approving this Agreement, elect to declare this Agreement null and void.

- (f) Review of the Listing and Costs. If the Commercial Operations Date is not achieved by the Guaranteed Commercial Operations Date, as such date may be extended as provided in Section 13.3 (Guaranteed Project and Reporting Milestone Dates), the listing of the Company-Owned Interconnection Facilities required in this Agreement and the cost-estimates for such Company-Owned Interconnection Facilities are subject to review and revision. Such revision may include, but not be limited to, such items as reconductoring an existing transmission or distribution line, construction of a new line, increase transformer capacity, and alternative relay specifications. In addition, such review and revision may require that the Company re-perform or update the IRS at the Seller's expense.
- (g) Responsibility of Seller and Company. The general responsibilities of Seller and Company for the design, procurement, installation, programming/testing, and maintenance/ownership of equipment at the Facility and the Company-Owned Interconnection Facilities is specified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom Responsibilities). **[DRAFTING NOTE: MATRIXES WILL BE UPDATED FOLLOWING COMPLETION OF IRS.]**

2. Construction and Support Services By Seller.

(a) Construction and Support Services By Seller.

- (i) Seller (and/or its Third Party consultants or contractors (collectively, "Contractors")) will design, engineer, construct, test and place in service, at Seller's expense:

- A. The items identified in Matrix G-1 (Substation Responsibilities) and Matrix G-2 (Telecom

Responsibilities) as being the responsibility of Seller to construct; and

- B. [ANY OTHER COMPANY-OWNED INTERCONNECTION FACILITIES TO BE CONSTRUCTED BY SELLER].
[NOTE: SUBPARTS "A" AND "B" BETWEEN THEM SHOULD GENERALLY INCLUDE A SUBSET OF THE LIST IN SECTION 1(d) ABOVE]

All design, engineering and construction performed by Seller (and/or its Contractors) shall, without limitation, satisfy the wind load and seismic load requirements of the International Building Code and any more stringent requirements imposed under applicable Laws.

- (ii) Seller shall provide the necessary support for the Company's [REDACTED] kV overhead line extension work, which may include, but not limited to:

- A. Furnish surveyed topographical drawing including contour lines of project areas and beyond as needed in State Plane coordinates with overlay of the Facility and Company pole line route(s) indicating pole locations and anchors in CADD format acceptable to Company.
- B. Staking of Company proposed poles and anchors by surveyor.
- C. Graded access roads including gravel if required by Company to provide sufficient vehicle access to Company poles and anchors by Company trucks and cranes.
- D. Graded level pads to provide vehicle working areas around all Company poles and anchors.
- E. Grading of the areas beneath the Company's overhead lines as needed to provide required ground clearance.
- F. Grubbing and clearing of vegetation within Company's easement area or as required.

- (b) Coordination of Construction. Prior to Seller engaging the Contractors, Seller shall obtain Company's written approval, which approval shall not be unreasonably

withheld. Prior to Seller and/or its Contractors first starting to work on the construction plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors), such as the civil, structural, and construction drawings, specifications to vendors, vendor approved final drawings and materials lists (collectively, the "Plans"), Seller and/or its Contractors shall meet with Company to discuss the construction of such Company-Owned Interconnection Facilities, including but not limited to subjects concerning coordination of construction milestone dates, agreement on areas of interface design, and Company's design/drawing layout and symbols standards, equipment specifications and construction specifications and standards. Company will provide the equipment specifications and construction specifications and standards information so Seller can incorporate such information in its bid documents.

- (c) Plans. Seller shall provide Company its complete Plans at 30%, 60% and 90% completion. No later than sixty (60) Days before Seller and/or its Contractors first start to order materials and equipment for Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors, Seller shall provide Company with the final Plans. The Plans for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors) shall comply with (i) all applicable Laws; (ii) Company's design/drawing layout and symbol standards, equipment specifications, and construction specifications and standards; and (iii) Good Engineering and Operating Practices (collectively, the "Standards"). Seller shall submit design drawings in MicroStation format per Company standards.
- (d) Company's Review of the Plans. Unless otherwise agreed to by the Parties, Company shall have thirty (30) Days following receipt of the complete Plans at each stage (30%, 60%, 90% and final) for it to review and comment on the Plans, and verify in writing to 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.

(e) Company Inspection. Construction work will be subject to Company inspections to ensure that construction is done in accordance with the Standards. Company inspectors will be allowed access to the construction sites for inspections and to monitor construction work. The inspector shall have the authority to work with the appropriate construction supervisor to stop any work that does not meet the Standards. All equipment and materials used in Company-Owned Interconnection Facilities to be constructed by Seller and/or its Contractors shall meet the Standards.

(f) Acceptance Test Procedures.

(i) Seller acknowledges that: (aa) Company has multiple on-going projects with other developers as well as its own capital improvement projects and on-going system work; (bb) Company has limited resources to provide engineering oversight (such as review of plans) to such projects and to participate in the testing of such projects; (cc) in order for Company to accommodate such oversight and testing, it is necessary for Company to sequentially allocate its resources for each project a year or more in advance; (dd) the result is a queue of such projects that reflects the scheduling commitments of Company's resources to conduct such oversight and to participate in such testing; (ee) if a project is behind the schedule on which Company's resources have been scheduled for the oversight of such project, or if a project is not ready for testing at the time Company's resources have been scheduled for the testing of such project, or if a project does not complete testing within the period for which Company's resources have been scheduled for such testing, the progress of projects later in the queue may be adversely affected; (ff) the Test Ready Deadline that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) reflects the scheduling commitment of Company's resources to (i) conduct the oversight

necessary to facilitate Seller's achievement of that Test Ready Deadline, (ii) commence the Acceptance Test on the Acceptance Testing Milestone Date that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and (iii) thereafter participate in the Control System Acceptance Test; and (gg) in the Company's sole discretion based on its assessment of Company's resources and overall schedule of projects at the time, the Project may lose its place in the queue and may be assigned a new Acceptance Testing Milestone Date for commencement of the Acceptance Test that may be behind the other projects then in the queue if (i) the Seller fails to satisfy any of the conditions precedent set forth in Section 2(f)(ii) of this Attachment G (Company-Owned Interconnection Facilities) within the time period specified therein for the task in question or, if no time period is specified therein, by the Test Ready Deadline, (ii) the Seller fails to satisfy any of the Seller's Conditions Precedent set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones) and/or (iii) the Acceptance Test is not satisfactorily completed within the time allotted to complete such testing.

- (ii) The Conduct of the Acceptance Test is subject to the satisfaction of the following conditions precedent within the time period specified below for the task in question or, if no time period is specified, by the Test Ready Deadline that is set forth in Attachment K-1 (Seller's Conditions Precedent and Company Milestones):

- Final Single-Line Drawing, and notes, has received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Relay List and Trip Scheme have received Company's written consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip

Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.

- Final Interface Block Diagram has received Company consent pursuant to Section 1(a)(i) (Single-Line Drawing, Interface Block Diagram, Relay List, Relay Settings and Trip Scheme) of Attachment B (Facility Owned by Seller) to this Agreement.
- Final Control System Telemetry and Control List has received Company consent.
- Final phasor measurement unit (PMU) devices, if applicable, have received Company consent.
- Control system design and tunable parameters reviewed and mutually agreed upon as needed to meet the Company requirements in accordance with Attachment B (Facility Owned by Seller) Performance Standards.
- Agreement on Active Power Control Interface.
- No later than fourteen (14) Days prior to commencement of the Acceptance Test:
 - Seller shall have certified to Company that Seller-Owned Interconnection Facilities have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section 2(f)(iii) of this Attachment G (Company-Owned Interconnection Facilities).
 - Seller shall have certified to Company that any Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) have been installed and commissioned and such certification has not, prior to the commencement of the Acceptance Test, been subsequently challenged by Company on the basis of on-site observations made by the Company's representatives following the walk-through to be conducted pursuant to Section

2(f) (iii) of this Attachment G (Company-Owned Interconnection Facilities).

- Any Company-Owned Interconnection Facilities not built by or on behalf of Seller have been installed and commissioned.
 - No later than seven (7) Days prior to the commencement of the Acceptance Test, Seller and Company shall have participated in walk-through of fully constructed Interconnection Facilities.
 - Redlined as-built drawings of the Seller-Owned Interconnection Facilities and any of the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) shall have been provided to Company.
 - Continuous power is being supplied to Company's protection and SCADA equipment.
 - Not less than four (4) weeks prior to the commencement of the Acceptance Test, the high speed communication lines required under this Agreement have been commissioned and are ready for use.
 - Not less than two (2) weeks prior to the commencement of the Acceptance Test, Seller and Company have participated in an on-Site Acceptance Test coordination meeting.
- (iii) Seller shall provide Company with at least fourteen (14) Days advance written notice of the commencement of the Acceptance Test. The Acceptance Test will be conducted on Business Days during normal business hours and may take a minimum of thirty (30) Days to complete. No electric energy will be delivered from Seller to Company during the Acceptance Test. No later than thirty (30) Days prior to conducting the Acceptance Test, Company and Seller shall agree on a written protocol setting out the detailed procedure and criteria for passing the Acceptance Test. Attachment N (Acceptance Test General Criteria) provides general criteria to be included in the written protocol for the Acceptance Test. At the time that Seller provides its 14-Day notice of the Acceptance Test to Company, Seller shall

concurrently schedule a site walk-through of the Facility with Company to occur no later than seven (7) Days prior to the Acceptance Test. Seller's 14-Day notice to Company of the Acceptance Test shall constitute its certification that (i) the completion of the installation and commissioning of the Seller-Owned Interconnection Facilities and the Company-Owned Interconnection Facilities built by Seller (and/or its Contractors) and (ii) a walk-through by Company shall demonstrate, to Company's reasonable satisfaction, Seller's readiness to commence with the Acceptance Test. If, after the site walk-through, Company representatives reasonably determine that Seller is not ready to commence with the Acceptance Test, and in the Company's sole discretion based on its assessment of the nature of Seller's lack of readiness and Seller's inability to achieve such readiness by the scheduled Acceptance Test date, then, based on Company resources and overall schedule of projects at the time, Company may, in its sole discretion, assign Seller a new Test Ready Deadline and a new Acceptance Testing Milestone Date, which may be behind the other projects then in the queue, coinciding with the estimated time it would take Seller to become test-ready and Company's ability to commence the Acceptance Test. If prior to the new Test Ready Deadline established by Company, Seller becomes ready for the performance of the Acceptance Test, i.e., Seller provides Company with its fourteen (14) Day advance written notice of the commencement of the Acceptance Test (the "Seller Accelerated Test Ready Deadline"), and Company confirms, in its site walk-through of the Facility (which site walk-through the Company may waive in its sole discretion), that Seller is ready for the Acceptance Test, but Company is unable to perform the Acceptance Test within [] Days¹ of the Seller Accelerated Test Ready Deadline (the "Seller Accelerated Acceptance Testing Milestone Date") and Company's inability to commence the Acceptance Test is solely due to the conditions set forth in

¹ This would be the number of Days between the Test Ready Deadline and the Acceptance Testing Milestone Date stated in the Company Milestones of Attachment K-1 to be updated in the IRS Amendment.

Section 2(f)(i)(aa) and (bb) of this Attachment G, then, for up to the period of time from the Seller Accelerated Acceptance Testing Milestone Date to the date that Company commences performance of the Acceptance Test, Seller shall be entitled to a waiver of Daily Delay Damages that would otherwise be accruing if Seller ultimately fails to meet the Guaranteed Commercial Operations Date due to its failure to meet the original Test Ready Deadline specified in Attachment K-1. For clarity, and to explain the limited waiver of Daily Delay Damages provided for in the preceding sentence, if Seller misses its Test Ready Deadline by 45 Days and subsequently misses its Guaranteed Commercial Operations Date for that reason by 60 Days and the period of time between the Seller Accelerated Acceptance Testing Milestone Date and the commencement date of the Acceptance Test is 15 Days (and such delay is solely due to the conditions set forth in Section 2(f)(i)(aa) and (bb) of this Attachment G), then Seller shall be entitled to a waiver of 15 Days of Daily Delay Damages otherwise accruing for Seller's failure to meet the Guaranteed Commercial Operations Date. If the above time periods remain the same but Seller only misses the Guaranteed Commercial Operations Date by 30 Days, Seller shall not be entitled to any Daily Delay Damages waiver as the 30 Day failure to meet the Guaranteed Commercial Operations Date would be attributable to the initial 45 Days that Seller missed the Test Ready Deadline. Finally, if the above time periods remain the same but Seller misses its Guaranteed Commercial Operations Date by 50 Days, Seller shall be entitled to only a 5 Day waiver of Daily Delay Damages. In the meantime, Seller shall remediate the deficiencies identified by Company, and the process described in this Section 1(f) (Acceptance Test Procedures) of Attachment G (Company-Owned Interconnection Facilities), shall commence again until Seller's readiness for the Acceptance Test is demonstrated to Company's reasonable satisfaction. Successful completion of the Acceptance Test requires successful completion of each of the individual tests that comprise the Acceptance Test. Retesting of any individual test constitutes a restart of the

Acceptance Test if such retesting is required because of a prior failure of such individual test or because of a prior test could not be completed because of a problem with the Facility. Within fifteen (15) Business Days of completion of the Acceptance Test and Company's receipt of the final report setting forth the results of the Acceptance Test, Company shall notify Seller in writing whether the Acceptance Test has been passed and, if so, the date upon which the Acceptance Test was passed.

- (iv) Company will be present when the Acceptance Test is conducted, and Seller shall promptly correct any deficiencies identified during the Acceptance Test. Seller will be responsible for the cost of Company personnel (and/or Company contractors) performing the duties (such as reviewing the Plans and reviewing the construction) necessary for Company-Owned Interconnection Facilities to be constructed by Seller (and/or its Contractors). If Company (aa) does not make any inspection or test, (bb) does not discover defective workmanship, materials or equipment, or (cc) accepts Company-Owned Interconnection Facilities (that were constructed by Seller and or its Contractors), such action or inaction shall not relieve Seller from its obligation to do and complete the work in accordance with the Plans approved by Company.
- (g) As-Built Drawings. Within thirty (30) Days of the successful completion of the Acceptance Test, Seller shall provide for Company review a set of the proposed as-built drawings for the Company-Owned Interconnection Facilities constructed by Seller (and/or its Contractors). Within thirty (30) Days of Company's receipt of the proposed as-built drawings, Company shall provide Seller with either (i) its comments on the proposed as-built drawings or (ii) notice of acceptance of the proposed as-built drawings as final as-built drawings. If Company provides comments on the proposed as-built drawings, Seller shall incorporate such comments into a final set of as-built drawings and provide such final as-built drawings to Company within twenty (20) Days of Seller's receipt of Company's comments.

3. Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility. [TO BE REVISED THROUGH INTERCONNECTION REQUIREMENTS AMENDMENT TO REFLECT COMPANY-BUILD OR DEVELOPER-BUILD SCENARIO, AS APPLICABLE]

(a) Seller Payment to Company.

- (i) Seller shall pay the Total Estimated Interconnection Cost, which is comprised of the estimated costs of (aa) acquiring, constructing and installing the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company, (bb) the engineering and design work (including but not limited to Company, affiliated Company and contracted engineering and design work) associated with (i) the application process for the PUC Approval Order, (ii) developing such Company-Owned Interconnection Facilities and (iii) reviewing and specifying those portions of Facility which allow interconnected operations as such are described in Attachment B (Facility Owned by Seller) (collectively, the "Engineering and Design Work"), and (cc) conducting the Acceptance Test and Control System Acceptance Test. The Total Actual Interconnection Cost (the actual cost of items (aa) through (cc)) are the "Total Interconnection Cost".
- (ii) Summary List of Company-Owned Interconnection Facilities and Related Services to be designed, engineered and constructed by Company:

[THIS LIST SHOULD GENERALLY INCORPORATE A SUBSET OF THE LIST IN ATTACHMENT G, SECTION 1(d), PLUS TESTING.]

- (iii) The following summarizes the Total Estimated Interconnection Cost of the Company-Owned Interconnection Facilities to be designed, engineered and constructed by Company:

[THIS LIST SHOULD INCLUDE ESTIMATED COSTS FOR THE ITEMS LISTED IN ATTACHMENT G, SECTION 3(a)(ii).]

The Total Estimated Interconnection Cost is \$.

- (b) Total Estimated Interconnection Costs. The Total Estimated Interconnection Cost, which, except as

otherwise provided herein, is non-refundable, shall be paid in accordance with the following schedule:

- (i) Initial Payment: Prior to the execution of the Interconnection Requirements Amendment, Seller has paid \$____,000.00 to Company;
 - (ii) Company-Owned Interconnection Facilities Prepayment: Within thirty (30) Days after the execution of the Interconnection Requirements Amendment, the total estimated costs related to the Engineering and Design Work are due and payable by Seller to Company;
 - A. Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Seller pays the amounts in Section 3(b)(i) (Initial Payment) and Section 3(b)(ii) (Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such engineering and design work.
 - (iii) Balance of Company-Owned Interconnection Facilities Prepayment: On the Guaranteed Procurement Payment Date, the difference between the portion of the Total Estimated Interconnection Cost paid to date and the Total Estimated Interconnection Cost is due and payable by Seller to Company.
 - A. Company shall not be obligated to perform any work with respect to Company-Owned Interconnection Facilities until Seller pays the amount in this Section 3(b)(iii) (Balance of Company-Owned Interconnection Facilities Prepayment) of this Attachment G (Company-Owned Interconnection Facilities), and receipt of such payment shall constitute Seller's irrevocable authorization to Company to perform such procurement and construction work.
- (c) True-Up. The final accounting shall take place within one hundred twenty (120) Days of the first to occur of

- (i) the Commercial Operations Date, (ii) the date this Agreement is declared null and void under Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential), or (iii) the date this Agreement is terminated, whichever occurs first. Company shall be entitled to an extension for a commercially reasonable amount of time to complete the final accounting if a delay in such completion is caused by Seller's delay or failure to respond to any Company request for information needed to complete the final accounting or take any action necessary for Company to complete the final accounting. Upon completion of the final accounting, Company shall deliver to Seller an invoice for payment of the amount, if any, of the difference between the Total Estimated Interconnection Cost paid to date and the Total Actual Interconnection Cost, which is the final accounting of the Total Interconnection Costs. Payment of such invoice shall be made within thirty (30) Days of receipt of such invoice from Company. If the Total Actual Interconnection Cost is less than the payments received by Company as the Total Estimated Interconnection Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.
- (d) Audit Rights. Seller shall have the right for a period of one (1) year following receipt of the invoice: (i) upon reasonable prior notice, to audit the books and records of Company to the limited extent reasonably necessary to verify the basis for the amount (if any) by which the Total Actual Interconnection Cost invoiced to Seller exceeds the Total Estimated Interconnection Cost, and (ii) to dispute the amount of any such excess. Seller shall not have the right to audit any other financial records of Company. Company shall make such information available during normal business hours at its offices in Hawai'i. Seller shall pay Company's reasonable actual, verifiable costs for such audits, including allocated overhead.

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

4. Ongoing Operation and Maintenance Charges.

- (a) Prior to the Transfer Date. Seller shall operate and maintain, at its sole cost and expense, Company-Owned Interconnection Facilities that it or its Contractors constructed, if any, prior to the Transfer Date.
- (b) On or After the Transfer Date. On and after the Transfer Date, Company shall own, operate and maintain Company-Owned Interconnection Facilities.
- (c) Monthly Bill. Company shall bill Seller monthly (or periodically as costs are incurred) for any reasonable costs incurred in operating, maintaining and replacing (to the extent not covered by insurance) Company-Owned Interconnection Facilities. Company's costs will be determined on the basis of, but not limited to, direct payroll, material costs, applicable overhead at the time incurred, consulting fees and applicable taxes. Seller shall, within thirty (30) Days after receipt of an invoice, reimburse Company for such monthly billed operation and maintenance charges. Company's invoice will include itemized charges reasonably necessary for Seller to verify the basis for such charges.

5. Relocation of Company-Owned Interconnection Facilities.

- (a) In the event that the Land Rights include a relocation clause and such clause is exercised or if Company-Owned Interconnection Facilities must be relocated for any other reason not caused by Company, Seller shall bear the cost of such relocation. Prior to the relocation of the Company-Owned Interconnection Facilities Company shall invoice Seller for the total estimated cost of relocating the Company-Owned Interconnection Facilities (the "Total Estimated Relocation Cost"). Seller shall, within thirty (30) Days after the invoice date, pay to Company the Total Estimated Relocation Cost.
- (b) Once the relocation of the Company-Owned Interconnection Facilities is complete, Company shall conduct a final accounting of all costs related thereto. Within thirty

(30) Days of the final accounting, which shall take place within one hundred and twenty (120) Days of completion of the relocation of Company-Owned Interconnection Facilities, Seller shall remit to Company the difference between the Estimated Relocation Cost paid to date and the total actual relocation cost incurred by Company (the "Total Actual Relocation Cost"). If the Total Actual Relocation Cost is less than the payments received by Company as the Total Estimated Relocation Cost, Company shall repay the difference to Seller within thirty (30) Days of the final accounting.

6. Guarantee for Interconnection Costs.

- (a) Standby Letter of Credit. To ensure payment by Seller of all costs and expenses incurred by Company (i) in excess of the Total Estimated Interconnection Cost paid in connection with the Company-Owned Interconnection Facilities to be provided and/or constructed by Company described in Section 3 (Seller Payment To Company for Company-Owned Interconnection Facilities and Review Of Facility) of this Attachment G (Company-Owned Interconnection Facilities), and (ii) if applicable, in excess of the Total Estimated Relocation Costs paid in connection with the relocation of the Company-Owned Interconnection Facilities as provided in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities), Seller shall obtain an Irrevocable Standby Letter of Credit with no Documentary Requirement ("Standby Letter of Credit") in accordance with the requirements of Section 6(b) (Requirements of the Standby Letter of Credit) of this Attachment G (Company-Owned Interconnection Facilities), wherein Company shall receive payment from the bank upon request by Company.
- (b) Requirements of the Standby Letter of Credit. The Standby Letter of Credit shall be (i) in an amount not less than twenty-five percent (25%) of the Total Estimated Interconnection Cost or Total Estimated Relocation Cost, as applicable, and (ii) in substantially in the form attached to this Agreement as Attachment M (Form of Letter of Credit) from a bank chartered in the United States with a credit rating of "A-" or better. If the rating (as measured by Standard

& Poors) of the bank issuing the Standby Letter of Credit falls below A-, Company may require Seller to replace the Standby Letter of Credit with a Standby Letter of Credit from another bank chartered in the United States with a credit rating of "A-" or better. In connection with the construction of the Company-Owned Interconnection Facilities, the Standby Letter of Credit shall be effective from the earlier of (aa) thirty (30) Days following the Effective Date, or (bb) the date that Seller requests Company to order equipment or commence construction on Company-Owned Interconnection Facilities. In connection with the relocation of the Company-Owned Interconnection Facilities, if applicable, the Standby Letter of Credit shall be effective within thirty (30) Days after Seller receives the invoice from Company for the Total Estimated Relocation Cost as set forth in Section 5 (Relocation of Company-Owned Interconnection Facilities) of this Attachment G (Company-Owned Interconnection Facilities). The Standby Letter of Credit shall be in effect through the earlier of forty-five (45) Days after the final accounting or seventy-five (75) Days after the Agreement is terminated. Seller shall provide to Company within fourteen (14) Days of the date the Standby Letter of Credit is to be effective as aforesaid, a document from the bank which indicates that such a Standby Letter of Credit has been established.

- (c) Other Form of Security. Notwithstanding the foregoing, in lieu of a Standby Letter of Credit, Company may, at its sole discretion, agree in writing to accept such other form of security as Company deems to provide Company with protection equivalent to a Standby Letter of Credit.

7. Land Restoration.

- (a) Definition of "Land". For the purposes of this Attachment G (Company-Owned Interconnection Facilities), "Land" means any portion of the Site and any other real property where any Company-Owned Interconnection Facilities are located.
- (b) Removal of Interconnection Facilities. After termination of this Agreement or in the event this Agreement is declared null and void under any of Section 12.4

(Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement, if requested by Company, Seller shall, at its sole cost and expense, remove (i) the Company-Owned Interconnection Facilities from the Land and (ii) the Seller-Owned Interconnection Facilities from the Land, and, in conjunction with such removal, shall develop and implement a program to recycle, to the fullest extent possible, or to otherwise properly dispose of, all such removed infrastructure; provided, however, that, Company may elect to remove all or part of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities from the Land because of operational concerns over the removal of such Interconnection Facilities, in which case Seller shall reimburse Company for its costs to remove such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities. To the extent Seller is obligated to remove Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, Seller shall complete such removal within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement), or as otherwise agreed to by both Parties in writing.

- (c) Restoration of the Land. After the termination of this Agreement (or declaration that the Agreement is null and void under any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities),

or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement) and removal of the Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as the case may be, Seller shall, at its sole cost and expense, restore the Land to its condition prior to construction of such Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities, as applicable. Land restoration shall be completed within ninety (90) Days of termination of this Agreement (or declaration that the Agreement is null and void under any of Section 12.4 (Interconnection Requirements Study), Section 12.5 (Prior to Effective Date), Section 12.6 (Time Periods for PUC Submittal Date and PUC Approval), Section 1(e) (Revisions to Costs) of Attachment G (Company-Owned Interconnection Facilities), or Section 1(d) (NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right) of Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement), or as otherwise agreed to by both Parties in writing.

8. Transfer of Ownership/Title.

- (a) Transfer of Ownership and Title. On the Transfer Date, Seller shall transfer to Company all right, title and interest in and to Company-Owned Interconnection Facilities to the extent such facilities were designed and constructed by Seller and/or its Contractors together with (i) all applicable manufacturers' or Contractors' warranties which are assignable and (ii) all Land Rights necessary to own, operate and maintain Company-Owned Interconnection Facilities on and after the Transfer Date. Seller shall provide a written list of the manufacturers' and Contractors' warranties which will be assigned to Company and the expiration dates of such warranties no later than thirty (30) Days before the Transfer Date.
- (b) No Liens or Encumbrances. Company's title to and ownership of Company-Owned Interconnection Facilities that were designed and constructed by Seller and/or its Contractors shall be free and clear of liens and encumbrances.

(c) Form of Documents. The transfers to be made to Company pursuant to this Section 8 (Transfer of Ownership/Title) of Attachment G (Company-Owned Interconnection Facilities) shall not require any further payment by Company. The form of the document to be used to convey title to the Company-Owned Interconnection Facilities that were designed and constructed by or on behalf of Seller shall be substantially in the form set forth in Attachment H (Form of Bill of Sale and Assignment). The form of the document(s) to be used to assign leases shall be substantially in the form set forth in Attachment I (Form of Assignment of Lease and Assumption). To the extent Land Rights other than leases are transferred to Company, appropriate modifications will be made to Attachment I (Form of Assignment of Lease and Assumption) to effectuate the transfer of such Land Rights.

9. Governmental Approvals for Any Company-Owned Interconnection Facilities.

Seller shall obtain at its sole cost and expense all Governmental Approvals necessary to the construction, ownership, operation and maintenance of the Company-Owned Interconnection Facilities. For Company-Owned Interconnection Facilities to be constructed by Company, Seller shall provide all Governmental Approvals necessary for the construction of such Company-Owned Interconnection Facilities prior to the commencement of construction by Company. For Company-Owned Interconnection Facilities to be constructed by Seller, Seller shall obtain all Governmental Approvals necessary for construction of the Company-Owned Interconnection Facilities prior to commencement of the construction activity for which such Governmental Approval is required. For all other Governmental Approvals for Company-Owned Interconnection Facilities, Seller shall provide these prior to the Transfer Date. On or before the Transfer Date, Seller shall provide Company with (i) copies of all such Governmental Approvals obtained by Seller regarding the construction, ownership, operation and maintenance of Company-Owned Interconnection Facilities that Seller and/or its Contractors constructed and (ii) documentation regarding the satisfaction of any condition or requirement set forth in any Governmental Approvals for Company-Owned Interconnection Facilities (excluding on-going reporting or monitoring requirements that may continue beyond the Transfer Date in

accordance with such Governmental Approval) or that such Governmental Approvals have otherwise been closed with the issuing Governmental Authority.

10. Land Rights.

Seller shall, prior to the commencement of construction of the Company-Owned Interconnection Facilities (whether to be built by Seller or by Company) obtain at its sole cost and expense all Land Rights that are required to construct, own, operate and maintain the Company-Owned Interconnection Facilities. Without limitation to the preceding sentence, Seller shall pay all surveying and mapping costs, appraisal fees, document preparation fees, recording fees or other costs. Seller shall use commercially reasonable efforts to obtain on behalf of the Company perpetual Land Rights for the Company-Owned Interconnection Facilities. Such Land Rights shall contain terms and conditions which are acceptable to Company and the documents setting forth the Land Rights shall be provided in advance of execution to Company for its review and approval and shall be recorded if required by Company. Following the Execution Date, Seller shall provide as part of the Monthly Progress Report the status of negotiations with landowner(s) regarding the Land Rights. Notwithstanding the foregoing, Company shall have the right in its sole discretion, at any time upon notice to Seller, to communicate directly with the landowner(s) and/or participate in the negotiations with landowner(s) for the Land Rights. For so long as Seller has the right under this Agreement to sell electric energy to Company, Seller shall pay for any rents and other payments due under such Land Rights that are associated with Company-Owned Interconnection Facilities.

11. Contracts for Company-Owned Interconnection Facilities.

For all contracts entered into by or on behalf of Seller for Company-Owned Interconnection Facilities to be designed, engineered and constructed, in whole or in part, by or on behalf of Seller, the following shall apply: (i) Company shall be made an intended third-party beneficiary of such contracts; and (ii) Company shall be provided with copies of such executed contracts, which may be redacted but only to the extent required to prevent disclosure of confidential or proprietary information of Seller or the counterparty to such agreement; provided, however, that such redactions may not conceal information that is necessary for the Company to

determine and exercise Company's rights under such contracts as a third-party beneficiary.

[MATRIX TO BE INSERTED]

ATTACHMENT H
FORM OF BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale"), made as of the _____ day of _____, 20____, by _____ ("Transferor") and _____ ("Transferee").

W I T N E S S E T H:

1. Bill of Sale. In consideration of the mutual covenants and agreements of Transferor and Transferee under the Power Purchase Agreement for Renewable Dispatchable Generation between Transferor and Transferee dated _____, 20____ ("PPA") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferor does hereby sell, assign and transfer over to Transferee all of Transferor's right, title and interest, in and to (i) all the tangible personal property and fixtures (including but not limited to the items set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) attached hereto and incorporated herein), that constitutes what is referred to as the "Company-Owned Interconnection Facilities to be installed by or on behalf of Seller" (or words to similar effect) as set forth in Attachment G (Company-Owned Interconnection Facilities) to the PPA between **[Transferor and Transferee]** and (ii) the intangible personal property (including but not limited to the intangible personal property set forth in Schedule H-2 (Description of Intangible Personal Property) attached hereto and incorporated herein) owned by Transferor and used or to be used in the ownership, operation and maintenance of the aforesaid tangible personal property, to the extent assignable by Transferor, including without limitation, certificates of occupancy, permits, licenses, transferable warranties and guaranties, instruments, documents of title, and general intangibles pertaining to the aforesaid intangible personal property.

2. Warranty of Title. Transferor hereby warrants to Transferee that Transferor is the legal owner of the aforesaid tangible personal property and the aforesaid intangible personal property (including but not limited to the property set forth in Schedule H-1 (Description of Tangible Personal Property and Fixtures) and Schedule H-2 (Description of Intangible Personal Property)), and that said property is being sold, assigned and transferred to Transferee free and clear of all liens and encumbrances.

3. Governing Law. This Bill of Sale shall be governed by, and construed and interpreted in accordance with, the laws of the State of Hawai'i.

[Signatures for Bill of Sale and Assignment
Appear on the Following Page]

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

a _____,

By _____
Its _____

"Transferor"

a Hawai'i corporation,

By _____
Its

By _____
Its

"Transferee"

SCHEDULE H-1
DESCRIPTION OF
TANGIBLE PERSONAL PROPERTY AND FIXTURES

SCHEDULE H-2
DESCRIPTION OF INTANGIBLE PERSONAL PROPERTY

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail () Pickup () To:	

Tax Map Key Nos.: _____ Total pages: _____

ATTACHMENT I
FORM OF ASSIGNMENT OF LEASE AND ASSUMPTION

THIS ASSIGNMENT is made as of this _____ day of _____, 20_____, by _____, a _____, whose principal place of business and post office address is _____, hereinafter called the "Assignor," and _____, a Hawai'i corporation, whose principal place of business and post office address is _____, Honolulu, HI 968_____, hereinafter called the "Assignee".

W I T N E S S E T H:

THAT the Assignor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it paid by the Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants and agreements of the Assignee hereinafter contained and on the part of the Assignee to be faithfully kept and performed, does hereby sell, assign, delegate, transfer, set over and deliver unto the Assignee, and its successors and assigns, all of Assignor's right, title and interest in and to

the lease described in Schedule 1 (the "Lease"); together with all interests thereto appertaining, and together with the personal property located on the land thereby demised.

And all of the estate, right, title and interest of the Assignor in and to the land thereby demised, and all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or used, occupied and enjoyed in connection with said Lease and the land thereby demised.

TO HAVE AND TO HOLD the same unto Assignee and its successors and assigns, for and during the respective unexpired term of said Lease, and as to said personal property (if any) absolutely and forever.

AND, in consideration of the premises, the Assignor does hereby covenant with the Assignee that the Assignor is the lawful owner of the herein described real property; that said Lease is in full force and effect and is not in default; that said real property is free and clear of and from all liens and encumbrances, except for the lien of real property taxes not yet by law required to be paid; that the Assignor is the lawful owner of said personal property (if any) and that Assignor's title thereto is free and clear of and from all liens and encumbrances, that the Assignor has good right to sell and assign said real property and personal property (if any) as aforesaid; and, that the Assignor will WARRANT AND DEFEND the same unto the Assignee against the lawful claims and demands of all persons, except as aforesaid.

AND, in consideration of the foregoing, the Assignee does hereby promise, covenant and agree to and with the Assignor and to and with the lessor under the Lease, that the Assignee will, effective as of and from the date of the execution and delivery of this instrument and during the residue of the term of said Lease, pay the rents thereby reserved as and when the same become due and payable pursuant to the provisions of said Lease, and will also faithfully observe and perform all of the covenants and conditions contained in said Lease which from and after the date hereof are or ought to be observed and performed by the lessee therein named, and will at all times hereafter indemnify and save harmless the Assignor from and against the nonpayment of said rent and the nonobservance or nonperformance of said covenants and conditions and each of them.

The terms "Assignor" and "Assignee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context hereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein. The term "Lease", as and when used herein, means the lease or sublease demising the leasehold estate described in Schedule 1, together with all recorded amendments thereof, if any, whether or not listed in Schedule 1. The term "rent", as and when used herein, means and includes all rents, taxes, assessments and any other sums charged pursuant to the Lease.

This instrument may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument binding on all the Parties hereto, notwithstanding that all the Parties are not signatory to the original or the same counterpart.

**[Signatures for Assignment of Lease and Assumption are on
following page.]**

IN WITNESS WHEREOF, Company and Assignor have executed this instrument as of the date first above written.

By _____

Name:

Title:

By _____

Name:

Title:

"Assignor"

By _____

Name:

Title:

By _____

Name:

Title:

"Assignee"

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

On this _____ day of _____, 20_____, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal) Signature: _____
Print Name: _____
Notary Public, State of Hawai'i

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description:

Doc. Date _____ No. of Pages: _____
Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____ Date of Notarization and
Certification Statement _____

Printed Name of Notary _____

(Official Stamp or Seal)

STATE OF HAWAI'I)
)
CITY AND COUNTY OF HONOLULU) SS:

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that such persons executed such instrument as the free act and deed of such persons and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Official Stamp or Seal)

Signature: _____
Print Name: _____
Notary Public, State of Hawai'i

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or
Description: _____

Doc. Date _____ No. of Pages: _____
Jurisdiction: _____ Circuit
(in which notarial act is performed

Signature of Notary _____ Date of Notarization and
Certification Statement

(Official Stamp or Seal)

Printed Name of Notary _____

SCHEDULE 1

- Description of Lease
- To Be Attached

ATTACHMENT J
COMPANY PAYMENTS FOR ENERGY, DISPATCHABILITY AND AVAILABILITY OF
BESS

1. Price for Purchase of Electric Energy. Commencing on the Commercial Operations Date, Company shall pay Seller for electric energy produced by the Facility and delivered to the Point of Interconnection in response to Company Dispatch in accordance with this Agreement at the rate of \$0/MWh. Company shall not pay for electric energy delivered to the Point of Interconnection from the BESS to the extent such energy was originally taken from the grid to charge the BESS. If the BESS is delivering electric energy to the Point of Interconnection in response to Company Dispatch during a period in which a portion of the energy stored in the BESS is attributable to electric energy that was originally taken from the grid, the electric energy delivered to the Point of Interconnection from the BESS during such period shall be deemed to be produced by the Facility for purposes of the first sentence of this Section 1 (Price for Purchase of Electric Energy) until no portion of the energy stored in the BESS is attributable to the production of the Facility.
2. Lump Sum Payment for Purchase of Dispatchability. Commencing on the Commercial Operations Date, Company shall pay Seller for the availability of the Facility's Net Energy Potential, subject to the Renewable Resource Variability, to respond to Company Dispatch in accordance with this Agreement, as well as for the BESS services, a monthly Lump Sum Payment as calculated and adjusted as set forth in Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). The monthly Lump Sum Payment shall be calculated and adjusted to reflect changes in the estimate of the Facility's Net Energy Potential as such estimate is revised from time to time as more fully set forth in Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.
3. Calculation of Lump Sum Payment. The monthly Lump Sum Payment shall be calculated and adjusted as follows:
 - i. Lump Sum Payment During First Benchmark Period. During the First Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product

(rounded to the nearest cent) obtained by multiplying the Unit Price by the First NEP Benchmark.

ii. Lump Sum Payment During Second Benchmark Period.

a. One purpose of the Second Benchmark Period is to provide the Seller, in the event that the Initial NEP OEPR Estimate is less than NEP RFP Projection, with a limited period during which Seller will have an opportunity, by having a Subsequent OEPR prepared pursuant to Section 3(b) (Voluntary Subsequent OEPR) of Attachment U (Calculation Adjustment of Net Energy Potential) to this Agreement, to obtain an adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment, subject to (i) the cap on any upward adjustment imposed by the limitation that the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment shall not exceed the NEP RFP Projection and (ii) the risk that any Subsequent OEPR might result in a downward adjustment to the NEP OEPR Estimate used to calculate the Lump Sum Payment. Accordingly, for each calendar month during the Second Benchmark Period, the monthly Lump Sum Payment shall be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of the (w) the NEP RFP Projection or (x) the NEP OEPR Estimate of the OEPR that is most recent as of the first Day of such calendar month. For avoidance of doubt:

1. On the first Day of the Second Benchmark Period, the most recent OEPR will be the Initial OEPR;
2. If no Subsequent OEPR is issued under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement for an OEPR Period of Record ending prior to the end of the third (3rd) Contract Year, the "most recent OEPR" during the entirety of the Second Benchmark Period will be the Initial OEPR;

3. If any Subsequent OEPR is prepared for an OEPR Period of Record ending prior to the commencement of the fourth (4th) Contract Year, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the NEP RFP Projection. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next Subsequent OEPR (if any) that is required or permitted under Section 4 (Preparation of OEPR) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement.

iii. Lump Sum Payment Following Second Benchmark Period.

a. As of the first Day of the fourth (4th) Contract Year, the estimate of Net Energy Potential that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark Period shall continue in effect as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment until the end of the calendar month during which an OEPR Evaluator issues the first Subsequent OEPR for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year and, effective at the end of such calendar month, the Second NEP Benchmark that was in effect immediately prior to the issuance of such Subsequent OEPR shall constitute the "Most Recent Prior NEP Benchmark" under clause (i) of the definition of that term set forth in this Agreement. For avoidance of doubt, if no Subsequent OEPR is issued for an OEPR Period of Record ending on or after the commencement of the fourth (4th) Contract Year, the Second NEP Benchmark that was used to calculate the Lump Sum Payment for the last calendar month of the Second Benchmark

Period shall continue in effect for the balance of the Term as the estimate of Net Energy Potential that is used to calculate the Lump Sum Payment.

- b. In order to facilitate planning for the Company System, no increase in Net Energy Potential (and hence in the monthly Lump Sum Payment) shall be permitted under this Agreement as a consequence of any Subsequent OEPR that is prepared for an OEPR Period of Record ending on or after the expiration of the Second Benchmark Period. Accordingly, if any such Subsequent OEPR is prepared, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the month during which an OEPR Evaluator issues such Subsequent OEPR, be equal to one-twelfth (1/12th) of the product (rounded to the nearest cent) obtained by multiplying the Unit Price by the lesser of (w) the NEP OEPR Estimate obtained from such Subsequent OEPR or (x) the Most Recent Prior NEP Benchmark. The monthly Lump Sum Payment calculated as aforesaid shall remain in effect through the first to occur of (y) the end of the Term or (z) the end of the calendar month during which an OEPR Evaluator issues the next following Subsequent OEPR (if any) that is required or permitted under Section 3 (Subsequent OEPRs) of Attachment U (Calculation and Adjustment of Net Energy Potential) to this Agreement. If any such next following Subsequent OEPR is issued, the monthly Lump Sum Payment shall, for the period commencing on the first Day of the calendar month following the calendar month during which an OEPR Evaluator issues such Subsequent OEPR, be recalculated and adjusted as provided in this Section 3.iii.b of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) and shall continue in effect for the period provided in the preceding sentence.
- iv. Under the Company's previous forms of as-available power purchase agreements for renewable energy, the independent power producer was compensated for the production and delivery of electrical energy and assumed the risk of non-payment for events such as Force Majeure that prevented such production and delivery. Although

under this Agreement most of Seller's compensation will be in the form of a Lump Sum Payment rather than for the production and delivery of electrical energy, it is not the intent of the Parties that Seller should be entitled to unrestricted compensation in circumstances in which an independent power producer would not have been able to earn compensation under the Company's prior form of power purchase agreements (*i.e.*, if the Facility or any portion thereof is unable to produce and deliver electric energy). Although the liquidated damages that are payable if the Inverter System Equivalent Availability Factor fails to satisfy the Inverter System Equivalent Availability Factor Performance Metric address this issue in certain of the circumstances when the Inverter System or a portion thereof is unable to generate electric energy, the Inverter System Equivalent Availability Factor does not account for events of Force Majeure because months containing such events are excluded from the calculation under Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor) of this Agreement. Furthermore, in the case of the PV System, the liquidated damages that are payable if the MPR fails to satisfy the GPR Performance Metric addresses this issue in certain of the circumstances when the PV System or a portion thereof is unable to generate electric energy while inverters are available, the MPR does not account for events of Force Majeure because periods containing such events are excluded from the calculation under Section 2.6(a)(iii) (Calculation of Measured Performance Ratio) of this Agreement. Similarly, in the case of the BESS, although the liquidated damages that are payable if the BESS Annual Equivalent Availability Factor fails to satisfy the BESS EAF Performance Metric addresses this issue in certain of the circumstances when the BESS or a portion thereof is unavailable to respond to Company Dispatch, the BESS Annual Equivalent Availability Factor does not account for events of Force Majeure because months containing such events are excluded from the calculation under Attachment X (BESS Annual Equivalent Availability) of this Agreement. Accordingly, and without limitation to the generality of the foregoing provisions of this Section 3 (Calculation of Lump Sum Payment) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), the monthly Lump Sum Payment shall be adjusted downward pro rata for

each hour or portion thereof during the calendar month in question that the Facility or a portion thereof was not available to generate energy or respond to Company Dispatch because of a Force Majeure condition (i) affecting the Facility or any portion thereof or (ii) that otherwise delays or prevents the Seller from making the Facility or a portion thereof generate energy and make it available for Company Dispatch. In the case of a BESS Force Majeure, such downward adjustment in the Lump Sum Payment shall be limited to the BESS Allocated Portion of the Lump Sum Payment. Further, during any periods in which there is a Force Majeure affecting both (i) the PV System or Inverter System, and (ii) the BESS, the Lump Sum Payment shall only be adjusted for the effect of the Force Majeure on the PV System or Inverter System. The hours the Facility is affected by a Force Majeure are converted to equivalent full outage hours by multiplying the actual duration of the event (hours) by (i) the size of the reduction in MWs or number of devices, divided by (ii) the Contract Capacity if the size of the reduction is in MWs or the total number of devices in the affected system if the size of the reduction is a device count. These equivalent hour(s) are then summed. The summation of equivalent full outage hours is then divided by the months total period hours (number of days in the month x 24hrs/day) to determine the pro-rated factor the Lump Sum Payment will be adjusted by. To avoid any concern of double counting in this calculation, any concurrent Force Majeure affecting both the PV System and Inverter System will only consider the more significantly affected system in this calculation; if the affect is equal, the equivalent full outage hours from just one of the systems will be included in the calculation. For all non-concurrent Force Majeure, the equivalent full outage hours of the non-concurrent event shall be included in the summation of equivalent full outage hours for calculating the pro-rated effect on the Lump Sum Payment.

- v. Example 1: if a Facility has ten inverter(s) and, during the month of May (which has 31 calendar days or 744 period hours), one inverter is not available to respond to Company Dispatch for a period of 360 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be

calculated as follows:

$$\begin{array}{lcl} \text{Monetary Amount} & = & (\text{MLSP}) \times (1/10 \\ \text{of Downward} & & \times 360) / 744 \\ \text{Adjustment} & & \end{array}$$

Example 2: if a Facility has ten inverter(s) and 10 MW DC of PV panels, and during the month of May (which has 744 period hours) an event or events of Force Majeure cause one inverter to not be available to respond to Company Dispatch for a period of 360 hours, and 2 MW DC of PV panels to be not available to generate energy for 120 hours, 60 hours of which occurred concurrently with the Inverter System as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum Payment for the month of May would be calculated as follows:

First, determine what adjustment factor to use during the concurrent Force Majeure:

PV System Concurrent FM factor = 2/10

Inverter System Concurrent FM factor = 1/10

Since the PV System Concurrent FM Factor is greater than the Inverter System Concurrent FM Factor it is used during the concurrent FM time:

$$\begin{array}{l} \text{Monetary} \\ \text{Amount of} \\ \text{Downward} \\ \text{Adjustment} \\ = \text{MLSP} \frac{(1/10 \times (360 - 60)) + (2/10 \times (120 - 60)) + (2/10 \times 60)}{744} \end{array}$$

where:

MLSP = The monthly Lump Sum Payment that would be payable for such month but for the downward adjustment.

Example 3: if a Facility has 40 MWh BESS capacity and, during the month of June (which has 720 period hours), one MWh is not available to respond to Company Dispatch for a period of 240 hours due to a Force Majeure condition as aforesaid, the monetary amount of the resulting downward adjustment to the monthly Lump Sum

Payment for the month of June would be calculated as follows:

$$\begin{array}{lcl} \text{Monetary Amount} & = & (\text{BLSP} \times 1/40) \\ \text{of Downward} & & \times 240/720 \\ \text{Adjustment} & & \end{array}$$

where:

BLSP = The BESS Allocated Portion of the Lump Sum Payment that would be payable for such month but for the downward adjustment.

For purposes of determining the monetary amount of the foregoing downward adjustment, the product obtained by multiplying a monetary value by a fraction shall be rounded to the nearest cent.

4. Test Energy. Company shall use reasonable efforts to accept test energy that is delivered as part of the normal testing for generators (such as energy delivered to Company during the Control System Acceptance Test but not during the Acceptance Test), provided Seller shall use reasonable efforts to coordinate such normal testing with Company so as to minimize adverse impacts on the Company System and operations. Company shall not compensate Seller for test energy.
5. Tax Credit Pass Through. Company acknowledges and agrees that the Federal Refundable Tax Credit and Federal Non-Refundable Tax Credit shall inure to the benefit of the Claiming Entity; provided, however, that Seller acknowledges and expressly agrees that the Federal Refundable Tax Credit and Federal Non-Refundable Tax Credit, with regard to Seller's Facility, have been calculated into the Contract Pricing based on the maximization of such credits. In the event that Seller's Facility does not gain the benefit of the Federal Refundable Tax Credit and/or the Federal Non-Refundable Tax Credit, Seller expressly acknowledges and agrees that it shall not seek to amend the Contract Pricing.
 - (a) Because the Hawai'i tax treatment that will apply to renewable energy technologies on the Commercial Operations Date is uncertain, the parties acknowledge that the Contract Pricing was set assuming Seller will not be eligible for any Hawai'i Renewable Energy Tax

Credit. The intent of this Section 5 (Tax Credit Pass Through) is to entitle Company, for the benefit of its customers, to a payment equal to 100% of the maximum Hawai'i Renewable Energy Tax Credit for which Seller is eligible with respect to the Facility and receives during the Term, as more fully set forth in this Section 5 (Tax Credit Pass Through).

- (b) If, as of the Commercial Operations Date, or, if not available at the Commercial Operations Date, at any subsequent time during the Term, a Hawai'i Refundable Tax Credit is reasonably available to Seller or its Affiliates with respect to the Facility, the following shall apply:
- (i) Seller or Seller's Affiliate will apply for such Hawai'i Refundable Tax Credit, it being understood and agreed that if Seller applies for a Hawai'i Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Refundable Tax Credit;
 - (ii) Seller shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Refundable Tax Credit within thirty (30) Days after funds are received from the Hawai'i Department of Taxation;
 - (iii) Upon application for the Hawai'i Refundable Tax Credit, an officer of Seller will deliver to Company a notice (A) describing Seller's efforts to apply for and obtain the Hawai'i Refundable Tax Credit, (B) confirming that Seller has applied for the Hawai'i Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Refundable Tax Credit as provided in this Section 5 (Tax Credit Pass Through);
 - (iv) Upon receipt of any funds from the Hawai'i Department of Taxation for the Hawai'i Refundable Tax Credit, an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company certifying (A) the amount of funds

received, (B) and the amount of payment that will be made to Company, net of federal tax and any documented and reasonable financial, legal, administrative, and other costs required to claim and transfer such funds to Seller, as supported by the officer's certificate as to the amount of such costs and the reasonableness thereof.

- (c) If, as of the Commercial Operations Date, a Hawai'i Refundable Tax Credit is unavailable, but a Hawai'i Non-Refundable Tax Credit is available to Seller or its Affiliates with respect to the Facility, or at any subsequent time during the Term, a Hawai'i Non-Refundable Tax Credit becomes available to Seller or its Affiliates with respect to the Facility, notwithstanding that Seller may have applied for a Hawai'i Refundable Tax Credit, and in either case Seller can utilize, or enable its investors to utilize, such Hawai'i Non-Refundable Tax Credit, the following shall apply:
- (i) Seller or an Affiliate of Seller will apply for any available Hawai'i Non-Refundable Tax Credit, it being understood and agreed that if Seller applies for a Hawai'i Non-Refundable Tax Credit as of the Commercial Operations Date, it shall have fulfilled its obligations hereunder to apply for the Hawai'i Non-Refundable Tax Credit;
 - (ii) Seller shall make a payment to Company in an amount equal to one hundred percent (100%) of the Net Amount of such Hawai'i Non-Refundable Tax Credit that Seller can utilize in the tax year in question within sixty (60) Days after the filing date of the applicable tax return for the tax year in which such Hawai'i Non-Refundable Tax Credit is utilized;
 - (iii) Upon the filing of the applicable tax return(s), an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company (A) describing Seller's efforts to apply for and obtain the Hawai'i Non-Refundable Tax Credit, (B) confirming that Seller has applied for the Hawai'i Non-Refundable Tax Credit, and (C) certifying that Seller has used commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Non-Refundable Tax Credit as

provided in this Section 5 (Tax Credit Pass Through);

- (iv) Upon receipt of any funds for the Hawai'i Non-Refundable Tax Credit, an officer of Seller or an Affiliate of Seller, if applicable, will deliver a notice to Company certifying (A) the amount of funds received, (B) and the amount of payment that will be made to Company, net of federal tax and any documented and reasonable financial, legal, administrative, and other costs required to claim, monetize and transfer such funds to Seller, as supported by the officer's certificate as to the amount of such costs and the reasonableness thereof;
- (d) Seller shall use commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai'i Refundable and/or Non-Refundable Tax Credit as provided in this Section 5 (Tax Credit Pass Through). If Seller fails to apply for and to use commercially reasonable efforts to obtain such Hawai'i Renewable Energy Tax Credit as described above, then Company shall be entitled to liquidated damages in an amount equal \$4,500,000.00. Seller and Company agree and acknowledge that (i) the failure to use commercially reasonable efforts as provided in the preceding sentence would result in damages to Company in the form of reduction or loss of a benefit for Company's customers that would be difficult or impossible to calculate with certainty and (ii) \$4,500,000.00 is an appropriate approximation of such damages. Company's right to collect liquidated damages as described in this Section 5(d) shall constitute Company's exclusive remedy and fulfillment of all Seller's liability with respect to its obligations to maximize the amount of Hawai'i Renewable Energy Tax Credit. Such liquidated damages shall be provided to Company in the form of a lump sum payment by Seller or as an energy price credit against any amounts due by Company to Seller for energy purchases under this Agreement, as Company reasonably determines.
- (e) If, prior to the application in Section 5(b) or filing in Section 5(c) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), as applicable, a change in tax law occurs to introduce a

Hawai'i Production Tax Credit or an alternative renewable tax credit, Seller will use commercially reasonable efforts to determine which tax strategy is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits. If, based on such efforts, Seller determines that either Section 5(b) or Section 5(c) would result in a larger Net Amount of usable tax credits, an officer of Seller will deliver a notice to Company certifying that Seller has reasonably determined that the selected form of Hawai'i Renewable Energy Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits and explaining the rationale for such determination. If, however, Seller reasonably determines that such Hawai'i Production Tax Credit is likely to result in the larger Net Amount (based on net present value for tax credits earned over time) of usable tax credits and that it reasonably can obtain such Hawai'i Production Tax Credit, Seller shall promptly notify Company in writing and explain the rationale for such determination, and Seller and Company shall negotiate in good faith and use commercially reasonable efforts to agree upon lump sum payments and/or credits or adjustments to the Contract Price and other terms of this Agreement as may be required to best benefit Company's customers with 100% of the Net Amount of such tax benefits and preserve the intended economic benefits to the Parties arising from this Agreement.

- (f) Company reserves the right to have Seller's application for the Hawai'i Renewable Energy Tax Credit in Section 5(b) or Section 5(c), or the Hawai'i Production Tax Credit or alternative tax credit under Section 5(e) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) reviewed by an Independent Tax Expert to determine if such application is expected to maximize available tax credits to best benefit Company's customers, in which case, the provisions of this Section 5(f) shall apply. Company shall deliver to Seller a written notice (the "Nomination Notice") of: (i) the names of three persons qualified and willing to accept appointment as an Independent Tax Expert; (ii) a description provided by each nominee of his or her qualifications to serve as an Independent Tax Expert; (iii) a written undertaking by

each nominee to review Seller's tax credit strategy and application, and (iv) each nominee's fee proposal. Seller and Company shall agree on a mutually acceptable person to serve as the Independent Tax Expert within ten (10) Business Days of Seller's receipt of Company's written notice. If the Parties fail to agree upon a mutually acceptable Independent Tax Expert within the aforesaid ten Business Day period, such disagreement shall be resolved pursuant to Section 5(g) of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS). Seller shall pay the fees and expenses of the Independent Tax Expert.

- (g) Any dispute arising under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) shall constitute a "Dispute" within the meaning of Article 28 (Dispute Resolution) of this Agreement and shall be resolved as provided in said Article 28 (Dispute Resolution).
- (h) For purposes of this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS), an Affiliate of Seller is a company that directly or indirectly controls, is controlled by, or is under common control with Seller, and Seller may perform its obligations under this Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) directly or through one or more Affiliates.

[ATTACHMENT K WILL BE REVISED TO REFLECT THE RESULTS OF IRS - COMPANY AND SELLER TO AGREE, FOLLOWING COMPLETION OF IRS, IF ANY GUARANTEED PROJECT MILESTONES ARE NECESSARY IN ADDITION TO THOSE LISTED IN ATTACHMENT K AND, IF SO, WHAT ARE THE CONSEQUENCES OF MISSING SUCH OTHER GUARANTEED PROJECT MILESTONES.]

ATTACHMENT K
GUARANTEED PROJECT MILESTONES

[For Developer Interconnection Build]

Guaranteed Project Milestone Date	Description of Each Guaranteed Project Milestone
[SPECIFY DATE CERTAIN]	<u>Construction Financing Milestone:</u> Provide Company with documentation reasonably satisfactory to Company evidencing (i) the closing on financing for the Facility including ability to draw on funds by [insert same date certain as in left column] or (ii) the financial capability to construct the Facility (" <u>Construction Financing Closing Milestone</u> ").
[SPECIFY DATE CERTAIN]	<u>Permit Application Filing Milestone:</u> Provide Company with documentation reasonably satisfactory to Company evidencing the filing by or on behalf of Seller of the following applications for Governmental Approvals required for the ownership, construction, operation and maintenance of the Facility: County Plan Approval
[10/30/2023]	<u>Guaranteed Commercial Operations Date.</u>

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

ATTACHMENT K-1
SELLER'S CONDITIONS PRECEDENT AND COMPANY MILESTONES

[For Developer Interconnection Build]

Seller's Conditions Precedent Date	Description of Each of Seller's Conditions Precedent
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(ii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller shall provide Company a right of entry for the Company-Owned Interconnection Facilities site(s).
	Seller shall make payment to Company of the amount required under <u>Section 3(b)(iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities)
	Seller's engineering, procurement and construction (" <u>EPC</u> ") contractor shall obtain grading permit.
	Seller's EPC contractor shall obtain and provide Company all permits (other than any required occupancy permits, if applicable), licenses, easements and approvals to construct the Company-Owned Interconnection Facilities, including the building permit.
No later than three (3) months prior to the commencement of	Seller shall provide station service power, if applicable, as required by Company.

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

the Acceptance Test	
No later than three (3) months prior to the commencement of the Acceptance Test	Seller or Seller's EPC contractor shall have Hawaiian Telcom Backup (or equivalent) installed which shall consist of a 1.5 Mbps Routed Network Services circuit for backup SCADA communications from Company's Substation at Seller's Facility to Company's EMS located at 820 Ward Avenue, Honolulu, Hawaii.
	Seller's EPC contractor shall complete installation of physical bus and structures within Company's substation up to the demark point as necessary to interconnect.
[specify date] ("Test Ready Deadline")	Seller's EPC contractor shall complete construction of the Seller-Owned Interconnection Facilities, the Seller shall have satisfied the conditions precedent to the conduct of the Acceptance Test set forth in <u>Section 2 (f)(ii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities) and Seller is otherwise ready to conduct the Acceptance Test.
	Seller shall close grading permit, unless Seller provides documentation establishing, to Company's reasonable satisfaction, that closing the grading permit is not required by the relevant Governmental Authority prior to energization, testing and use of the Facility.

COMPANY MILESTONES

If Seller satisfies the foregoing Seller's Conditions Precedent, the following Company Milestones shall apply:

Company Milestone Date	Description of Each Company Milestone
[] Business Days following the Test Ready Deadline	Company shall, subject to Seller's continued satisfaction of the requirements set forth in <u>Section 2 (f)(ii)</u> and <u>Section 2 (f)(iii)</u> of <u>Attachment G</u> (Company-Owned Interconnection Facilities), commence Acceptance Testing.
	Energization of Company-Owned Interconnection Facilities, provision of back-feed power to support commissioning.

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

ATTACHMENT L
REPORTING MILESTONES

[For Developer Interconnection Build]

Reporting Milestone Date	Description of Each Reporting Milestone
[Date]	Seller shall provide Company with a redacted copy of the executed Facility equipment, engineering, procurement and construction (" <u>EPC</u> ") or other general contractor agreements. Under no circumstances shall redactions conceal information that is necessary for Company to verify its rights under the Agreement.
[Date]	Seller shall provide Company with redacted copies of executed purchase orders/contracts for the delivery of Facility inverters.
[Date]	Building Permit: Seller or Seller's EPC contractor shall obtain building permit.
[Date]	Construction Start Date (defined as the start of civil work on Site).
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformer facilities.
[Date]	All inverters for the Facility shall have been installed at the Site.
[Date]	The step-up transformer shall have been installed at the Site.

ATTACHMENT M
FORM OF LETTER OF CREDIT

Page 1 of 2

[Bank Letterhead]

[Date]

Beneficiary: Hawaiian Electric Company, Inc.

[Address]

[Bank's Name]

[Bank's Address]

Re: [Irrevocable Standby Letter of Credit Number]

Ladies and Gentlemen:

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

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

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

This Letter of Credit may be drawn upon under the terms and conditions set forth herein, including any documentation that must be delivered with any drawing request.

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

The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of

Hawaiian Electric Company, 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, Inc.] [(i) the Letter of Credit will expire in less than thirty (30) days, it has not been replaced or extended and collateral is still required under Section _____ of the Power Purchase Agreement*].

Such drafts must bear the clause "Drawn under **[Bank's Name and Letter of Credit Number]** _____ and date of Letter of Credit.]"

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Bank Fax Number]** or other such number as specified from time to time by the bank. If presentation is made by facsimile transmission, you may contact us at **[Bank Phone Number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. If presented by facsimile, original documents are not required. Alternatively, presentation of such drawing documents may be made by email transmission to TRADE.CSU(AT)CITI.COM in PDF format, or such other email ID number identified by CITIBANK, N.A. in a written notice to you. To the extent a presentation is made by email transmission, you should (1) provide telephone notification thereof to CITIBANK, N.A. to 866-945-2684 prior to or simultaneously with the sending of such email transmission and (2) send the original of such drawing document(s) to CITIBANK, N.A., c/o CITICORP NORTH AMERICA, INC., 3800 CITIBANK CENTER, Building B, 1st Floor, Tampa, FL 33610 by overnight courier, at the same address provided above for presentation of documents, provided, however, that CITIBANK, N.A.'s receipt of such telephone notice or original document(s) shall not be a condition to payment hereunder.

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

* For draw relating to lapse of Letter of Credit while credit support is still required pursuant to the Power Purchase Agreement.

you and Applicant in writing at least thirty (30) days prior to any such expiration date that this letter of credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, both to:

Beneficiary at:

Director, Renewable Acquisition Division
Hawaiian Electric Company, Inc.
Central Pacific Plaza
220 South King Street, 21st Floor
Honolulu, Hawai'i 96813

and to

SVP and Chief Financial Officer
Hawaiian Electric Company, Inc.
American Savings Bank Tower
1001 Bishop Street, Suite 2500
Honolulu, Hawai'i 96813

And to Applicant at:

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to [Bank's Name] and [Bank's Address] if presented on or before the then-current expiration date hereof.

Payment of any amount under this Letter of Credit by [Bank] shall be made as the Beneficiary shall instruct on the next Business Day after the date the [Bank] receives all documentation required hereunder, in immediately available funds on such date. As used in this Letter of Credit, the term "Business Day" shall mean any day other than a Saturday or Sunday or any other day on which banks in the State of [Note - insert State of bank's location] are authorized or required by law to be closed.

Unless otherwise expressly stated herein, this irrevocable standby letter of credit is issued subject to the rules of the International Standby Practices, International Chamber of Commerce

publication no. 590 ("ISP98"), and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of the State of New York.

[Bank's Name] :

By: _____
[Authorized Signature]

ATTACHMENT N
ACCEPTANCE TEST GENERAL CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]

Upon final completion of Company review of the Facility's drawings, final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Acceptance Test in accordance with the Agreement. The Acceptance Test may include the following:

1. Interconnection.

- (a) Based on manufacturer's specification, test the local operation of the Facility's ____ kV breakers, which connect the Facility to Company System - must open and close locally using the local controls. Test and ensure that the status shown on the Energy Management System (EMS) is the same as the actual physical status in the field.
- (b) Remotely test the operation of the Facility's ____ kV breakers which connect the Facility to Company System - must open and close remotely from Company's EMS. Test and ensure that the status shown on the EMS is the same as the actual physical status in the field.
- (c) Relay test engineers to connect equipment and simulate certain inputs to test and ensure that the protection schemes such as any under/over frequency and under/over voltage protection or the Direct Transfer Trip operate as designed. (For example, a fault condition may be simulated to confirm that the breaker opens to sufficiently clear the fault. Additional scenarios may be tested and would be outlined in the final test criteria and procedures.) Seller to also test the synchronizing mechanisms to which the Facility would be synchronizing and closing into the Company System to ensure correct operation. Other relaying also to be tested as specified in the protection review of the IRS and on the single line diagram, Attachment E (Single-Line Drawing and Interface Block Diagram) for the Facility.

- (d) All ____ kV breaker disconnects and other high voltage switches will be inspected to ensure they are properly aligned and operated manually or automatically (if designed).
- (e) Switching Station inspections - The Switching Station may be inspected to test and ensure that the equipment that Seller has installed is installed and operating correctly based upon agreed to design. Wiring may be field verified on a sample basis against the wiring diagrams to ensure that the installed equipment is wired properly. The grounding mat at the Switching Station may be tested to make sure there is adequate grounding of equipment.
- (f) Communication testing - Communication System testing to occur to ensure correct operation. Detailed scope of testing will be agreed by Company and Seller to reflect installed systems and communication paths that tie the Facility to Company's communications system.
- (g) Various contingency scenarios to be tested to ensure adequate operation, including testing contingencies such as loss of communications, and fault simulations to ensure that the Facility's ____ kV breakers, if any, open as they are designed to open. (Back up relay testing)
- (h) Metering section inspection; verification of metering PTs, CTs, and cabinet and the installation of Company meters.

2. Telephone Communication.

- (a) Test to confirm Company has a direct line to the Facility control room at all times and that it is programmed correctly.
- (b) Test to confirm that the Facility operators can sufficiently reach Company System Operator.

If agreed by the Parties in writing, some requirements may be postponed to the Control Systems Acceptance Test.

ATTACHMENT O
CONTROL SYSTEM ACCEPTANCE TEST CRITERIA

[THIS ATTACHMENT WILL NEED TO BE MODIFIED BASED ON THE TYPE AND DESIGN OF THE FACILITY AND RESULTS OF THE IRS]

Final test criteria and procedures shall be agreed upon by Company and Seller no later than thirty (30) Days prior to conducting the Control System Acceptance Test ("CSAT") in accordance with Good Engineering and Operating Practices and with the terms of this Agreement. The Control System RTU Points List is necessary for the effective operation of the Company System and will be tested during the Control System Acceptance Test.

The Control System Acceptance Test is comprised of two parts, a set of onsite (at Facility) specific tests and a monitoring performance test. These tests may include the following:

On-site Tests:

1. SCADA Test to verify the status and analog telemetry, and if the remote controls between the Company's EMS and the Facility are working properly end-to-end.
2. Dispatch Test to verify if the Facility's active power limit controls and the Active Power Control Interface with the Company's EMS are working properly. The Test is generally conducted by setting different active power setpoints and limits and observing the proper dispatch of the appropriate ramp rate of the Facility's real power output.
3. Control Test for Voltage Regulation to verify the Facility can properly perform automatic voltage regulation as defined in this Agreement. Test is generally conducted by making small adjustments of the voltage setpoint and verifying by observation that the Facility regulates the voltage at the point of regulation to the setpoint by delivering/receiving reactive power to/from the Company System to maintain the applicable setpoint according to the reactive power control and the reactive amount requirements of Sections 3(a) (Reactive Power Control) and Section 3(b) (Reactive Amount) of Attachment B (Facility Owned by Seller) to this Agreement.
4. Primary Frequency Response Control Test to verify the Facility provides a frequency droop response as defined in this Agreement. Test is generally conducted by making

adjustments of the frequency reference setting and verifying by observation that the Facility responds per droop and deadband settings.

5. [Reserved]
6. Loss-of-Communication Test to verify the Facility will properly shutdown upon the failure of the direct-transfer-trip communication system. Test is generally conducted by simulating a communications failure and observing the proper shutdown of the Facility.
7. Round Trip Efficiency Test to verify that the round trip efficiency of the BESS is not less than eighty-five percent (85%).
8. Capacity Test to verify the BESS Capacity Ratio.
9. Blackstart Test.

Monitoring Test:

- a) The monitoring test requires the Facility to operate as it would in normal operations.
- b) To ensure useful and valid test data is collected, the monitoring test shall end when one of the following criteria is met:
 - A. The Facility's power production is greater than 85% of its Allowed Capacity, for at least four (4) hours in any continuous 24-hour CSAT period.
 - B. The recorded renewable energy resource at the Facility is above **[600 W/m²] [a Measured Wind Speed of 9 meters per second]** for at least eight (8) hours in any continuous 48-hour CSAT period.
 - C. 14 continuous Days from the start of the CSAT.
- c) At the end of the test, an evaluation period is selected based on the criteria that triggered the end of the test.
- d) The performance of the Facility during the period of a successfully completed monitoring test is evaluated for, e.g., voltage regulation, primary frequency response, dispatch control, operating limits and ramp rate performance, to verify the performance meets the requirements of this Agreement. The Facility is considered to have complied with a requirement if the Facility was compliant with the requirement at least 99.0% of the time during the evaluation

period and the Facility does not grossly violate the requirement when the Facility was in violation. The Parties understand and agree that these compliance conditions are limited only to determining whether the Facility successfully completes the CSAT monitoring test and are not for use in determining compliance during Commercial Operations, shall not be considered a waiver of any of the performance standards of Seller, all of which are hereby reserved, and shall not alleviate Seller from any of its obligations under the Agreement.

ATTACHMENT P
SALE OF FACILITY BY SELLER

1. Company's Right of First Negotiation Prior to End of the Term.
 - (a) Right of First Negotiation. Commencing as of the Commercial Operations Date, should Seller desire to sell, transfer or dispose of its right, title, or interest in the Facility, in whole or in part, including a Change in Control (as defined below), then, other than through an "Exempt Sale" (as defined below):
 - (i) Seller shall first offer to sell such interest to Company by providing Company with written notice of the same (the "Offer Notice"), which notice shall identify the proposed purchase price for such interest (including a description of any consideration other than cash that will be accepted) (the "Offer Price") and any other material terms of the intended transaction, and Company may, but shall not be obligated to, purchase such interest at the Offer Price and upon the other material terms and conditions specified in the Offer Notice, and in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). Seller shall provide to Company as part of the Offer Notice, information in its possession regarding the Facility to allow Company to conduct due diligence on the potential purchase, including, but not limited to information on the operational status of the Facility and its components, and the amount of debt or other material Seller obligations remaining with respect to the Facility (the Offer Notice and due diligence information on the Facility are collectively referred to as, the "Offer Materials"). Within five (5) Days of Company's receipt of the Offer Materials, if Company believes the due diligence information is incomplete, Company shall specify in writing the additional information Company requires to conduct its due diligence. The date on which Company receives the Offer Materials from Seller is referred to hereinafter as the "Offer Date."
 - (ii) If Company desires to purchase such interest, Company shall indicate so by delivering to Seller a

binding, written offer to purchase such interest at the Offer Price and on the terms and conditions specified in the Offer Notice within thirty (30) Days of the Offer Date (an "Acceptance Notice"). In the event Company timely delivers an Acceptance Notice, Seller shall sell and transfer to Company the interest substantially on the terms and conditions contained in the Offer Notice consistent with this Attachment P (Sale of Facility by Seller) and in accordance with definitive documentation to be entered into between Seller and Company. The Parties shall have sixty (60) Days from the Company's Acceptance Notice, or such other extended timeframe as agreed to by the Parties in writing, to negotiate in good faith, the terms and conditions of a purchase and sale agreement. The period beginning with the Offer Date and ending with such sixty (60) Day period (as may be extended as aforesaid) is referred to as the "Right of First Negotiation Period".

- (iii) Seller shall not solicit any offers for the sale of such interest to any other party during the Right of First Negotiation Period unless, during that period, Company provides Seller with written notice that Company no longer desires to purchase such interest, whereupon negotiations shall terminate.
- (iv) In the event that (A) Company fails to timely deliver an Acceptance Notice, (B) Company delivers a notice to Seller that it no longer desires to purchase the interest, or (C) the Parties are not able to execute a purchase and sale agreement within the 60-Day period set forth in Section 1(a)(ii) of this Attachment P (Sale of Facility by Seller), Seller may for a period of two hundred seventy (270) Days following the event specified in subsection (A), (B) or (C) above, commence solicitation of offers and negotiations from and with other parties for the sale of such interest. If the interest is not transferred to a purchaser or purchasers for any reason within the two hundred seventy (270) Day period, the interest may only be transferred by again complying with the procedures set forth in this Section 1(a) (Right of First Negotiation) of Attachment P (Sale of Facility by

Seller); provided, however, if Seller and the prospective purchaser have entered into definitive agreement(s) for the sale of the interest that was reasonably expected to close within such two hundred seventy (270) Day period and such agreement(s) remain in full force and effect between Seller and such prospective purchaser and are subject to conditions precedent that are expected to be satisfied within a reasonable period, the two hundred seventy (270) Day period shall be extended as to such agreement(s) and such prospective purchaser for up to one hundred eighty (180) additional Days or, if sooner, until such date that such agreement(s) have been terminated, cancelled or otherwise become no longer in full force and effect.

- (v) After expiration of the Right of First Negotiation Period, Company will not be precluded from providing offers or proposals to Seller along with other prospective purchasers in accordance with any offer or bid procedures established by Seller in its discretion.
- (b) Change in Ownership Interests and Control of Seller. Commencing as of the Commercial Operations Date, the Right of First Negotiation shall also be triggered by a transfer or sale of an ownership interest in Seller (whether in a single transaction or a series of related or unrelated transactions) following which The AES Corporation or an entity controlled by The AES Corporation is no longer a direct or indirect owner of at least fifty-one percent (51%) of the equity interest or voting control of Seller (excluding any equity interest or voting control of Seller held by a tax equity investor or for Financing Purposes (as defined below)) (such transfer of ownership interest and change in control collectively referred to as a "Change in Control"); provided, however that a transfer or sale whereby The AES Corporation retains the possession, directly or indirectly, or the power to direct or cause the direction of the management and policies of Seller, whether through ownership, by contract, or otherwise, shall not be deemed a Change in Control.

- (c) Exempt Sales. Exempt Sales shall not trigger a Right of First Negotiation and shall not require the consent of Company. As used herein, "Exempt Sales" means: (i) a change in ownership of the Facility or equity interests in Seller resulting from the direct or indirect transfer or assignment by or of Seller in connection with financing or refinancing of the Facility ("Financing Purposes"), including, without limitation, any exercise of rights or remedies (including foreclosure) with respect to Seller's right, title, or interest in the Facility or equity interests in Seller undertaken by any financing party in accordance with applicable financing documents, and including, without limitation, (x) a sale and leaseback of the Facility, (y) an inverted lease, (z) a sale or transfer of equity in Seller to facilitate a tax credit financing (including any partnership "flip" transaction), (ii) a disposition of equipment in the ordinary course of operating and maintaining the Facility, (iii) a sale that does not result in a Change in Control, and (iv) a sale or transfer of any interest in Seller or the Facility to one or more companies directly or indirectly controlling, controlled by or under common control with Seller.
- (d) Seller's Right to Transfer. The provisions of this Section 1(d) (Seller's Right to Transfer) shall apply (i) from the Execution Date through the Commercial Operations Date and (ii) from the Commercial Operations Date in the event that Company does not consummate a purchase pursuant to its exercise of the Right of First Negotiation in accordance with the terms and conditions of this Attachment P (Sale of Facility by Seller). In such circumstances, Seller shall, subject to the prior written consent of Company, which consent shall not be unreasonably withheld, conditioned or delayed, have the right to transfer or sell the Facility to any person or entity which proposes to acquire the Facility with the intent to continue the operation of the Facility in accordance with the provisions of this Agreement pursuant to an assignment of this Agreement. Company shall consent to the assignment of this Agreement to such prospective purchaser upon receiving documentation from Seller establishing, to Company's reasonable satisfaction, that the assignee (i) has a tangible net worth of \$100,000,000 or a credit rating of "BBB-" or better and has the ability to perform its financial

obligations hereunder (or provides a guaranty from an entity that meets this description) in a manner consistent with the terms and conditions of this Agreement; and (ii) has experience in the ownership and at least five (5) years of experience in the operation (or contracts with an entity that has at least five (5) years of experience in the operation) of power generation and BESS facilities; provided, however, that Company shall be deemed to have consented to the assignment if, within ten (10) Business Days of receiving from Seller the documentation establishing that the assignee meets all the foregoing criteria, Company does not either (y) deliver the required consent to Seller, or (z) notify Seller which of the foregoing criteria is not established by such documentation. Notwithstanding the foregoing, Company consent shall not be required for any Exempt Sale.

- (e) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its Right of First Negotiation under Section 1(a) (Right of First Negotiation) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement, such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (f) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility or an interest in the Facility to Company prior to the expiration of the Right of First Negotiation Period, the provisions of this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) shall apply if (i) Seller thereafter offers to sell the Facility to a third party for less than (as applicable) the final amount Company had offered to purchase the Facility or (ii) an ownership interest in the Facility that would result in a Change in Control is offered for sale to a third party that is less than the proportionate share of (as applicable) the final amount Company had offered to purchase the Facility. (By way of example, if the final amount offered by Company to purchase the Facility was \$100, and the ownership interest being offered for sale

is 75%, the "proportionate share" is \$75, such that an offer to sell such ownership interest for less than \$75 would trigger this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller). Seller shall notify Company in writing of an offer that triggers this Section 1(f) (Right of First Refusal) of this Attachment P (Sale of Facility by Seller) and Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. If the offer of which Seller notifies Company as aforesaid is an offer to sell the Facility, Company shall have the right to purchase the Facility for the amount of such offer on similar terms and conditions. If the offer of which Seller notifies Company as aforesaid is an offer to sell an ownership interest that could result in a Change in Control, Company shall have the right to purchase the Facility by a price that is proportionate to the amount at which such ownership interest was offered on the terms and conditions to be negotiated by the Parties on the basis of Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and otherwise consistent with this Attachment P (Sale of Facility by Seller). (By way of example, if a 75% ownership Interest is being offered for sale at \$75, the proportionate amount at which Company shall have the right to purchase the Facility would be \$100.)

2. Company's Right of First Negotiation to Purchase at End of Term.

- (a) Option of Exclusive Negotiation Period. Company shall have the option of an exclusive negotiation period to negotiate a purchase of the Facility on the last Day of the Term, and all rights of Seller therein or relating thereto. Company shall indicate its preliminary interest in exercising the option for exclusive negotiation by delivering to Seller a notice of its preliminary interest not less than two (2) years prior to the last Day of the Term. If Company fails to deliver such notice by such date, Company's option shall terminate.

- (b) Negotiations. Once Company has given such notice of preliminary interest to Seller, for a period not to exceed three (3) months, Company shall have the exclusive right to negotiate in good faith with Seller, the terms of a purchase and sale agreement pursuant to which Company may purchase the Facility, which purchase and sale agreement shall include, without limitation, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller) and a price equal to the Offer Price as presented by Seller in accordance with the procedures identified in Section 1(a)(i) through (v) of this Attachment P (Sale of Facility by Seller). The Parties may agree in writing to extend this period for negotiations. (Such period, as extended as aforesaid, is referred to herein as the "Exclusive Negotiation Period.") Seller shall not solicit any offers or negotiate the terms for the sale of the Facility with any other entity during the Exclusive Negotiation Period, unless, during the Exclusive Negotiation Period, Company gives written notice that such negotiations are terminated.
- (c) Purchase and Sale Agreement and PUC Approval. In the event that Company exercises its right of exclusive negotiation under Section 2(a) (Option of Exclusive Negotiation Period) of this Attachment P (Sale of Facility by Seller) and the Parties conclude a purchase and sale agreement pursuant to Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), such agreement shall contain, at a minimum, the terms set forth in Section 4 (Purchase and Sale Agreement) of this Attachment P (Sale of Facility by Seller), and such agreement shall be subject to PUC Approval as provided in Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller).
- (d) Right of First Refusal. In the event the Parties fail to agree upon a sale of the Facility to Company prior to the expiration of the Exclusive Negotiation Period provided in Section 2(b) (Negotiations) of this Attachment P (Sale of Facility by Seller), and Seller thereafter offers to sell the Facility to a third party

for less than the final amount Company had offered to purchase the Facility, Seller shall notify Company in writing of such offer and Company shall have the right to purchase the Facility for the amount of such offer and on no less favorable terms and conditions consistent with this Attachment P (Sale of Facility by Seller) and subject to PUC Approval; provided, however, that Company shall have one (1) month in which to notify Seller of its intent to exercise this right. The Right of First Refusal shall not apply to any offer to purchase the Facility received from a third party more than twelve (12) months after the end of the Term.

3. Procedure to Determine Fair Market Value of the Facility.

- (a) If the Parties have agreed to effectuate a sale of the Facility pursuant to Section 24.5 (Consolidation) and are unable to agree on the fair market value of the Facility, each of Company and Seller shall engage the services of an independent appraiser experienced in appraising power generation assets similar to the Facility to determine separately the fair market value of the Facility. Subject to the appraisers' execution and delivery to Seller of a suitable confidentiality agreement in form reasonably acceptable to Seller, Seller shall provide both appraisers full access to the books, records and other information related to the Facility required to conduct such appraisal. Company shall pay all reasonable fees and costs of both appraisers, subject to Section 3(c) of this Attachment P (Sale of Facility by Seller). Each of Company and Seller shall use reasonable efforts to cause its appraisal to be completed within two (2) months following the engagement of the independent appraisers. If for any reason (other than failure by Seller to provide full access to Company's appraiser) one of the appraisals is not completed within such two (2) month period, the results of the other, completed appraisal shall be deemed to be the Appraised Fair Market Value of the Facility. Each Party may provide to both appraisers (with copies to each other) a list of factors which the Parties suggest be taken into consideration when the appraisers generate their appraisals.

- (b) Company and Seller shall exchange the results of their respective appraisals when completed and, in connection therewith, the Parties and their appraisers shall confer in an attempt to agree upon the fair market value of the Facility.
 - (c) If, within thirty (30) Days after completion of both appraisals, the Parties cannot agree on a fair market value for the Facility, within ten (10) Days thereafter, the first two appraisers shall by mutual consent choose a third independent appraiser. If the first two appraisers fail to agree upon a third appraiser, such appointment shall be made by DPR upon application of either Party. The Parties shall direct the third appraiser (i) to select one of the appraisals generated by the first two appraisers as the Appraised Fair Market Value of the Facility (without compromise, aka "baseball" arbitration), and (ii) to complete his or her work within one month following his or her retention. If the third appraiser selects the appraisal originally generated by Seller's appraiser, Company shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally generated by Company's appraiser, Seller shall pay the fees and costs of the third appraiser and shall pay or reimburse Company for the costs of Seller's original appraiser.
 - (d) The "Appraised Fair Market Value of the Facility" means the fair market value determined by appraisal pursuant to Section 3(a) or Section 3(c) of this Attachment P (Sale of Facility by Seller) as applicable.
4. Purchase and Sale Agreement. The purchase and sale agreement ("PSA") concluded by the Parties pursuant to this Attachment P (Sale of Facility by Seller) (as applicable) shall contain, among other provisions, the following:
- (a) Seller shall, as of the closing of the sale, convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, including all rights of Seller in the Facility or relating thereto, free and clear of all liens, claims, encumbrances, or rights of others, except any Permitted Lien;

- (b) To the extent assignable or transferrable, Seller shall assign or transfer to Company all of Seller's interest in all Project Documents and Governmental Approvals that are then in effect and that are utilized for the operation or maintenance of the Facility;
- (c) Seller shall execute and deliver to Company such deeds, bills of sale, assignments and other documentation as Company may reasonably request to convey title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, free from all liens, claims, encumbrances, or rights of others, except any Permitted Lien;
- (d) Seller shall cause all liens on the Facility for monies owed (including liens arising from Financing Documents), and any liens in favor of Seller's affiliates, to be released prior to closing on the sale of the Facility to Company;
- (e) Seller shall warrant, as of the date of the closing of the sale of the Facility to Company, title to the Facility consistent with the state of title in existence as of the date of execution of the PSA, is free and clear of all other liens, claims, encumbrances and rights of others, except any Permitted Lien;
- (f) Company shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties) incurred by Seller on account of Company's purchase of the Facility, nor any other obligation to Seller except for the purchase price, and Seller shall indemnify Company against any such losses, liabilities or damages;
- (g) Company shall assume all of Seller's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company, including (i) to the extent assignable, all Permits held by, for, or related to the Facility, and (ii) all of Seller's agreements with respect to the Facility provided to and approved by Company at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, except for such agreements Company has elected to terminate, in which case any related termination expenses shall be, at Company's option, paid

directly by Company and deducted from the purchase price;

- (h) Seller shall indemnify Company against all of Seller's obligations with respect to the Facility accruing through the date of closing the sale of the Facility to Company, and Company shall indemnify Seller against all of Company's obligations with respect to the Facility accruing from and after the date of closing on the sale of the Facility to Company;
- (i) Unless otherwise agreed to by the Parties, Seller makes no representations or warranties with respect to the condition of the Facility, and Company shall purchase the Facility on an as-is basis;
- (j) Seller shall warrant that, except as disclosed to and approved by Company in writing at least thirty (30) Days prior to the date of closing on the sale of the Facility to Company, the Facility has been operated by Seller in conformity with all Laws;
- (k) Seller shall warrant that Seller provided full access to Company and each appraiser in connection with the procedure to determine fair market value provided in Section 3 (Procedure to Determine Fair Market Value of the Facility) of this Attachment P (Sale of Facility by Seller);
- (l) If applicable, Seller's lease of the Site from Company will terminate and Seller will relinquish all rights, privileges and obligations relating to such lease; and
- (m) Seller shall maintain the Facility in accordance with Good Engineering and Operating Practices between appraisal and the closing date.

As used in this Attachment P (Sale of Facility by Seller), "Permitted Lien" shall mean (i) any lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) any lien arising in the ordinary course of business by operation of applicable Laws with respect to a liability not yet due or delinquent or that is being contested in good faith, (iii) all matters that are disclosed (whether or not subsequently deleted or endorsed over) on any survey, in the title policies insuring any Land Rights or in any title commitments, title reports or other

title materials, (iv) any matters that would be disclosed by a complete and correct survey of the Property, (v) zoning, planning, and other similar limitations and restrictions, and all rights of any Governmental Authority to regulate the Site and/or the Facility, (vi) all matters of record, (vii) any lien that is released on or prior to closing of the sale of the Facility to Company, (viii) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, and statutory or common law liens to secure claims for labor, materials or supplies arising in the ordinary course of business which are not delinquent, and (ix) the matters agreed by the Parties, to the extent that such Permitted Liens are taken into account at arriving at the appraised value.

5. PUC Approval. Any purchase and sale agreement related to the Facility entered into by the Parties is subject to approval by the PUC and the Parties' respective obligations thereunder are conditioned upon receipt of such approval, except as specifically provided otherwise therein.

- (a) Company shall submit the purchase and sale agreement to the PUC for approval within thirty (30) Days after execution by both Parties, but Company does not extend any assurances that PUC approval will be obtained. Seller will provide reasonable cooperation to expedite obtaining an approval order from the PUC, including providing information requested by the PUC and parties to the PUC proceeding in which approval is being sought. Seller understands that lack of cooperation may result in Company's inability to file an application with the PUC and/or failure to receive PUC approval. Unless otherwise agreed to in writing by the Parties, neither Company nor Seller shall seek reconsideration, appeal, or other administrative or judicial review of any unfavorable PUC order. The Parties agree that neither Party has control over whether or not a PUC approval order will be issued and each Party hereby assumes any and all risk arising from, or relating in any way to, the inability to obtain a satisfactory PUC order and hereby releases the other Party from any and all claims relating thereto.
- (b) Seller shall seek participation without intervention in the PUC docket for approval of the purchase and sale agreement pursuant to applicable rules and orders of the

PUC. The scope of Seller's participation shall be determined by the PUC. However, Seller expressly agrees to seek participation for the limited purpose and only to the extent necessary to assist the PUC in making an informed decision regarding the approval of the purchase and sale agreement. If the Seller chooses not to seek participation in the docket, then Seller expressly agrees and knowingly waives the right to claim, before the PUC, in any court, arbitration or other proceeding, that the information submitted and the application requesting the PUC approval are insufficient to meet Company's burden of justifying that the terms of the purchase and sale agreement are just and reasonable and in the public interest, or otherwise deficient in any manner for purposes of supporting the PUC's approval of the purchase and sale agreement. Seller shall not seek in the docket and Company shall not disclose any confidential information to Seller that would provide Seller with an unfair business advantage or would otherwise harm the position of others with respect to their ability to compete on equal and fair terms.

- (c) In order to constitute an approval order from the PUC under this Section 5 (PUC Approval) of this Attachment P (Sale of Facility by Seller), the order must approve the purchase and sale agreement, Company's funding arrangements and Company's acquisition of the Facility, shall not contain any terms and conditions deemed to be unacceptable by Company, and be in a form deemed reasonable by Company in its sole, but non-arbitrary, discretion.
- (d) The Final Non-Appealable Order from the PUC must be obtained within six (6) months of the submission of the purchase and sale agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the six (6) month period; provided, however, that if the purchase and sale agreement governs a sale of the Facility executed pursuant to Section 24.5 (Consolidation) of this Agreement, the Final Non-Appealable Order must be obtained within twelve (12) months of the submission of the purchase and agreement to the PUC, or any extension of such period as agreed by the Parties in writing within ten (10) Days of the expiration of the twelve (12) month period. The term "Final Non-appealable Order

from the PUC" means an Approval Order from the PUC (i) that is not subject to appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, because the period permitted for such an appeal has passed without the filing of notice of such an appeal, or (ii) that was affirmed on appeal to any Circuit Court of the State of Hawai'i, Intermediate Court of Appeals of the State of Hawai'i, or the Supreme Court of the State of Hawai'i, or was affirmed upon further appeal or appellate process, and that is not subject to further appeal, because the jurisdictional time permitted for such an appeal and/or further appellate process such as a motion for reconsideration or an application for writ of certiorari has passed without the filing of notice of such an appeal or the filing for further appellate process. Such Final Non-Appealable Order from the PUC shall constitute and be referred to as "PUC Approval" for purposes of this Attachment P (Sale of Facility by Seller).

- (e) If a Final Non-Appealable Order from the PUC has not been obtained prior to the deadline provided in Section 5(b) of this Attachment P (Sale of Facility by Seller), either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
 - (f) If the Final Non-appealable Order from the PUC does not satisfy the conditions set forth in Section 5(a) of this Attachment P (Sale of Facility by Seller), either (i) the Parties may agree to renegotiate and submit a revised purchase and sale agreement to the PUC, or (ii) either Party may give written notice to the other Party that it does not wish to proceed further with a sale of the Facility to Company.
6. Make Whole Amount. For purposes of Section 24.5 (Consolidation and Lease), the "Make Whole Amount" shall be equal to the sum of the following: (a) Seller's book value (including depreciation on a twenty (20) year straight line basis) of all actual verifiable costs of studies, designs, engineering, and construction of the Facility and all Interconnection Facilities (including any Company-Owned Interconnection Facilities paid for by Seller), including cancellation charges and other costs of unwinding

construction and demobilization if the determination is made prior to the Commercial Operation Date, (b) Seller's book value of all actual verifiable costs and expenses acquiring real estate rights for the Facility and Interconnection Facilities, (c) Seller's book value of all actual verifiable costs and expenses incurred in obtaining Governmental Approvals, (d) Seller's book value of all actual verifiable costs of financing the Facility and the Interconnection Facilities, including fees and expenses of bankers, consultants and counsel, and any discounts or premiums paid in connection with any financing, (e) any actual verifiable costs of repaying any financing in connection with a sale, including prepayment penalties or premiums, make whole payments, minimum interest payments, breakage fees, payments on account of taxes, duties and other costs, and other costs of unwinding swaps or other hedges, (f) other breakage, make whole or indemnity payments arising as the result of Company's purchase of the Facility, (g) tax costs, including recapture of federal or state tax credits and payment of transfer taxes, and (h) interest on the foregoing amounts at annual rate equal to the Prime Rate plus two percent (2%) as in effect from time to time from the date incurred through the date of payment, with all such costs being demonstrated by Seller with support and verified by Company. The items described in clauses (e), (f) and (g) (and clause (h) to the extent applicable to clauses (e), (f) and/or (g)) are referred to as the "Financial Termination Costs".

ATTACHMENT Q
[RESERVED]

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

ATTACHMENT R
REQUIRED INSURANCE

(See also Article 18 (Insurance))

1. Worker's Compensation and Employers' Liability. This coverage shall include Worker's Compensation, Temporary Disability and other similar insurance required by applicable State or U.S. federal laws. If exposure exists, coverage required by the Longshore and Harbor Worker's Compensation Act (33 U.S.C. §688) shall be included. Employers' Liability coverage limits shall be no less than:

Bodily Injury by Accident - \$1,000,000 each Accident
Bodily Injury by Disease - \$1,000,000 each Employee
Bodily Injury by Disease - \$1,000,000 policy limit

2. General Liability Insurance.

- (i) This coverage shall include Commercial General Liability Insurance or the reasonable equivalent thereof, covering all operations by or on behalf of Seller. Such coverage shall provide insurance for bodily injury and property damage liability for the minimum limits of liability indicated below and shall include coverage for:
 - (a) Premises, operations, and mobile equipment,
 - (b) Products and completed operations,
 - (c) Claims resulting from damage to the environment and damage or injury caused by hazardous conditions or hazardous materials to the extent such coverage is appropriate and available at a commercially reasonable cost,
 - (d) Blanket contractual liability,
 - (e) Broad form property damage (including completed operations),
 - (f) No exclusion for (XCU) explosion, collapse and underground hazard,
 - (g) Personal injury liability, and
 - (h) Failure to supply liability, which may be provided as a sublimit of \$1,000,000 per occurrence under

the general liability policy, on ISO endorsement CG 22 50 or equivalent, so long as such coverage is available on a commercially reasonable basis.

- (ii) Limits of liability for Bodily Injury & Property Damage shall be:

\$10,000,000 combined single limit per occurrence and;
\$20,000,000 aggregate annually

- (iii) Coverage limits may be satisfied using Umbrella and/or Excess Liability insurance policies.

3. Automobile Liability Insurance. This insurance shall include coverage for owned (if any), leased and non-owned automobiles. The minimum limits of liability shall be a combined single limit for bodily injury and property damage of Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate annually. If exposure exists, the policy shall be endorsed to include Transportation Pollution Liability insurance, covering hazardous materials to be transported by Seller, as appropriate.
4. Builders All Risk Insurance. This insurance shall include but not be limited to coverage for wind including named windstorm, earthquake, flood, perils, property in transit (excluding ocean transit), off-site storage - property in temporary storage or assembly away from the project site, testing, covering all materials, equipment, machinery and supplies of any nature whatsoever, the property of the Seller or of others for which the Seller may have assumed responsibility, used or to be used in or incidental to the site preparation, demolition of existing structures, erection and/or fabrication and/or reconstruction and/or repair of the project insured, including temporary works (all scaffolding, formworks, fences, shoring, hoarding, false work and temporary buildings and all incidental to the project) from the start of construction through the earlier of the Commercial Operations Date or the effective date of the policy coverage set forth in Section 5 (All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction)) of this Attachment R (Required Insurance). The amount of coverage shall be purchased on a full replacement cost basis, except for earthquake, windstorm and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT)

Modeling report, if such insurance amounts are appropriate and available on commercially reasonable terms. The coverage shall be written on an "All Risks" completed value form and may allow for reasonable other sublimits for transit and for incidental offsite storage. Coverage shall be extended to include testing. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.

5. All Risk Property/Comprehensive Mechanical and Electrical Breakdown Insurance (Upon Completion of Construction). This insurance shall provide All Risk Property Coverage (including the perils of wind including named windstorm, earthquake, and flood) and Comprehensive Mechanical and Electrical Breakdown Coverage against damage to the Facility. The amount of coverage shall be purchased on a full replacement cost basis (no coinsurance shall apply) except for earthquake, windstorm and flood perils which shall be provided as sublimits and aggregate limits supported by a Probable Maximum Loss (PML) study and/or Catastrophe (CAT) Modeling reports, if such insurance amounts are appropriate and available on commercially reasonable terms. Such coverage may allow for other reasonable sublimits. Such policies shall be endorsed to require that the coverage afforded shall not be canceled (except for nonpayment of premiums) or reduced without at least thirty (30) Days' prior written notice to Seller and Company; provided, however, that such endorsement shall provide (i) that the insurer may not cancel the coverage for non-payment of premium without giving Seller and Company ten (10) Days' notice that Seller has failed to make timely payment thereof, and (ii) that, subject to the consent of the Facility Lender, Seller or Company shall thereupon have the right to pay such premium directly to the insurer.
6. Business Interruption Insurance (Upon Completion of Construction). This insurance shall provide coverage for all of Seller's costs to the extent that they would not be eliminated or reduced by the failure of the Facility to

operate for a period of at least twelve (12) months following a covered physical damage loss deductible period or reasonable dollar deductible or waiting period.

7. [Reserved]
8. Ocean Transit. Seller shall take reasonable action to ensure that the risk of loss or damage to any material items of equipment which are subject to ocean transit is adequately protected against by the terms of delivery from contractors or suppliers of such equipment or Seller's own insurance coverage.

ATTACHMENT S
FORM OF MONTHLY PROGRESS REPORT

1. Instructions

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement for Renewable As-Available Energy by and between [] ("Seller"), and Hawaiian Electric Company, Inc., a Hawai'i corporation, dated _____, (the "Agreement").

In addition to the remedial action plan requirement set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the Agreement, Seller shall review the status of each Construction Milestone of the construction schedule (the "Schedule") for the Facility and identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Construction Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law, actual or threatened opposition to the granting of a necessary Governmental Approvals, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Construction Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Construction Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Construction Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Construction Milestone or materially threaten any contemplated

agreements with other parties which are necessary for attaining any Construction Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Construction Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of the Facility;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

2. Executive Summary

2.1 Major activities completed

Please provide a cumulative summary of the major activities completed for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.1.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]
- 2.1.2 Financing
- 2.1.3 Governmental Approvals for Development
- 2.1.4 Site Control
- 2.1.5 Land Rights for Company-Owned Interconnection Facilities
- 2.1.6 Design and Engineering
- 2.1.7 Major Equipment Procurement
- 2.1.8 Construction
- 2.1.9 Interconnection

2.1.10 Startup Testing and Commissioning

2.2. Major activities recently performed

Please provide a summary of the major activities performed for each of the following aspects of the Facility since the previous report (provide details in subsequent sections of this report):

- 2.2.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]
- 2.2.2 Financing
- 2.2.3 Development Permits
- 2.2.4 Site Control
- 2.2.5 Land Rights for Company-Owned Interconnection Facilities
- 2.2.6 Design and Engineering
- 2.2.7 Major Equipment Procurement
- 2.2.8 Construction
- 2.2.9 Interconnection
- 2.2.10 Startup Testing and Commissioning

2.3 Major activities planned but not completed

Please provide a summary of the major activities that were planned to be performed since the previous report but not completed as scheduled, including the reasons for not completing the activities, for each of the following aspects of the Facility:

- 2.3.1 [Insert Construction Milestones from Attachment K and Attachment L, if needed]
- 2.3.2 Financing
- 2.3.3 Governmental Approvals for Development
- 2.3.4 Site Control

- 2.3.5 Land Rights for Company-Owned Interconnection Facilities
- 2.3.6 Design and Engineering
- 2.3.7 Major Equipment procurement
- 2.3.8 Construction
- 2.3.9 Interconnection
- 2.3.10 Startup Testing and Commissioning

2.4 Major activities expected during the current month

Please provide a summary of the major activities to be performed during the current month for each of the following aspects of the Facility (provide details in subsequent sections of this report):

- 2.4.1 Construction Milestones
- 2.4.2 Financing
- 2.4.3 Governmental Approvals
- 2.4.4 Site Control
- 2.4.5 Land Rights for Company-Owned Interconnection Facilities
- 2.4.6 Design and Engineering
- 2.4.7 Major Equipment procurement
- 2.4.8 Construction
- 2.4.9 Interconnection
- 2.4.10 Startup Testing and Commissioning

3. Milestones

3.1 Milestone schedule

Please list all Construction Milestones specified in Attachment K and Attachment L and state the current status of each.

Construction Milestone	Milestone Date Specified in the Agreement	Status (e.g., on schedule, delayed due to [specify reason]; current expected completion date)
---------------------------	---	---

3.2 Remedial Action Plan (if applicable)

Provide a detailed description of Seller's course of action and plan to achieve the missed Construction Milestones and all subsequent Construction Milestones by the Guaranteed Commercial Operation Date using the outline provided below.

- 3.2.1 Identify Missed Construction Milestone
- 3.2.2 Explain plans to achieve missed Construction Milestone
- 3.2.3 Explain plans to achieve subsequent Construction Milestones
- 3.2.4 Identify and discuss (a) delays in engineering schedule, equipment procurement, and construction and interconnection schedule and (b) plans to remedy delays as a result of the missed Construction Milestones

4. Financing

Please provide the schedule Seller intends to follow to obtain financing for the Facility. Include information about each stage of financing.

Activity (e.g., obtain \$xx for yy stage from zz)	Completion Date
	____ / ____ / ____ (expected / actual)
	____ / ____ / ____ (expected / actual)

5. Project Schedule

Please provide a copy of the current version of the overall Facility schedule (e.g., Work Breakdown Structure, Gantt chart, MS Project report, etc.). Include all major activities for Governmental Approvals for Development, design and engineering, procurement, construction, interconnection and testing.

6. Governmental Approvals

6.1 Environmental Impact Review

Please provide information about the primary environmental impact review for the Facility. Indicate whether dates are expected or actual.

Agency

Date of application/submission ____ / ____ / ____
(expected / actual)

Date application/submission deemed complete by agency ____ / ____ / ____
(expected / actual)

Date of initial study (if applicable) ____ / ____ / ____
(expected / actual)

Process (e.g., Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report)

Date of Notice of Preparation ____ / ____ / ____
(expected / actual)

Date of Draft ND/MND/EIR ____ / ____ / ____
(expected / actual)

Date Notice of Determination filed at _____ / _____ /
OPR or County Clerk (expected /
actual)

Governmental Approvals

Please describe each of the Governmental Approvals to be obtained by Seller and the status of each:

Status Summary

e.g., dates of application / hearing / notice / etc. (note whether dates are anticipated or actual); major activities (indicate whether planned, in progress and/or completed); primary reasons for possible delay, etc.

Agency / Approval

6.3 Governmental Approval activities recently performed

Please list all Governmental Approval activities that occurred since the previous report.

6.4 Governmental Approval activities expected during the current month

Please list all Governmental Approval activities that are expected to occur during the current month.

6.5 Governmental Approval Notices received from EPC Contractor

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received since the previous report, whether from EPC Contractor or directly from Governmental Authorities.

7. Site Control

7.1 Table of Site Control schedule

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Site (e.g., purchase, lease).

Activity	Completion Date
	____ / ____ / ____ (expected / actual)
	____ / ____ / ____ (expected / actual)

7.2 Site Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

7.3 Site Control activities expected during the current month

Please explain in detail the site control activities that are expected to be performed during the current month.

8. Land Rights for the Company-Owned Interconnection Facilities

8.1 Table of Land Rights schedule for Company-Owned Interconnection Facilities

If not obtained prior to execution of the Agreement, please provide the schedule Seller intends to follow to obtain control of the Land for the Company-Owned Interconnection Facilities (e.g., purchase, lease).

Activity	Completion Date
	____ / ____ / ____ (expected / actual)
	____ / ____ / ____ (expected / actual)

8.2 Land Control activities recently performed

Please explain in detail the property acquisition activities that were performed since the previous report.

8.3 Land Control activities expected during the current month

Please explain in detail the Land control activities that are expected to be performed during the current month.

9. Design and Engineering

9.1 Design and engineering schedule

Please provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent).

Please list all major design and engineering activities, both planned and completed, to be performed by Seller and the EPC Contractor.

Name of EPC Contractor / Subcontractor	Activity	Completion Date
		/ / / (expected / actual)
		/ / / (expected / actual)

9.2 Design and engineering activities recently performed

Please explain in detail the design and engineering activities that were performed since the previous report.

9.3 Design and engineering activities expected during the current month

Please explain in detail the design and engineering activities that are expected to be performed during the current month.

10. Major Equipment Procurement

10.1 Major equipment to be procured

Please list all major equipment to be procured by Seller or the EPC Contractor:

Equipment Description	Manufacturer	Delivery Date (indicate whether expected or actual)	Installation Date (indicate whether expected or actual)
		/ / / (expected / actual)	/ / / (expected / actual)
		/ / / (expected / actual)	/ / / (expected / actual)

Equipment Description	No. Ordered	No. Made	No. On-Site	No. Installed	No. Tested

10.2 Major Equipment procurement activities recently performed

Please explain in detail the major equipment procurement activities that were performed since the previous report.

10.3 Major Equipment procurement activities expected during the current month

Please explain in detail the major equipment procurement activities that are expected to be performed during the current month.

11. Construction

11.1 Construction activities

Please list all major construction activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	EPC Contractor / Subcontractor	Completion Date
		/ / / (expected / actual)
		/ / / (expected / actual)

11.2 Construction activities recently performed

Please explain in detail the construction activities that were performed since the previous report.

11.3 Construction activities expected during the current month

Please explain in detail the construction activities are expected to be performed during the current month.

11.4 EPC Contractor Monthly Construction Progress Report

Please attach a copy of the Monthly Progress Reports received since the previous report from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

12. Interconnection

12.1 Interconnection activities

Please list all major interconnection activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		/ / / (expected / actual)
		/ / / (expected / actual)

12.2 Interconnection activities recently performed

Please explain in detail the interconnection activities that were performed since the previous report.

12.3 Interconnection activities expected during the current month

Please explain in detail the interconnection activities that are expected to be performed during the current month.

13. Startup Testing and Commissioning

13.1 Startup testing and commissioning activities

Please list all major startup testing and commissioning activities, both planned and completed, to be performed by Seller or the EPC Contractor.

Activity	Name of EPC Contractor / Subcontractor	Completion Date
		___/___/___ (expected / actual)
		___/___/___ (expected / actual)

13.2 Startup testing and commissioning activities recently performed

Please explain in detail the startup testing and commissioning activities that were performed since the previous report.

13.3 Startup testing and commissioning activities expected during the current month

Please explain in detail the startup testing and commissioning activities that are expected to be performed during the current month.

14. Safety and Health Reports

14.1 Accidents

Please describe all Facility-related accidents reported since the previous report.

14.2 Work stoppages

Please describe all Facility-related work stoppages from that occurred since the previous report.

Please describe the effect of work stoppages on the Facility schedule.

15. Community Outreach

Please describe all community outreach efforts undertaken since the last report.

16. Certification

I, _____, on behalf of and as an authorized representative of [_____], do hereby certify that any and all information contained in this Seller's Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT T
MONTHLY REPORTING AND DISPUTE
RESOLUTION BY INDEPENDENT AF EVALUATOR

1. Monthly Report. Commencing with the month during which the Commercial Operations Date is achieved, and for each calendar month thereafter during the Term, Seller shall provide to Company a monthly report in Excel, Lotus or such other format as Company may require ("Monthly Report"), which Monthly Report shall include (i) the data for the calendar month in question populated into the form of a Monthly Report below, (ii) the data for the BESS Measurement Period ending with the calendar month in question populated into the form of "BESS Measurement Period Report" below, and (iii) Seller's calculations of the performance metrics and any liquidated damages assessments for the LD Period ending with such calendar month as set forth below. Seller shall deliver such Monthly Report to Company by the tenth(10th) Business Day following the close of the calendar month in question. Seller shall deliver the Monthly Report electronically to the address provided by the Company. Company shall have the right to verify all data set forth in the Monthly Report by inspecting measurement instruments and reviewing Facility operating records. Upon Company's request, Seller shall promptly provide to Company any additional data and supporting documentation necessary for Company to audit and verify any matters in the Monthly Report.

Monthly Report

NAME OF IPP FACILITY: [Facility Name]
MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Inverter System & PV System Monthly Report

NAME OF IPP FACILITY: [Facility Name]
MONTHLY REPORT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the information for each Force Majeure event affecting the Inverter System and/or the PV System during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of devices for item (D), total number of devices is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of effect in MW or Number of devices system that are offline (D)	Contract Capacity or Total number of devices in the effected system (E)	Equivalent Hours (hrs) (C x D) / E
...					

Calendar hours in the reporting period: _____

Total equivalent hours for the reporting period (from above with proper accounting from simultaneous events): _____

: _____

Please provide the following availability information even in months containing Force Majeure even though it will not be applied in the Inverter System EAF Calculation. Enter the information for each Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 2 decimal places.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: _____

Total Outage hours for the reporting period (from above): _____

Available Hours (AH) in the reporting period: _____

AH from the last eleven (11) reporting periods: _____

AH for the last twelve (12) reporting periods: _____

Enter the information for each Seller Attributable Derating events during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of inverters for item (D), total number of inverters is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating in MWs or Number of Inverters (D)	Contract Capacity or Total number of Inverters in the Inverter System (E)	Equivalent Hours (hrs) (C x D) /E
...					

Total Equivalent Seller Attributable Derated hours (ESADH) for the reporting period: _____

ESADH from the last eleven (11) reporting periods: _____

ESADH for the last twelve (12) reporting periods: _____

Enter the information for each Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of inverters for item (D), total number of inverters is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating in MWs or Number of Inverters (D)	Contract Capacity or Total number of Inverters in the Inverter System (E)	Equivalent Hours (hrs) (C x D) /E

...					

Total equivalent planned derated hours (EPDH) for the reporting period: _____

EPDH from the last eleven (11) reporting periods: _____

EPDH for the last twelve (12) reporting periods: _____

Enter the information for each Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration and equivalent hours should be rounded to 2 decimal places. When using MWs for item (D) below, Contract Capacity is to be provided for (E); and when using number of inverters for item (D), total number of inverters is to be provided for (E).

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of derating in MWs or Number of Inverters (D)	Contract Capacity or Total number of Inverters in the Inverter System (E)	Equivalent Hours (hrs) (C x D) / E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: _____

EUDH for the last eleven (11) reporting periods: _____

EUDH for the last twelve (12) reporting periods: _____

Period Hours (PH) is : _____ (8760 hours if no 29th day in February in that last twelve months otherwise 8784 hours)

Enter the Available Hours, ESADH, EPDH, and EUDH for the last twelve (12) reporting periods as calculated above.

AH (A)	ESADH (B)	EPDH (C)	EUDH (D)	Inverter System Annual Equivalent

				Availability Factor $100\% \times (A - B - C - D) / PH$

If the month for which this monthly report has been prepared contains a Force Majeure event please indicate the Inverter System Annual Equivalent Availability Factor calculated in the previous month's monthly report.

Enter the following properties for the facility's PV panels that are used in the calculation of the Measured Performance Ratio. Refer to Article 2.6 for the definitions of terms.

DC rated capacity of the system at standard test conditions ($P_{DC_{STC}}$): _____

Temperature coefficient of power in %/ $^{\circ}\text{C}$ (δ): _____

Temperature empirical constant (a): _____

Wind speed empirical constant (b): _____

Conduction temperature coefficient (dT_{cond}): _____

Annual average irradiance-weighted cell temperature ($T_{cell_typ_avg}$) _____

For the reporting period, provide 15 minute interval averaged site data for the following measurements in .csv format (refer to Article 2.6 for the definitions of terms). The data set should include an indication of whether each interval is included or excluded in the calculation of the Measured Performance Ratio. To the extent specifically requested by the Company following the receipt of a Monthly Report, Seller shall also specify the reason for exclusion of data (refer to article 2.6 for data requirements); provided, however, that Seller shall not be required to provide the reason for exclusion for any Monthly Report period more than three (3) months prior to Company's request.

Measured data:

- $P_{AC,i}$ is the active power output of the PV System measured at the POI averaged over time period i (MW)
- $P_{DC,i}$ is the measured DC power output of the PV System measured at the DC input to the BESS charging system averaged over time period i (MW)
- $G_{POA,i}$ is the measured plane of array irradiance averaged over time period i (W/m^2);
- $T_{a,i}$ = the measured ambient temperature averaged over time period i [$^{\circ}C$]
- WS_i = the measured wind speed corrected to a measurement height of 10 meters (using the anemometer height and proper Hellmann coefficient) averaged over time period i [m/s]

Calculated data:

- Computed cell temperature ($T_{cell,i}$)

Using the data provided above, enter the calculated values for Measured Performance Ratio rounded to the third decimal place (0.001).

Measured Performance Ratio for the reporting period: _____

Measured Performance Ratio for this reporting period and the previous eleven (11) reporting periods: _____

Enter the Applicable Contract Year and calculated Degradation Factor for the reporting period. Refer to Article 2.6(c) for how these should be calculated.

Applicable Contract Year: _____

Degradation Factor: _____

BESS Measurement Period Report

NAME OF IPP FACILITY: [Facility Name]

BESS MEASUREMENT PERIOD: [Month Day, Year] to [Month Day, Year]

Enter the applicable information from operational data collected during the most recently completed BESS Capacity Test to demonstrate satisfaction of the BESS Capacity Performance Metric during the reporting period.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	BESS Contract Capacity (MWh) (B)	BESS Capacity Ratio 100% x (A/B)

Enter the applicable information from operational data collected during the most recently completed BESS RTE Test to demonstrate satisfaction of the BESS Round Trip Efficiency Performance Metric during the reporting period.

Date/Time Start	Date/Time End	Total MWh delivered to the POI (A)	Charging Energy (MWh) (B)	BESS RTE Ratio 100% x (A/B)

Enter the information for each Force Majeure event affecting the BESS during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Calendar hours in the reporting period: _____

Total equivalent hours for the reporting period (from above, with proper accounting for any simultaneous events): _____

Please provide the following BESS availability information even in months containing Force Majeure even though it will not be applied in the Inverter System EAF Calculation.

Enter the information for each BESS Outage during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Calendar hours in the reporting period: _____

Total Outage hours for the reporting period (from above): _____

Available Hours (AH) in the reporting period: _____

AH from the last three (3) reporting periods: _____

AH for the last four (4) reporting periods: _____

Enter the information for each BESS Planned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Total equivalent planned derated hours (EPDH) for the reporting period: _____

EPDH from the last three (3) reporting periods: _____

EPDH for the last four (4) reporting periods: _____

Enter the information for each BESS Unplanned Derating event during the reporting period. Dates and times should be entered to the nearest minute. Duration, size of reduction, maximum rated output, and equivalent hours should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (C) = (B-A)	Size of Reduction (MW) (D)	Maximum Rated Output (MW) (E)	Equivalent Hours (hrs) (C x D) / E
...					

Total equivalent unplanned derated hours (EUDH) for the reporting period: _____

EUDH for the last three (3) reporting periods: _____

EUDH for the last four (4) reporting periods: _____

Period Hours (PH) is : _____ (8760 hours if no 29 day February in that last twelve months otherwise 8784 hours) Enter the Available Hours, EPDH, EUDH, and Period Hours for the last four (4) reporting periods as calculated above.

AH (A)	EPDH (B)	EUDH (C)	PH (D)	BESS Annual Equivalent Availability Factor 100% x (A - B - C) / PH

Enter the information for each Unplanned (Forced Outage) during the reporting period. Dates and times should be entered to the nearest minute. Duration should be rounded to 1 decimal place.

Date/Time Start (A)	Date/Time End (B)	Duration (hrs) (B-A)
...		

Total Forced Outage Hours (FOH) for the reporting period
(from above): _____

FOH from the last three (3) reporting periods: _____

FOH for the last four (4) reporting periods: _____

Enter the FOH and EUDH for the last four (4) reporting periods as calculated above.

FOH (A)	EUDH (B)	BESS Annual Equivalent Forced Outage Factor $100\% \times (A + B) / 8760$

If the BESS Measurement Period for which this report has been prepared contains a month with a BESS Force Majeure event please indicate the proper 12 month period used to calculate the BESS Annual Equivalent Availability Factor for this report.

2. Monthly Report Disagreements.

- (a) Notice of Disagreement With Monthly Report. Within ten (10) Business Days following the close of the calendar month in question, Seller shall provide to Company the Monthly Report for such calendar month and the LD Period, the MPR Assessment Period and the BESS Measurement Period (if any) ending with such calendar month, as provided in Section 1 (Monthly Report) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). Within ten (10) Business Days after Company's receipt of a Monthly Report, Company shall provide written notice to Seller of any Monthly Report Disagreement, including with respect to the data for the calendar month covered by such Monthly Report and Seller's calculation of, as applicable, (i) the Inverter System Equivalent Availability Factor for the LD Period ending with such calendar month, (ii) the MPR for the

MPR Assessment Period ending with such calendar month, or (iii) any of the BESS Capacity Ratio, the BESS RTE Ratio, the BESS Annual Equivalent Availability Factor or the BESS Equivalent Forced Outage Factor for the BESS Measurement Period (if any) ending with such calendar month ("Notice of Disagreement"). Together with any such Notice of Disagreement, the Company shall include its own calculations and other support for its position. If Company fails to provide a Notice of Disagreement within said 10-Business Day period, the Monthly Report provided by Seller shall be deemed to be accepted by Company and shall no longer be subject to dispute by Company or Seller.

- (b) [Reserved]
- (c) Submission of Monthly Report Disagreement to Independent AF Evaluator. Upon issuance of a Notice of Disagreement, the Parties shall review the contents of the Monthly Report(s) together with such Notice of Disagreement and attempt to resolve such Monthly Report Disagreement. If the Parties are able to agree on a resolution of any Monthly Report Disagreement, the resulting corrected Monthly Report(s) in question shall be set forth in a writing executed by both Parties, following which (i) such corrected Monthly Reports shall no longer be subject to dispute by either Party and (ii) to the extent such resolution of such Monthly Report Disagreement affects future Monthly Reports, such future Monthly Reports shall be prepared, and the Inverter System Equivalent Availability Factor, the MPR, the BESS Annual Equivalent Factor and the BESS Annual Equivalent Forced Outage Factor in such future Monthly Reports shall be calculated, in a manner consistent with such resolution. If the Parties are unable to resolve such Monthly Report Disagreement within ten (10) Business Days after Company's issuance of such Notice of Monthly Report Disagreement, either Party may, within five (5) Business Days after the end of such 10-Business Day period, submit the unresolved Monthly Report Disagreement to an Independent AF Evaluator for resolution.
- (d) [Reserved]

- (e) Appointment of Independent AF Evaluator. If either Party decides to submit an unresolved Monthly Report Disagreement to an Independent AF Evaluator, it shall provide written notice to that effect (the "Submission Notice") to the other Party, which notice shall designate which of the engineering firms on the OEPR Consultants List is to act as the Independent AF Evaluator for purposes of resolving such dispute; provided, however, for purposes of facilitating consistency in the resolution of Monthly Report Disagreements, all Monthly Report Disagreements concerning the same Performance Metric arising out of any one or more of the twelve (12) Monthly Reports issued for a given Contract Year shall be submitted to the same Independent AF Evaluator unless such Independent AF Evaluator declines to accept any such submission(s). A Submission Notice must be provided within the 5-Business Day period provided in Section 2(c) (Submission of Monthly Report Disagreement to Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Independent AF Evaluator.
- (f) Eligibility for Appointment as Independent AF Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) (Acceptable Persons and Entities) of Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to serve as Independent AF Evaluator. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (g) Participation of Parties. Promptly following the issuance of a Submission Notice as provided in Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator), Seller and Company shall provide the Independent AF Evaluator which such data as they consider to be material to the resolution of the disputed issue(s). Seller and Company shall also provide such additional data and information as the Independent AF Evaluator may

reasonably request. The Parties shall assist the Independent AF Evaluator throughout the process of resolving such dispute, including making key personnel and records available to the Independent AF Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the Independent AF Evaluator will have the right to conduct meetings, hearing or oral arguments in which both Parties are represented.

- (h) Written Decision of Independent AF Evaluator. The terms of engagement with the Independent AF Evaluator shall require the Independent AF Evaluator to issue its written decision resolving the disputed issues submitted to it within the applicable time period set forth below, which time periods are subject to any tolling that may be applicable pursuant to Section 2(i) (Sequence to Resolving Interrelated Disagreements) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator):
- (a) 30 Days as measured from the issuance of the Submission Notice; or (b) such other time period as the Parties may agree in writing. Unless otherwise agreed by the Parties in writing:
- (i) for a Monthly Report Disagreement concerning the Inverter System Equivalent Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) for the calendar month in question, the correct values for AH, ESADH, EPDH, EUDH and PH to be used in calculations under Section 2.5 (Inverter System Equivalent Availability Factor; Liquidated Damages; Termination Damages) of this Agreement as determined by such Independent AF Evaluator if any such values were in dispute and (bb) for the LD Period ending with the calendar month in question, the Inverter System Equivalent Availability Factor for such LD Period as determined by such Independent AF Evaluator if such Inverter System Equivalent Availability Factor was in dispute;
- (ii) for a Monthly Report Disagreement concerning the MPR, the written decision of the Independent AF

Evaluator shall set forth (aa) the correct data points from the operational data set for the calendar month in question to be used in the calculation of MPR under Section 2.6(a) (Calculation of Measured Performance Ratio) for the MPR Assessment Periods that include such calendar month if any such data points were in dispute, (bb) if a MPR Test was conducted during the month in question, the correct data points from such MPR Test to be used in the calculation of MPR under Section 2.6(a) (Calculation of Measured Performance Ratio) of this Agreement for the MPR Assessment Periods that include the month preceding the month covered by the Monthly Report in question if any such data points were in dispute and (cc) for the MPR Assessment Period ending with the calendar month in question, the Measured Performance Ratio if such Measured Performance Ratio was in dispute;

- (iii) for a Monthly Report Disagreement concerning the BESS Capacity Ratio or BESS RTE Ratio, the written decision of the Independent AF Evaluator shall set forth the BESS Capacity Ratio and/or the BESS RTE Ratio for the BESS Measurement Period ending with the calendar month in question;
- (iv) for a Monthly Report Disagreement concerning the BESS Annual Equivalent Availability Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values to be used for AH, EPDH, EUDH and PH under Attachment X (BESS Annual Equivalent Availability Factor) for the calendar month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Availability Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Availability Factor was in dispute; and
- (v) for a Monthly Report Disagreement concerning the BESS Annual Equivalent Forced Outage Factor, the written decision of the Independent AF Evaluator shall set forth (aa) the correct values for FOH and EUDH under Attachment Y (BESS Annual

Equivalent Forced Outage Factor) for the calendar month in question if any such values were in dispute and (bb) the BESS Annual Equivalent Forced Outage Factor for the BESS Measurement Period ending with the calendar month in question if such BESS Annual Equivalent Forced Outage Factor was in dispute.

- (i) Sequence for Resolving Interrelated Disagreements. If at the time a Monthly Report Disagreement is submitted to an Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) there are one or more other unresolved Monthly Report Disagreements concerning the same Performance Metric and the same LD Period that are pending before a different Independent AF Evaluator, and the resolution of such other Monthly Report Disagreement(s) is necessary to the resolution of the Monthly Report Disagreement that has been newly submitted to a new Independent AF Evaluator as aforesaid, the time period for such new Independent AF Evaluator to issue its written decision resolving such newly submitted Monthly Report Disagreement shall be tolled until such pending Performance Metric Disagreement(s) have been resolved. For avoidance of doubt, it is the intent of the Parties that disagreements over performance ratio data and calculations for a given calendar month or a given BESS Measurement Period shall (i) not be subject to resolution twice and (ii) once resolved, shall not be reopened.
- (j) Final, Conclusive and Binding. The Parties acknowledge the inherent uncertainty in calculating the Performance Metrics, and hereby assume the risk of such uncertainty and waive any right to dispute the qualification of the person or entity appointed as the Independent AF Evaluator pursuant to Section 2(e) (Appointment of Independent AF Evaluator) of this Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) and/or the appropriateness of the methodology used by Independent AF Evaluator in resolving such Monthly Report Disagreements. Without limitation to the generality of the preceding sentence, the decision of the

Independent AF Evaluator as to each Monthly Report Disagreement submitted to an Independent AF Evaluator shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement.

3. Periodic Review of Method of Calculating and Reporting Performance Metric. At least once per Contract Year, Company shall review the method of calculating and reporting Performance Metric under this Agreement to determine if other variables should be incorporated into such calculations. Any revisions to the Performance Metric calculations in this Agreement shall be mutually agreed to by both Seller and Company.
4. Future Changes in Reporting Requirements. Seller shall reasonably cooperate with any Company requested revisions to the Monthly Report to include additional data that may be necessary from time to time to enable Company to comply with any new reporting requirements directed by the PUC or otherwise imposed under applicable Laws.

ATTACHMENT U
CALCULATION AND ADJUSTMENT OF NET ENERGY POTENTIAL

1. Net Energy Potential.

- (a) Net Energy Potential and the Intent of the Parties. The essence of this Agreement is that Company is paying to Seller a Lump Sum Payment in exchange for Company's right to dispatch, subject to Renewable Resource Variability, the Facility's Net Energy Potential. Under this Agreement, "Net Energy Potential": (i) constitutes an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years excluding losses due to availability and Company Dispatch; (ii) is subject to adjustment from time to time as provided in this Attachment U (Calculation and Adjustment of Net Energy Potential); and (iii) as so adjusted, provides a basis for calculating and adjusting the Lump Sum Payment, as provided in Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement. For the avoidance of doubt, Net Energy Potential shall include all energy that the Facility is capable of delivering to the POI including DC PV energy that is generated in excess of the Allowed Capacity that is sent to the Facility's BESS component and can later be discharged to the POI while considering the BESS Contract Capacity and Maximum Rated Output. Any assumed losses incurred from the BESS component and electrical losses from the BESS to the POI shall be ignored for purposes of calculating the Net Energy Potential. In addition, the Net Energy Potential shall consider the normal operation limits set forth in Section 3(p) (Normal Operation Limits) of Attachment B (Facility Owned by Seller). Any energy in excess of what is allowed to be delivered to the POI and would result in exceeding the BESS Contract Capacity shall be excluded from the the Net Energy Potential. The Net Energy Potential shall be calculated using, but not be limited to, long-term solar resource data correlated with on-site measurements (if available), the most current

construction design and equipment specifications, and industry-accepted energy simulation models. Loss factors shall include, but not be limited to, shading, electrical losses, and PV conversion. Loss factors will exclude losses due to availability and Company Dispatch. It is the intent of the Parties that the estimate of Net Energy Potential, as calculated and adjusted as foreseen, should reflect the following risk allocation between the Parties under this Agreement:

- (i) Seller has assumed the risk of downward adjustment to the Net Energy Potential (and hence the Lump Sum Payment) to account for any of the following circumstances:
 - (aa) if the Renewable Resource Baseline (as estimated on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is lower than Seller had assumed when it submitted its RFP Proposal;
 - (bb) if the as-built design and construction of the Facility is not as efficient in generating electrical energy and delivering such electric energy to the Point of Interconnection as Seller had assumed when it submitted its RFP Proposal; and
 - (cc) if the Facility's level of operational efficiency is below the standard of comparable facilities;
- (ii) Company has assumed the risk of the following (i.e., the following are to be disregarded for purposes of estimating Net Energy Potential (and hence the Lump Sum Payment)):
 - (aa) Renewable Resource Variability; and
 - (bb) the possibility that, at any given moment, Company does not need to dispatch any or all of the electric energy that the Facility is then capable of generating and delivering to the Point of Interconnection.

The foregoing is not intended as an exhaustive list of the risks assumed by either Party under this Agreement or as a limitation on the circumstances that an OEPR Evaluator, in its professional judgment, may decide to take into account in preparing its OEPR under Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (b) NEP RFP Projection. In its RFP Proposal, the Seller projected that the Facility would have a Net Energy Potential (as defined in this Agreement) of 107,595 MWh and provided the plane of array irradiance data used in arriving at the NEP RFP Projection, and Company relied on Seller's NEP RFP Projection in deciding to contract with Seller in lieu of other developers. Among the fundamentals of the bargain evidenced in this Agreement is that there will be consequences to Seller if (i) the IE Energy Assessment does not support the NEP RFP Projection and/or (ii) the operational performance of the Facility indicates a Net Energy Potential that is below the applicable thresholds set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (c) NEP IE Estimate and Company-Designated NEP Estimate. Prior to the closing of the construction financing for the Facility but in no event later than the Commercial Operations Date, the Seller shall provide Company with a copy of the IE Energy Assessment Report and the data on plane of array irradiance and corresponding power output used in arriving at the NEP IE Estimate. In addition, Seller shall obtain from the administrative agent of the Facility Lender and provide to Company, at financial close of the construction debt financing, a confirmation letter confirming to Company that the IE Energy Assessment Report including the data on plane of array of irradiance and corresponding power output used in arriving at the NEP IE Estimate provided by Seller to Company is the final energy assessment prepared for the Facility Lender as part of the Facility Lender's due diligence leading up to the Facility Lender's legally binding commitment (subject to certain conditions precedent) to provide a specific amount of financing for the Project as evidenced by the Facility Lender's execution of the Financing

Documents. If the IE Energy Assessment Report fails to provide a NEP IE Estimate that is consistent with the requirements of this Agreement in all material respects, or if the data on plane of array of irradiance, ambient temperature, windspeed, and corresponding power output used in arriving at the NEP IE Estimate is not provided, or if the aforementioned confirmation letter is not provided, Company shall have the option, exercisable by written notice to Seller issued no later than 30 Days, or such longer period as the Parties may agree in writing, following the first to occur of Company's receipt of (i) the IE Energy Assessment Report or (ii) notice that Company will not be provided with a copy of the IE Energy Assessment Report and the data on plane of array of irradiance and corresponding power output used in arriving at the NEP IE Estimate, to designate such Company-Designated NEP Estimate as Company, in its sole discretion, determines to be reasonable in light of the information then available to Company. In connection with Company's decision as to whether to designate a Company-Designated NEP Estimate, Company shall have the right to require Seller to pay for an energy assessment to be performed by an independent engineer selected by Company. In such case, the aforesaid 30-Day period for Company's decision to designate a Company-Designated NEP Estimate shall be tolled for the time necessary to prepare such assessment. If Company fails, within the aforesaid 30-Day period as such period may be tolled as provided in the preceding sentence, to designate a Company-Designated NEP Estimate, the NEP RFP Projection shall constitute the First NEP Benchmark, unless the Parties agree in writing on a lower First NEP Benchmark.

- (d) NEP IE Estimate, Liquidated Damages and Seller's Null and Void Right. If the NEP IE Estimate is higher than the NEP RFP Projection, the NEP RFP Projection shall constitute the First NEP Benchmark. In any other case, Seller shall have the option to declare this Agreement null and void by written notice to Company as follows:
- (i) if (aa) the NEP IE Estimate is lower than the NEP RFP Projection and (bb) Seller issues its null and void notice to Company not later than 30 Days

after issuance of the IE Energy Assessment Report; or

- (ii) if (aa) Company exercises its right to designate a Company-Designated NEP Estimate under Section 1(c) (NEP IE Estimate and Company-Designated NEP Estimate) of this Attachment U (Calculation and Adjustment of Net Energy Potential), (bb) such Company-Designated NEP Estimate is lower than the NEP RFP Projection, and (cc) Seller issues its null and void notice to Company not later than 30 Days after Company's notice of the Company-Designated NEP Estimate.

If Seller fails to declare this Agreement null and void under the conditions set forth in either clause (i) or clause (ii) above, then: (x) the NEP IE Estimate or the Company-Designated NEP Estimate, as applicable, shall thereafter constitute the First NEP Benchmark and (y) Seller shall, within five (5) Business Days following the expiration of the applicable 30-Day period for the issuance of Seller's null and void notice, pay liquidated damages equal to \$10 for every MWh by which the NEP RFP Projection exceeds the First NEP Benchmark for the initial Contract Year.

2. Initial OEPR. Following the Initial NEP Verification Date, i.e., the first Day of the calendar month following the end of the 15th full calendar month following the Commercial Operations Date, the Initial OEPR shall be prepared pursuant to the process set forth in Section 4 (Preparation of OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential) and the Initial NEP OEPR Estimate shall be as set forth in or derived from the Initial OEPR, as more fully set forth in Section 4(e) (Terms of Engagement) of this Attachment U (Calculation and Adjustment of Net Energy Potential). If the Initial NEP OEPR Estimate differs from the First NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.ii (Lump Sum Payment During Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

3. Subsequent OEPRs.

- (a) Required Subsequent OEPR. If Seller makes any changes to the Facility that involve (i) replacing any step-up transformer(s) or (ii) making any other changes (e.g., changing the characteristics of the Facility equipment or the specifications used in the IRS) that Company reasonably determines require an updated IRS, then Seller shall also be required to have a subsequent OEPR prepared as of the first Day of the calendar month following the second anniversary of the date such change to the Facility was completed.
- (b) Voluntary Subsequent OEPR. Without limitation to the generality of Section 3(a) (Required Subsequent OEPR) of this Attachment U (Calculation and Adjustment of Net Energy Potential), if the Seller makes any changes to the Facility (e.g., replacing original equipment) that does not trigger a required Subsequent OEPR but which changes Seller has reasonable grounds to believe will improve the Facility's Net Energy Potential, Seller shall have a one-time option, exercisable by written notice to Company issued not less than 120 Days prior to the Applicable NEP Verification Date, of having a subsequent OEPR prepared as of a date no sooner than 12 months following completion of the then most recent OEPR.
- (c) Subsequent OEPR and Adjustment to Lump Sum Payment. If the Subsequent NEP OEPR Estimate differs from the Most Recent Prior NEP Benchmark, the Lump Sum Payment shall be recalculated and adjusted as provided in Section 3.iii (Lump Sum Payment Following Second Benchmark Period) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) to this Agreement.

4. Preparation of OEPR. The following provisions apply to the Initial OEPR and any Subsequent OEPR:

- (a) Selection of OEPR Evaluator. No later than 90 Days prior to the Applicable NEP Verification Date, Company and Seller shall select, in accordance with the terms of this Section 4(a) (Selection of OEPR Evaluator), an independent engineering firm from the firms listed on the OEPR Consultants List (the "OEPR Evaluator") to

prepare an operational energy production report ("OEPR"). Each party shall select the names of two (2) firms from the OEPR Consultants List. If there is mutual agreement on one or both of the named firms, then the Seller shall select one of the named firms to serve as the OEPR Evaluator. If there is no agreement on any of the named firms, then Seller shall select one of the firms named by the Company.

- (b) Eligibility for Appointment as OEPR Evaluator. Both Parties agree that the engineering firms listed in Section 4(j) of this Attachment U (Calculation and Adjustment of Net Energy Potential) are fully qualified to prepare the OEPR. By mutual agreement between the Parties in writing, a name or names may be added to or removed from the OEPR Consultants List at any time. In no event shall there be less than three (3) names on the OEPR Consultants List.
- (c) OEPR Period of Record. It is the intent of the Parties that the OEPR shall be prepared using measured meteorological and production data from the OEPR Period of Record. However, although the OEPR Period of Record is a twelve-month period, the Parties acknowledge that, in certain circumstances (e.g., Force Majeure), there may not be twelve months of data available for the OEPR Period of Record. In such case, (i) it is the intent of the Parties that the OEPR be prepared using such measured meteorological and production data that is available from the OEPR Period of Record and (ii) Parties may, by written agreement, direct the OEPR Evaluator to use such additional data outside of the OEPR Period of Record as the Parties may agree. The preceding sentence does not constitute a limitation on the professional judgment of the OEPR Evaluator as to the appropriateness of using measured meteorological and/or production from outside of the OEPR Period of Record.
- (d) Participation of Parties. Promptly following the Applicable NEP Verification Date, Seller and Company shall provide the OEPR Evaluator with such data from the OEPR Period of Record as they consider to be material to the preparation of the OEPR. Seller and Company shall also provide such additional data and

information as the OEPR Evaluator may reasonably request. The Parties shall assist the OEPR Evaluator throughout the process of preparing the OEPR, including making key personnel and records available to the OEPR Evaluator, but neither Party shall be entitled to participate in any meetings with personnel of the other Party or review of the other Party's records. However, the OEPR Evaluator will have the right to conduct meetings, hearings or oral arguments in which both Parties are represented. Seller and Company shall have forty-five (45) Days from issuance of the draft OEPR Report to review and provide feedback to the OEPR Evaluator on such report.

- (e) Terms of Engagement. Upon selection of the OEPR Evaluator, as set forth in this Attachment U (Calculation and Adjustment of Net Energy Potential), the Seller shall retain and contract with the OEPR Evaluator in accordance with the terms of this Attachment U (Calculation and Adjustment of Net Energy Potential). The OEPR Evaluator's scope of work and expected deliverables for all OEPRs must be acceptable to Company and shall, among other things, require the OEPR Evaluator to provide (i) an estimated single number with a P-Value of 95 for annual Net Energy that could be produced by the Facility based on the estimated long-term monthly and annual total of such production over a period of ten years; (ii) the data on plane of array of irradiance and corresponding power output used in arriving at the aforementioned estimated annual Net Energy; (iii) the GPR Performance Metric as provided in Section 2.6(b)(ii) (Commencing With Initial OEPR) or Section 2.6(b)(iii) (Commencing With First Subsequent OEPR and Thereafter) of this Agreement, as applicable; and (iv) any additional information that may be reasonably required by a Party with respect to the methodology used by the OEPR Evaluator to reach its conclusion. The provisions of this Attachment U (Calculation and Adjustment of Net Energy Potential) do not impose a limit on the OEPR Evaluator's professional judgment as to what other estimates (if any) to include in the OEPR. Without limiting the professional judgment of the OEPR Evaluator in estimating the Net Energy Potential and GPR Performance Metric, the following is a general

description of how the Parties anticipate that the OEPR Evaluator will proceed:

The purpose of an OEPR is to implement the intent of the Parties as set forth in Section 1(a) (Net Energy Potential and the Intent of the Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential) by evaluating (i) whether, when the Renewable Resource Baseline (as estimated by the OEPR Evaluator on the basis of the typical meteorological year as derived from the Site's measured meteorological data) is present and the Facility is in Full Dispatch, the Facility is capable of doing what the Parties expected the Facility to do: i.e., generating and delivering to the Point of Interconnection electric energy in an amount consistent with the then applicable Net Energy Potential of the Facility (i.e., the estimate of Net Energy Potential then being used to calculate the monthly Lump Sum Payment pursuant to Section 3 (Calculation of Lump Sum Payment) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS to this Agreement); and (ii) if the Facility is not doing what the parties expected in this regard, identifying a new estimated single number with a P-Value of 95 for annual Net Energy that could be generated and delivered by the Facility based on the estimated long-term monthly and annual total of such production over a period of the next ten years.

At a high level, the analysis relies on reported Actual Output (i.e., energy delivered to the Point of Interconnection) during the OEPR Period of Record to estimate Facility performance over a future evaluation period of ten years. The data from the OEPR Period of Record are first quality screened and evaluated. One-time events are assessed and removed from the

record where appropriate. Values for potential energy are then calculated from the reported energy production measured at the Point of Interconnection by adjusting for 100% availability and undispatched energy. Suitable long-term reference data sets are then identified by analyzing the reference for irradiance and the normalized values for potential energy production at the Point of Interconnection over the OEPR Period of Record. Relationships between selected long-term reference irradiance data sets and normalized values for potential energy production at the Point of Interconnection are used to calculate long-term values for such on a monthly and annual basis. Finally, estimates of future Facility availability (taking into account anticipated maintenance) and losses (such as system degradation and balance of plant losses) are applied in order to calculate the Net Energy Potential. For this purpose, no reductions are made for future estimates of energy that Company may choose not to dispatch. If a copy of the IE Energy Assessment Report is available to the OEPR Evaluator, the OEPR Evaluator should review such Report before commencing preparation of the OEPR and evaluate whether it is appropriate for the OEPR Evaluator to take into account any of the work reflected in the IE Energy Assessment Report.

- (f) Timeline and Fees. The terms of engagement with the OEPR Evaluator shall require the OEPR Evaluator to issue an OEPR that shall include a NEP OEPR Estimate and a Guaranteed Measured Performance Ratio Benchmark within 30 Days following the NEP Applicable Verification Date ("First OEPR"). The Parties shall each pay fifty percent (50%) of the fees and expenses charged by the OEPR Evaluator in connection with the Initial OEPR. For the Initial OEPR, the OEPR Evaluator's fees and costs must be acceptable to Company. Seller shall pay all of the fees and expenses charged by the OEPR Evaluator in connection with any Subsequent OEPR. Seller shall also pay for

any reasonable internal fees and costs incurred by the Company as a result of its participation in the process set forth in Section 4(d) (Participation of Parties) of this Attachment U (Calculation and Adjustment of Net Energy Potential).

- (g) Review of the First OEPR Report. In the event Company or Seller does not agree with the NEP OEPR Estimate or GPR Performance Metric determined by the First OEPR Evaluator, Seller or Company may, within 30 Days of issuance of the First OEPR, engage, at its own cost, a different expert evaluator from the OEPR Consultants List (the "Second OEPR Evaluator") to prepare a second OEPR that shall include a NEP OEPR Estimate or GPR Performance Metric, as applicable ("Second OEPR"). The terms of engagement with the Second OEPR Evaluator shall require the Second OEPR Evaluator to issue the Second OEPR within 60 Days following the date of its appointment. In the event the NEP OEPR Estimates or GPR Performance Metric, as applicable, provided by the First OEPR Evaluator and the Second OEPR Evaluator are different then, within ten (10) Days of the issuance of the Second OEPR, the Parties shall, with the two evaluators, confer in an attempt to mutually agree upon a NEP OEPR Estimate or GPR Performance Metric, as applicable ("OEPR Conference").
- (h) Review of the Second OEPR Evaluator Report. If the Parties are unable to agree upon an NEP OEPR Estimate or GPR Performance Metric, as applicable, within 30 Days of the OEPR Conference, then within ten (10) Days thereafter the First OEPR Evaluator and Second OEPR Evaluator shall, by mutual agreement, select a third firm from the OEPR Consultants List to act as an independent OEPR Evaluator ("Third OEPR Evaluator"). The Third OEPR Evaluator shall not be a person from the same entity as the First OEPR Evaluator or the Second OEPR Evaluator. The Parties shall direct the Third OEPR Evaluator to review the First OEPR and Second OEPR and select one as the final and binding NEP OEPR Estimate and/or GPR Performance Metric, as applicable ("Third OEPR"). The Third OEPR Evaluator shall complete its review and selection of the NEP OEPR Estimate within thirty (30) Days following his or her retention. If the Third OEPR Evaluator selects the First OEPR, then the Party requesting the Second

OEPR shall pay for the cost of the Third OEPR. If the Third OEPR Evaluator selects the Second OEPR, then the Parties shall each pay fifty percent (50%) of the fees and expenses charged by the Third OEPR Evaluator in connection with the Third OEPR.

- (i) Final, Binding and Conclusive. The Parties acknowledge the inherent uncertainty in estimating the Net Energy Potential and GPR Performance Metric and hereby assume the risk of such uncertainty and waive any right to dispute any of the qualification of the person or entity appointed as the OEPR Evaluator pursuant to Section 4(a) (Selection of OEPR Evaluator) and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential) of this Agreement, the appropriateness of the methodology used by OEPR Evaluator in preparing the OEPRs, the NEP OEPR Estimate and/or the GPR Performance Metric. Without limitation to the generality of the preceding sentence, the determination of the NEP OEPR Estimate and GPR Performance Metric in the First OEPR, Second OEPR (if applicable), or final decision of the Third OEPR Evaluator (if applicable) shall be final, conclusive and binding upon Company and Seller and shall not be subject to further dispute under Article 28 (Dispute Resolution) of the Agreement; provided that, nothing in this Section 4(i) (Final, Binding and Conclusive) of this Attachment U (Calculation and Adjustment of Net Energy Potential) shall preclude Seller from engaging an OEPR Evaluator to issue a Subsequent OEPR as allowed pursuant to Section 3 (Subsequent OEPRs) of this Attachment U (Calculation and Adjustment of Net Energy Potential).
- (j) Acceptable Persons and Entities. The OEPR Evaluator and Second OEPR Evaluator shall be selected from the following engineering firms listed below, subject to such additions or deletions effectuated by the Parties as provided in Section 2(f) (Eligibility for Appointment as Independent AF Evaluator) of Attachment T (Monthly Reporting and Dispute Resolution by Independent AF Evaluator) to this Agreement and Section 4(b) (Eligibility for Appointment as OEPR Evaluator) of this Attachment U (Calculation and Adjustment of Net Energy Potential):

DNV GL

UL

Black & Veatch

Leidos Engineering

EXECUTION VERSION
Waiawa Phase 2 Solar, LLC
Hawaiian Electric Company, Inc.

U-13

Attachment V
SUMMARY OF MAINTENANCE AND INSPECTION PERFORMED
IN PRIOR CALENDAR YEAR

(See Article 5)

DATE WORK ORDER SUBMITTED: 06/28/96

WO#: 11451

EQUIPMENT #: 1CCF-TNK-1

EQUIPMENT DESCRIPTION: AMMONIA STORAGE TANK 1

PROBLEM DESCRIPTION: PURCHASE EMERGENCY ADAPTER FITTINGS FOR UNLOADING GASPRO TANKS TO STORAGE TANK

WORK PERFORMED: PURCHASED THE NEW ADAPTERS AND VERIFIED THEIR OPERATION.

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: AA

-----END OF CURRENT WORK ORDER-----

DATE WORK ORDER SUBMITTED: 05/19/96

WO#: 11136

EQUIPMENT #: 1WSA-BV-12

EQUIPMENT DESCRIPTION: MAKE-UP PI ISOLATION

PROGRAM DESCRIPTION: 'D' MAKE-UP PUMP PI ISOLATION FITTING LEAKING ON SPOOL SIDE

WORK PERFORMED: REMOVED AND REPLACED FITTINGS AND FLANGES WITH STAINLESS STEEL. THIS WORK WAS DONE DURING PUMP OVERHAUL ON WO 1374. JH

COMPLETION DATE: 06/28/96

WORK ORDER COMPLETED BY: BB

-----END OF CURRENT WORK ORDER-----

ATTACHMENT W
BESS TESTS

Prior to achieving Commercial Operations, and in each BESS Measurement Period, unless waived by Company, Seller shall demonstrate that the BESS satisfies the (1) BESS Capacity Performance Metric, and (2) the RTE Performance Metric, each as defined and further described below.

For the avoidance of doubt, for purposes of this Attachment W, achieving a "0% State of Charge" refers to the BESS Contract Capacity having been delivered to the Point of Interconnection and not necessarily the full potential BESS capacity.

BESS Capacity Performance Metric

The BESS Capacity Performance Metric reflecting the net output of the BESS to the Point of Interconnection can be demonstrated either through (i) operational data or (ii) a scheduled formal BESS Capacity Test.

The "BESS Capacity Performance Metric" shall be deemed to be satisfied where the BESS Capacity Ratio is not less than **100%** for an applicable BESS Measurement Period. The "BESS Capacity Ratio" shall be the number, expressed as a percentage, equal to the total "Discharge Energy" (MWh discharge) delivered to the Point of Interconnection to bring the BESS from (i) its maximum State of Charge or (ii) 100% State of Charge to a 0% State of Charge, divided by the BESS Contract Capacity.

A "BESS Capacity Test" is when the Company coordinates Company Dispatch to demonstrate the BESS maintains the power output required to follow the dispatch signal provided by the Company through a control setpoint, as measured at the Point of Interconnection, and is able to continuously discharge energy to the Point of Interconnection according to Company Dispatch to bring the BESS from (i) its maximum State of Charge or (ii) 100% State of Charge to a 0% State of Charge.

The BESS Capacity Test can only be performed when the BESS is at the lower of: (i) its maximum State of Charge or (ii) 100% State of Charge prior to the start of the BESS Capacity Test and during the BESS Capacity Test, Company Dispatch allows for continuous discharge of the BESS until the 0% State of Charge

has been reached with energy delivered to the Point of Interconnection.

RTE Performance Metric

The "RTE Performance Metric" is set forth in Section 2.10(a) (RTE Test and Liquidated Damages). The RTE Performance Metric reflecting the charging/discharging of the BESS can be demonstrated either through (i) operational data or (ii) a scheduled formal RTE Test.

Demonstration of the RTE Performance Metric requires measurement of "Charging Energy" (MWh charge) at the BESS DC charging input to bring the BESS from a 0% State of Charge to a 100% State of Charge from the PV System or grid according to Company Dispatch, followed by measurement at the Point of Interconnection of the "Discharge Energy" (MWh discharge) delivered to the grid to bring the BESS to a 0% State of Charge according to Company Dispatch. The exact equipment and point used for measurement of Charging Energy will be mutually agreed to by the Parties on the Facility's single-line diagram attached to the Agreement as Attachment E (Single-Line Drawing and Interface Block Diagram). For the purposes of evaluating satisfaction of the RTE Performance Metric, the "RTE Ratio" shall be the number, expressed as a percentage, equal to the total Discharge Energy delivered to the Point of Interconnection during the BESS Capacity Test, divided by the Charging Energy measured at the BESS DC charging input.

The formula for the RTE Ratio is as follows:

$$\text{RTE Ratio} = 100\% \times (\text{MWh discharge}) / (\text{MWh charge})$$

The RTE Performance Metric will be deemed to have been "passed" or "satisfied" to the extent the RTE Ratio is not less than the RTE Performance Metric set forth in Section 2.10(a) (RTE Test and Liquidated Damages).

An "RTE Test" is when the Company coordinates Company Dispatch to demonstrate the charging/discharging requisite to satisfy the RTE Performance Metric.

The RTE Test may be conducted concurrently with a BESS Capacity Test.

For purposes of the RTE Test, the charging cycle shall begin when the BESS is at a 0% State of Charge to support a (i) 100% charge/discharge cycle or (ii) BESS Capacity Test if being conducted concurrently. The Charging Energy is the amount of energy, as measured at the BESS DC charging input, that brings the BESS to a 100% State of Charge.

BESS Test Procedures

After Commercial Operations, Seller shall demonstrate satisfaction of the BESS Capacity Performance Metric by reference to the operational data reflecting the net output of the BESS to the Point of Interconnection, or by conducting a scheduled formal BESS Capacity Test during such BESS Measurement Period. Once Seller demonstrates satisfaction of the BESS Capacity Performance Metric through either operational data or a scheduled formal BESS Capacity Test (100% discharge cycle), the BESS shall be deemed to have met the BESS Capacity Performance Metric and satisfied ("passed") the BESS Capacity Test for the applicable BESS Measurement Period.

After Commercial Operations, Seller shall demonstrate satisfaction of the RTE Performance Metric by reference to the operational data reflecting the charging/discharging of the BESS, or by conducting a scheduled formal RTE Test during such BESS Measurement Period. Once Seller demonstrates satisfaction of the RTE Performance Metric through either operational data or a scheduled formal RTE Test (100% charge/discharge cycle), the BESS shall be deemed to have met the RTE Performance Metric and satisfied ("passed") the RTE Test for the applicable BESS Measurement Period.

Any BESS Capacity Test or RTE Test (each a "BESS Test" and collectively, the "BESS Tests") scheduled in lieu of being demonstrated by reference to operational data shall be performed at a time scheduled by the Company in its sole discretion.

Seller shall be permitted up to a total of three (3) BESS Tests (100% discharge cycles) within a BESS Measurement Period to demonstrate satisfaction of the BESS Capacity Performance Metric and the RTE Performance Metric for such BESS Measurement Period, unless additional such tests are authorized by Company. If upon completion of the first BESS Test, Seller does not "pass"

either the BESS Capacity Test or the RTE Test, Company shall attempt to notice up to two (2) additional BESS Tests within a BESS Measurement Period, for Seller to further demonstrate its performance. If a scheduled formal BESS Test is requested by Seller, Company shall attempt to schedule a formal BESS Test and Company shall provide notice to Seller no less than three (3) Business Days prior to conducting such scheduled formal BESS Test.

If, during a BESS Measurement Period, Seller fails to pass a BESS Capacity Test, the BESS shall nevertheless be deemed to have satisfied the BESS Capacity Performance Metric for the applicable BESS Measurement Period if (i) Company failed to notice up to three BESS Capacity Tests in order for Seller to further demonstrate the BESS' performance during such BESS Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed BESS Capacity Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Non-Generation or (b) an act or omission by Company. If Seller-Attributable Non-Generation is cause for the inability to demonstrate the BESS Capacity Performance Metric, the BESS Capacity Ratio used to assess LDs shall be the highest demonstrated in operational data or the most recently completed test during the applicable BESS Measurement Period.

If, during a BESS Measurement Period, Seller does not demonstrate satisfaction of the BESS Capacity Performance Metric through operational data or a BESS Capacity Test, assessment of Liquidated Damages will be based on the highest of the BESS Capacity Tests performed during such BESS Measurement Period.

If, during a BESS Measurement Period, Seller fails to pass an RTE Test, the BESS shall nevertheless be deemed to have satisfied the RTE Performance Metric for the applicable BESS Measurement Period if (i) Company failed to notice up to three RTE Tests in order for Seller to further demonstrate the BESS' performance during such BESS Measurement Period, or (ii) Seller was unable to perform at least two (2) such noticed RTE Tests during such BESS Measurement Period due to (a) conditions on the Company System other than Seller-Attributable Non-Generation or (b) an act or omission by Company. If Seller-Attributable Non-Generation is cause for not adequately demonstrating the RTE Performance Metric, the RTE Ratio used to assess LDs shall be the highest demonstrated in operational data or the most

recently completed test during the applicable BESS Measurement Period.

If, during a BESS Measurement Period, Seller does not demonstrate satisfaction of the RTE Performance Metric through operational data or RTE Tests, assessment of Liquidated Damages will be based on the highest of the RTE Tests performed during such BESS Measurement Period.

Company will conduct any necessary BESS Test(s) through Company Dispatch. Company shall have the right to attend, observe and receive the results of all BESS Tests. Seller shall provide to Company the results of each BESS Test (including time stamped graphs of system performance based in operational data or test data) no later than ten (10) Business Days after any BESS Test.

ATTACHMENT X
BESS ANNUAL EQUIVALENT AVAILABILITY FACTOR

To the extent the Commercial Operations Date occurs on a date other than the first day of a BESS Measurement Period, the period between the Commercial Operations Date and the first day of the next BESS Measurement Period if any, shall be ignored for purposes of this BESS Availability Factor.

For the purposes of calculating the BESS Annual Equivalent Availability Factor for the first three (3) full BESS Measurement Periods in the first Contract Year, the calculation will assume that the BESS is one hundred percent (100%) available for the remaining hours of the Contract Year. If an Inverter System Outage or derating exists as set forth in Section 2.5(a) (Calculation of the Inverter System Equivalent Availability Factor) of the Agreement, those hours will be excluded in the BESS Annual Equivalent Availability Factor, except Inverter System outages or deratings that effect BESS availability but which occur during Inverter System Reserve Shutdown Hours as set forth in this Attachment X (Bess Annual Equivalent Availability Factor).

"BESS Annual Equivalent Availability Factor" shall be calculated as follows:

$$\text{BESS Annual Equivalent Availability Factor} = 100\% \times \frac{AH - EPDH - EUDH}{PH}$$

Where:

PH is period hours (8760 hours; except leap year is 8784).

Available Hours (AH) is the number of hours that the BESS is not on BESS Outage. It is sum of all Service Hours (SH) + Reserve Shutdown Hours (RSH).

A "BESS Outage" exists whenever the entire BESS is offline and unable to charge or discharge electric energy and is not in Reserve Shutdown state

If the Inverter System is in Reserve Shutdown but would have otherwise been on Outage, the Inverter System Outage is counted as a BESS Outage during that period due to its effect on the BESS Availability.

Service Hours (SH) is the number of hours during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods the BESS is online and (i) charging from the PV System or Company System, or (ii) discharging electric energy to the Company System.

Reserve Shutdown Hours (RSH) is the number of hours during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods the BESS is available but (x) not charging or discharging electric energy or (y) is offline at the Company's request, in either case (i) for reasons other than Seller-Attributable Non-Generation or (ii) due to an Inverter System Outage as set forth in Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor).

A "BESS Derating", whether EPDH or EUDH, as further described below, exists when the BESS is available but at less than Maximum Rated Output. For the avoidance of doubt, if there is a BESS Outage occurring there cannot also be a BESS Derating. If the Inverter System is in Reserve Shutdown but would have otherwise had a Derating the Inverter System Derating is counted as a BESS Derating during that period due to its effect on the BESS availability.

EPDH is the equivalent planned derated hours, including Planned Deratings (PD) and Maintenance Deratings (D4). A Planned Derating is when the BESS experiences a derating scheduled well in advance and for a predetermined duration. A Maintenance Derating is a derating that can be deferred beyond the end of the next weekend (Sunday at midnight or before Sunday turns into Monday) but requires a reduction in capacity before the next Planned Derating (PD). Each individual derating is transformed into equivalent full outage hour(s) by multiplying the actual duration of the derating (hours) by (i) the size of the

reduction (MW) divided by (ii) Maximum Rated Output. These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods. If the Inverter System is experiencing a Planned Derating as set forth in Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor) any BESS Planned Derating during the Inverter System Planned Derating is excluded from the BESS EPDH calculation.

EUDH is the equivalent unplanned derated hours. An Unplanned Derating (Forced Derating) occurs when the BESS experiences a derating that requires a reduction in availability before the end of the nearest following weekend. Unplanned Deratings include those due to Seller-Attributable Non-Generation affecting BESS availability but which occur during Inverter System Reserve Shutdown Hours. Each individual Unplanned Derating is transformed into equivalent full outage hour(s) by multiplying the actual duration of the derating (hours) by (i) the size of the reduction (MW) divided by (ii) the Maximum Rated Output. These equivalent hour(s) are then summed for the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods. If the Inverter System is experiencing an Unplanned Derating as set forth in Section 2.5(a) (Calculation of Inverter System Equivalent Availability Factor) any BESS Unplanned Derating during the Inverter System Unplanned Derating is excluded from the BESS EUDH calculation.

The effect of Force Majeure is taken into account in calculating the BESS Annual Equivalent Availability Factor over a 12 calendar month period as follows: When such 12 month period contains any hours in a month during which the BESS or a portion of the BESS is unavailable due to Force Majeure, then such month shall be excluded from the 12 month period and the calculation period shall be extended back in time to include the data used to calculate the BESS EAF from the next previous month during which there was no such unavailability of the BESS or a portion thereof due to Force Majeure. This means the BESS Annual Equivalent Availability Factor would not change from that

determined in the month directly preceding a month containing Force Majeure.

The following examples are provided as illustrative examples only:

Example A: The BESS was continuously available, with no Planned or Unplanned (Forced) Deratings during the applicable BESS Measurement Period and in the immediately preceding three (3) full BESS Measurement Periods. In this case AH = 8760, EPDH and EUDH = 0 hours.

$$\text{BESS EAF} = 100\% \times \frac{8,760 - 0}{8,760} = 100\%$$

Example B: During the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods. The BESS was online and charging from the PV system or discharging electric energy to the Company System for 8,400 hours and was available but not discharging electric energy due to lack of stored energy (i.e., not Seller-Attributable Non-Generation) for 226 hours. The BESS experienced a Planned Derating of 7.2 MWs for 100 hours for maintenance that was scheduled a month in advance. The BESS also experienced an Unplanned Derating of 6.2 MWs for 100 hours as the derating could not be deferred to beyond the nearest following weekend. The BESS Maximum Rated Output is 10 MW.

PH = 8,760 hours in 12 calendar months
SH = 8,400 hours
RSH = 226 hours
AH = SH + RSH = 8,400 hours + 226 hours = 8,626 hours
EPDH = 100 hours x 7.2MW/10MW = 72 hours
EUDH = 100 hours x 6.2MW/10MW = 62 hours (Unplanned Derating (Forced Derating))

$$\text{BESS EAF} = 100\% \times \frac{8,626 - 72 - 62}{8,760} = 96.9\%$$

ATTACHMENT Y
BESS ANNUAL EQUIVALENT FORCED OUTAGE FACTOR

$$EFOF = 100\% \times \frac{(FOH + EUDH)}{8760}$$

Where:

Equivalent Unplanned (Forced) Derated Hours (EUDH) is calculated in accordance with Attachment X (BESS Annual Equivalent Availability Factor) of this Agreement.

Forced Outage Hours (FOH) = Sum of all hours the BESS experienced an Unplanned (Forced) Outage during the applicable BESS Measurement Period and the immediately preceding three (3) full BESS Measurement Periods.

Unplanned (Forced) Outage: An outage that requires removal of the entire BESS from service before the end of the nearest following weekend that is not planned.

EXAMPLE CALCULATION:

Assume a 50 MW BESS that for the BESS Measurement Period in question was completely out of service for 50 hours. For the BESS Measurement Period in question, it also had the following deratings:

Duration of Deration	MW Size Reduction
100 Hours	25 MW
20 Hours	20 MW
50 Hours	5 MW

During the three preceding BESS Measurement Periods, the BESS had a total of 150 Forced Outage Hours and a total of 100 Equivalent Unplanned (Forced) Derated Hours.

$$FOH = 50 \text{ hours} + 150 \text{ hours} = 200 \text{ hours}$$

$$EUDH = ((100 \times 25) / 50) + ((20 \times 20) / 50) + ((50 \times 5) / 50) + 100 = 163 \text{ hours}$$

$$EFOF = 100\% \times \frac{(200 + 163)}{8760} = 4.1\%$$

EXHIBIT 2

RFP Development

Exhibit 2
Stage 2 Request for Proposal Development

This Exhibit 2 provides a detailed summary of the Hawaiian Electric Companies¹ Stage 2 Request for Proposal (“Stage 2 RFP”) process, providing an overview of the development of the RFPs and the competitive bidding process. The Stage 2 RFP is a continuation of the Companies’ efforts from the Stage 1 Requests for Proposals for Variable Renewable Dispatchable Generation for O‘ahu, Maui, and Hawai‘i islands issued in February 2018 (“Stage 1 RFP”).

The 2016 Power Supply Improvement Plan (“PSIP”)² established a plan for achieving Hawai‘i’s 100 percent Renewable Portfolio Standard (“RPS”) by 2045, setting forth the Companies’ intention to competitively procure new grid-scale generation resources from 2017-2021 and identifying resources needs for each island in the Companies’ service territory. On January 6, 2017, the Companies requested by letter that the Commission open a docket for the purpose of receiving filings, reviewing approval requests, and resolving disputes relating to the Companies’ plans to acquire new renewable energy generation. On October 6, 2017, the Commission opened Docket 2017-0352 to receive filings, review requests, and resolve disputes, if necessary, related to the Companies’ plan to acquire dispatchable firm generation and new renewable energy generation.

¹ The “Hawaiian Electric Companies” or “Companies” are Hawaiian Electric Company, Inc. (“Hawaiian Electric”), Maui Electric Company, Limited (“Maui Electric”) and Hawai‘i Electric Light Company, Inc. (“Hawai‘i Electric Light”). For purposes of this Exhibit, Company refers to Hawaiian Electric.

² See Docket No. 2014-0183, Chapter 7 of The Hawaiian Electric Companies’ Power Supply Improvement Plan Update Report, filed December 23, 2016 and accepted by the Commission in Decision and Order No. (“D&O”) 34696, filed July 14, 2017.

Based on the PSIP-identified resource needs through 2022, the Companies sought approximately 485,000 MWh of variable renewable dispatchable generation on O‘ahu, 240,000 MWh of variable renewable dispatchable generation on Hawai‘i island, and 270,000 MWh of variable renewable dispatchable generation on Maui during Stage 1. The Companies also sought to open a firm RFP for Maui to procure an additional 40 MW of firm capacity renewable generation on Maui. The Companies selected a total of eight (8) Proposals to the Final Award Group to participate in power purchase agreement (“PPA”) negotiations for Stage 1.

During Stage 1, the Companies indicated that they would procure any remaining megawatt-hours (“MWh”) of renewable generation from the Stage 1 RFPs through Stage 2 RFPs. On January 31, 2019, the Commission requested that the Companies present proposed plans for Stage 2 of the competitive procurement process. The Companies outlined proposed next steps and answered questions from the Commission during a status conference on February 7, 2019. On February 27, 2019, the Commission issued Order No. 36187, *Providing Guidance in Advance of the Hawaiian Electric Companies’ Phase 2 Draft Requests for Proposals for Dispatchable and Renewable Generation* (“Order 36187”). Among other things, Order 36187 stated that the Hawaiian Electric Companies should run an RFP for renewable generation on O‘ahu, Maui and Hawai‘i island to fulfill the remaining energy needs from the Stage 1 RFP as well as to meet the energy, capacity and ancillary services needs following the retirement of the AES Hawaii coal plant on O‘ahu and the Kahului Power Plant on Maui. Order 36187 also noted that the Stage 2 RFP for Hawai‘i island “can and should build contingencies for uncertainties surrounding PGV and Hu Honua, recognizing the contingency benefits of procuring additional renewable resources on Hawai‘i island even if both PGV and Hu Honua are put into service, as

planned.”³ The Commission also expressed that it expected the Companies to hold to the timelines set forth in the PSIP for retiring AES and KPP⁴ and that the resources should be procured for 2022 or sooner.⁵ Finally, the Commission’s order noted a concern that the Companies’ O‘ahu procurement plans could result in replacing old units with batteries that are primarily charged with non-renewable generation.⁶

As with their Stage 1 RFPs, in developing the competitive bidding process for each of the Stage 2 RFPs, the Companies followed the following set of guiding principles: (1) the Companies’ PSIP provides the roadmap; (2) transparency, predictability and streamlining lowers costs to customers and fosters trust in the process; (3) community engagement is critical to near-term and long-term project success; (4) coordination and collaboration of all parties involved is necessary to achieve a successful and timely procurement; and (5) there is no perfect answer; tradeoffs must be considered.

The Companies filed their Stage 2 Draft Request for Proposals for Variable Renewable Dispatchable Generation (“Draft Renewable RFP”) with the Commission on April 1, 2019, with additional technical attachments filed on April 8, 2019. Comments to the Draft Renewable RFP from interested stakeholders were due on May 20, 2019.⁷ Status conferences were held on April 18, 2019 and May 2, 2019 to provide an overview of the RFP. Throughout the RFP process, the Companies responded to non-project specific questions that were received either through dedicated RFP email addresses or through the PowerAdvocate platform that was used to administer the RFP via a Q&A page on the Companies’ website as long as the answers could be

³ Order 36187 at 12-13.

⁴ Order 36187 at 2.

⁵ Order 36187 at 13.

⁶ Order 36187 at 10.

⁷ Order 36290.

shared publicly. On May 20, 2019, the Companies filed their response to stakeholder comments from the April 18, 2019 and May 2, 2019 status conferences and to feedback from written comments received in Docket 2017-0352.

On June 10, 2019, the Commission provided further guidance on the RFPs⁸ and directed the Companies to file their final RFPs by July 10, 2019. Between June 10, 2019 and July 10, 2019, the Companies worked diligently with the Independent Observers to revise their draft RFPs, including the Companies' model PPA. The Companies filed their final draft of the RFPs, including the model PPA, on July 10, 2019, incorporating much of the feedback received from stakeholder comments as well as from the Independent Observers, with revisions submitted on July 26, 2019. On August 15, 2019, the Commission approved the Companies' RFP.

In developing the Stage 2 resource needs, the Companies looked to the remaining resource needs in the Near-Term Action Plan for renewable generation, as well as the PSIP resource needs for energy storage and customer-sited distributed energy resources, recognizing that the PSIP established all three as integral parts of the Companies' efforts to reach 100% renewable energy. The Companies also considered the Commission's Order 36187, current grid needs, and market conditions to set procurement targets for the RFPs. The Companies further accelerated the scope of Stage 2 based on feedback from the Commission and stakeholders leading up to the issuance of the final, approved RFPs.

With regards to energy storage, the Companies noted in Stage 1 that in Stage 2, the Companies may make modifications to the RFP to reflect advances in technology, including storage and/or declining costs of equipment. Based on the successful procurement of generation projects paired with storage in Stage 1, in reviewing the needs of the Companies' grids and

⁸ Order No. 36356, *Providing Guidance on the Hawaiian Electric Companies' Phase 2 Draft Requests for Proposals for Dispatchable and Renewable Generation*, issued on June 10, 2019.

practices in other jurisdictions, and reviewing the storage needs identified above, the Companies expanded the scope of the procurement in Stage 2 to include standalone storage bids and to require grid charging for paired storage after the Investment Tax Credit (“ITC”) recapture period.

The Companies ultimately issued the Stage 2 RFPs on August 22, 2019 seeking up to 1,300,000 MWh of renewable energy, 200 MW of storage to fill the capacity need due to the expiration of the AES Hawaii PPA, and 50 MW of contingency storage on O‘ahu; seeking up to 295,000 MWh of renewable energy and 40 MW of storage to fill the capacity need due to the retirement of the Kahului Power Plant on Maui; and seeking up to 444,000 MWh of renewable energy and up to 18 MW of contingency storage on Hawai‘i island.

Stage 2 of the RFPs for O‘ahu, Maui, and Hawai‘i island represents the largest renewable energy procurement undertaking in Hawai‘i’s history. The primary purpose of the RFPs was to obtain variable renewable generation that would be dispatchable by the Companies at a competitive, reasonable cost with reliability, viability, and operational characteristics consistent with the Companies’ long-term planning and energy policy requirements. The projects selected through these RFPs will assist the Companies in continuing to transform the Companies’ power supply portfolio from fossil fuel-based generation to renewable-based generation with more stable costs for customers.⁹

The procurement timeline was a critical component of Stage 2 and as such, projects seeking to replace the capacity for the AES Hawaii coal plant were required to have Guaranteed Commercial Operations Dates (“GCOD”) no later than June 1, 2022 and projects seeking to replace the capacity for the Kahului Power Plant to have a GCOD no later than April 30, 2023. Projects intending to meet the contingency storage requirement on Hawai‘i island were required

⁹ See, Docket No. 2017-0352, *Final RFP for Variable Renewable Dispatchable Generation on the Island of O‘ahu*, filed February 27, 2018 (“Variable RFP”), Section 1.1.4.

to have a GCOD no later than December 31, 2022. All other projects allowed an in-service date from 2022 through December 31, 2025.¹⁰ The RFP was specifically designed to include the following characteristics: technology agnostic; allowing projects to be sited at developer-defined sites; and allowing for variations within proposals (including the option to pair storage with generation), which provided the benefits of encouraging broader developer participation as well as allowing the market to dictate technology and price. In order to maintain a competitive and fair process, the Companies followed the Commission’s Framework for Competitive Bidding (“Framework”).¹¹

Consistent with the resource needs for the island of O‘ahu in the PSIP, Hawaiian Electric sought Proposals for the capability to provide approximately 1,300,000 MWh per year (“MWh/year”) of variable renewable dispatchable generation delivered to the Company’s System.¹² For O‘ahu, the Company’s RFP permitted developers to submit proposals both with and without battery energy storage systems (“BESS”) as well as standalone storage projects. Proposals with a BESS were required to provide: (1) a storage capacity of not less than the greatest amount of projected energy during the Facility’s projected most productive continuous four-hour period during the year; and (2) the capability of 365¹³ discharges for the year. The RFP further provided that the Company retain specified dispatch rights over the stored energy, and the Seller retain the discretion to utilize the BESS to meet the Performance Standards¹⁴ for energy delivery specified in the PPA.

¹⁰ Order 36356 at 16-17.

¹¹ See Docket No. 03-0372, Decision and Order No. 23121 (December 8, 2006).

¹² See Stage 2 RFP, Chapter 1.

¹³ 366 discharges were required during leap years.

¹⁴ Capitalized terms used but not defined in this exhibit have the meaning given to them in the Variable RFP.

Evaluation of Proposals began when the RFPs closed on November 5, 2019. Navigant Consulting (now known as Guidehouse) and Bates White, the Independent Observers appointed by the Commission, provided oversight throughout the entire evaluation process.

All Proposals were first reviewed to ensure that all Eligibility Requirements were satisfied. Proposals were then reviewed to ensure that all Threshold Requirements were met. Proposals that successfully met the Eligibility and Threshold Requirements then entered the Initial Evaluation phase, where both price and non-price related criteria were evaluated. During the non-price related criteria evaluation, proposals utilizing the same technology were evaluated in separate technology-based evaluation categories, with the inclusion of energy storage resulting in a separate category. These categories were established so that projects of “like” technology would be evaluated against each other on an “apples-to-apples” basis. At the conclusion of the Initial Evaluation, total scores for each Proposal were calculated using a weighting of both price-related and non-price related criteria, resulting in a ranking of Proposals within each technology-based evaluation category.¹⁵

Following the Initial Evaluation, the highest scoring Proposals across the different technology-based evaluation categories were selected to the Priority List and invited to update (downward only) the pricing elements of their Proposals through a Best and Final Offer. The Best and Final Offers of the Priority-Listed Proposals were then examined during the Detailed Evaluation. The Detailed Evaluation process consisted of an assessment of combinations of Proposals from the Priority Lists that met the energy, storage, and Contingency Storage targets of the applicable Stage 2 RFP (“Portfolios”). A production simulation iteration was created for the Portfolios to evaluate the Total Net Cost (Cost and Benefits) of integrating the Portfolio onto the

¹⁵ See *Variable RFP*, Section 4.4.1.

Company's System. Each Portfolio's Total Net Cost was compared against the Base Case. The Companies utilized the PLEXOS model¹⁶ for this analysis. Load flow analyses were also performed to determine if certain Project combinations introduced transmission circuit constraints that could factor into the selection process.¹⁷

Based on the results of the Detailed Evaluation and concurrence of the results with the Independent Observer, the Companies selected a Portfolio of projects on each island resulting in a total of sixteen (16)¹⁸ Proposals to the Final Award Groups of the RFPs, which included Seller's Project. The filing of the present application is the culmination of successful PPA negotiations between the Company and the Seller.

¹⁶ The PLEXOS Integrated Energy Model software is developed by Energy Exemplar. Refer to their website: www.energyexemplar.com for additional information on the software.

¹⁷ See *Variable RFP*, Section 4.7.

¹⁸ Two projects have since decided on their own to withdraw from the process.

EXHIBIT 3

Project Benefits Analysis

Exhibit 3

Project Benefits Analysis

I. Introduction

Implementation of the Waiawa Phase 2 Solar LLC project (“Waiawa Phase 2 Solar” or “Project”) will result in benefits to the Company’s customers. Benefits include lower fuel consumption tied to the increase in renewable energy production, contribution toward meeting Renewable Portfolio Standards (“RPS”), and increased energy security to customers.

II. Methodology

The analysis sets a baseline, or “Base Case” long term resource plan without the project that includes the awarded RFP Phase 1 projects and reflects current long-term assumptions. An “Alternate Case”, where the Project is implemented, is also modeled to compare the differences between the Base Case and Alternate Case plans to quantify the benefits of the Project. The planning period covers the term of the Project’s Power Purchase Agreement (“PPA”).

A production simulation computer program called PLEXOS was used to simulate how the system will operate in both the Base and Alternate Cases, i.e., without the Project, and with the Project. The key inputs to the computer program are described in Section III.B, below. The key outputs from the computer simulation include energy produced and fuel consumed by each generating unit for both utility and non-utility units, energy taken from each variable generation unit, and cost of fuel consumed.

In addition to the benefits provided by the Project, the Company evaluated a separate Alternate Case analysis that includes the portfolio or group of all selected proposals on the island from Stage 2 of the RFP.

III. Pricing Evaluation

A. Long-Run Avoided Cost Analysis

Long-run avoided energy cost serves as a benchmark against new project pricing to evaluate and assess the reasonableness of the proposed pricing. Since the planning environment has become increasingly uncertain, the determination of the utility’s “true” avoided costs has become increasingly complex. For example, the key determinants of avoided costs include, but are not limited to: the forecast of future fossil fuel and biofuel prices; the forecast of sales and peak demand; the size, type and characteristics of future energy storage; the size, type and characteristics of future firm capacity resources installed; the size, type and characteristics of future variable generation resources installed; the amount of distributed generation capacity installed; and the amount of regulating reserve needed to maintain system stability. The assumptions for the production simulation model analysis herein are described below. Resource plans utilized for the Base Case and Alternate Case are shown in Attachment 1.

- Base Case: Hawaiian Electric's Base Case resource plan includes Ho'ohana Solar I, Mililani I Solar, Waiawa Solar, and West Oahu Solar from RFP phase 1, and CBRE Phases 1 and 2.
- Alternate Case: Added the Waiawa Phase 2 Solar proposal for a 30 MW PV and 8-hour load shifting battery.

The results of the analysis will indicate the value of the Project. It will show the avoided fuel displaced by adding the Project in the Alternate Case, and the anticipated impacts to Hawaiian Electric customers.

B. Key Inputs to the Long-Run Avoided Cost Analysis

The inputs used in this analysis are briefly described below.

1. Sales Forecast

Hawaiian Electric's December 2019 sales forecast. The sales forecast utilized for the analysis is shown in Attachment 2.

2. Fuel Price Forecast

Hawaiian Electric's March 2020 forecast of fuel prices. Fuel price forecasts utilized for the analysis are shown in Attachment 3.

3. Demand Response Impact and Cost Forecast

The forecast of DR impacts based on what was acquired during the Company's recent grid services RFP.

4. Community-Based Renewable Energy

Assuming CBRE PV 5 MW for Phase 1 and CBRE 170 MW for Phase 2 as shown in the resource plan.

5. Revised Resource Plan and Resource Costs

The resource plans used in the analysis are provided in Attachment 1. The resource costs used for the purpose of this analysis are based on the PSIP Update Report cost assumptions.

6. Discount Rate

An after-tax discount rate of 7.032% was used to determine the present value of future expenditures. The after-tax discount rate was derived from the Company's composite incremental cost of capital on an after-tax basis.

7. Costs for the Project

The Project costs are calculated based on the terms of the PPA, including annual fixed payments, and contract rate for energy purchased for each MWh where applicable.

8. Regulating Reserve

The regulating reserves for the analysis are consistent with the methods described in the PSIP Update Report¹. The regulating reserve formula that Hawaiian Electric used for the purposes of this analysis is:

Required regulating reserve amount equals the sum of:

1 MW regulating reserve for each 1 MW of delivered wind and PV generation up to 18% of nameplate capacity of wind and PV during daytime hours of 7 AM to 6 PM; and

1 MW regulating reserve for each 1 MW of delivered wind and PV generation up to 23% of nameplate capacity during the hours of 6 PM to 7 AM.

IV. Results

A. System Revenue Requirement NPV of Base Case and Alternate Case

The calculation of the net present value (“NPV”) of the revenue requirements for the Base Case and Alternate Case includes the total annual costs discounted to 2022 dollars as shown in Attachment 4.

B. System Revenue Requirement NPV Differential

The comparison of the revenue requirements of the Base Case with the Alternate Case and the NPV of revenue requirements is shown in Attachment 4.

C. Avoided Fuel Consumption

Energy from the Project will reduce fuel consumption in Hawaiian Electric’s generating units and in dispatchable independent power producer generating units. The production simulation results provide an estimate of the amount of fuel consumption that could be avoided on Oahu with the Project in service. The approximate avoided fuel consumption total over the life of the PPA is shown below:

- Low Sulfur Fuel Oil: 862,349 barrels
- Diesel Fuel: 73,200 barrels
- Ultra-Low Sulfur Diesel: 1,972,548 barrels
- Biodiesel: -2,390 barrels

¹ See PSIP Update Report, Appendix J, page J-7. Required Regulating Reserve.

A table showing further breakdown of avoided fuel consumption is provided in Attachment 5.

In addition to the benefits discussed above, a non-cost benefit of the Project is that the reduction in fuel consumption will reduce customer exposure to the volatility in fuel prices, particularly since fuel consumption will be displaced by new renewable energy generation, which is fixed in price. Historically, fuel prices have been volatile. Reducing generation dependency on fossil fuels is one way to buffer customers from the volatility of fuel prices.

D. Analysis for All Project Applications for Oahu

In addition to this Project, the Company has filed other applications to approve PPAs for this island under the competitive bidding process to acquire dispatchable and renewable generation established in Docket No. 2017-0352. Considering the totality of the projects procured under the competitive bidding process, approval of these competitive bidding projects is consistent with the public interest.

Although each individual application details the possible savings that are expected upon integrating the Project onto the island electrical system on a stand-alone basis, the savings expected upon integration of all PPAs² proposed for this island through the RFP process, while even more beneficial to customers, are by definition somewhat smaller than the sum of the savings identified in the individual PPA analyses; note that, while all renewable project energy is expected to beneficially replace fossil fuel energy costs, the highest fossil fuel costs can only be replaced once.

The net present value of the savings across all the projects proposed for the common years (2024-2041) for this island is shown in the table below. The savings shown are higher than the savings shown for this particular project in Attachment 2.

Year	Base Case Total System Costs (\$)	Total Costs of System with Multiple Projects (\$)	Differential of Total System Cost (\$)
	a	b	c = a - b
NPV	\$8,894,161,978	\$8,834,069,195	\$60,092,784

E. Customer Bill Impacts

² Project applications for Oahu include a 15 MW PV and 4-hour load shifting battery, Barbers Point Solar, a 60 MW PV and 4-hour load shifting battery, Kupehau Solar, a 42 MW PV and 4-hour load shifting battery, Kupono Solar, a 120 MW PV and 4-hour load shifting battery, Mahi Solar, a 7 MW PV and 5-hour load shifting battery, Mountain View Solar, a 30 MW PV and 8-hour load shifting battery, Waiawa Phase 2 Solar, and a 135 MW 4-hour load shifting battery and 50 MW 30-minute contingency battery, Kapolei Energy Storage.

The results of the analysis indicate that the Project will provide bill savings to customers over the PPA term. Attachment 6 shows estimations of impacts to a typical residential customer 500 kWh bill.

Bill impacts are highly dependent on the particular production simulation modeling assumptions used for each particular year analyzed and will be different than estimated herein over the project term as actual conditions deviate from the assumed conditions.

In Attachment 7, bill impacts are shown with the portfolio or combination of Barbers Point Solar, Kupehau Solar, Kupono Solar, Mahi Solar, Mountain View Solar, Waiawa Phase 2 Solar, and Kapolei Energy Storage projects which shows the total benefit that the Company intends to procure during this process.

F. Representative Dispatch of Project

Attachment 8 provides an illustration of the utilization of the Project PV resource and the battery based on the results of the production simulation. The Project will allow the Company to avoid running additional oil-fired units to meet the demand especially during the evening peak since it is expected that the Project's battery will dispatch its stored energy during the evening.

V. Conclusions

The Project will increase renewable energy on the system, lower fuel consumption, and increase energy security by reducing dependency on imported oil. Taking all these factors together, it is in Hawaiian Electric's customers' best interests to integrate the proposed Project onto the system to help achieve renewable energy policy goals and long-term price stability.

ATTACHMENTS TO EXHIBIT 3

- Attachment 1 Resource Plan
- Attachment 2 Sales Forecast
- Attachment 3 Fuel Price Forecast
- Attachment 4 System Revenue Requirement NPV Differential
- Attachment 5 Hawaiian Electric System Fuel Consumption
- Attachment 6 Typical Residential Bill Impact of Project
- Attachment 7 Typical Residential Bill Impact of Portfolio
- Attachment 8 Representative Dispatch of Project

EXHIBIT 3
ATTACHMENT 1
PAGE 1 OF 2

ATTACHMENT 1

Year	Base Case	Year	Alternate Case
2021	Install 5 MW Grid-Scale PV (CBRE PV Phase 1)	2021	Install 5 MW Grid-Scale PV (CBRE PV Phase 1)
2022	AES deactivated 9/2022 Install Ho‘ohana Solar 1 – 52 MW PV + 208 MWh Storage Install Mililani 1 Solar – 39 MW PV + 156 MWH Storage Install Waiawa Solar – 36 MW PV + 144 MWH Storage Install West Oahu Solar – 12.5 MW PV + 50 MWH Storage Install 19 MW of Demand Response Programs from Grid Services RFP	2022	AES deactivated 9/2022 Install Ho‘ohana Solar 1 – 52 MW PV + 208 MWh Storage Install Mililani 1 Solar – 39 MW PV + 156 MWH Storage Install Waiawa Solar – 36 MW PV + 144 MWH Storage Install West Oahu Solar – 12.5 MW PV + 50 MWH Storage Install 19 MW of Demand Response Programs from Grid Services RFP
2023	Waiau 3 & Waiau 4 Removal from Service	2023	Waiau 3 & Waiau 4 Removal from Service
2024		2024	Install Waiawa Phase 2 Solar – 30 MW PV + 240 MWH Storage
2025	Install 170 MW Grid-Scale PV + 680 MWH Storage (CBRE Phase 2)	2025	Install 170 MW Grid-Scale PV + 680 MWH Storage (CBRE Phase 2)
2026	Install 151 MW CC Waiau 5 & 6 Removal from Service	2026	Install 151 MW CC Waiau 5 & 6 Removal from Service
2028	Install 151 MW CC Kahe 5 & 6 Removal from Service	2028	Install 151 MW CC Kahe 5 & 6 Removal from Service
2030	Install 200 MW Offshore Wind Install 165 MW 4hr LS Battery	2030	Install 200 MW Offshore Wind Install 165 MW 4hr LS Battery
2031	Waiau 7 & 8 Removal from Service	2031	Waiau 7 & 8 Removal from Service
2032	Install 302 MW CC (2 x 151 MW)	2032	Install 302 MW CC (2 x 151 MW)
2035	Install 168 MW 4hr LS Battery Kahe 1 & 2 Removal from Service	2035	Install 168 MW 4hr LS Battery Kahe 1 & 2 Removal from Service
2039	Kahe 3 & 4 Removal from Service	2039	Kahe 3 & 4 Removal from Service

EXHIBIT 3
ATTACHMENT 1
PAGE 2 OF 2

2040	Install 280 MW Grid-Scale PV Install 420 MW 4hr LS Battery	2040	Install 280 MW Grid-Scale PV Install 420 MW 4hr LS Battery
2045	Install 1180 MW Grid-Scale PV Install 1525 MW 4hr LS Battery Install 68 MW ICE (4 x 17 MW) K1-6, Removal from Service CIP CT-1, Waiau 9 & 10, Airport DSG, Schofield, ICEs, CCs, and KPLP biodiesel conversion	2045	Install 1180 MW Grid-Scale PV Install 1525 MW 4hr LS Battery Install 68 MW ICE (4 x 17 MW) K1-6, Removal from Service CIP CT-1, Waiau 9 & 10, Airport DSG, Schofield, ICEs, CCs, and KPLP biodiesel conversion

ATTACHMENT 2

Hawaiian Electric Sales Forecast

Year	Sales (GWh)
2020	6,489
2021	6,459
2022	6,475
2023	6,480
2024	6,511
2025	6,536
2026	6,490
2027	6,424
2028	6,363
2029	6,277
2030	6,205
2031	6,166
2032	6,157
2033	6,168
2034	6,176
2035	6,196
2036	6,252
2037	6,270
2038	6,323
2039	6,414
2040	6,555
2041	6,620
2042	6,732
2043	6,856
2044	7,011
2045	7,121
2046	7,259
2047	7,396
2048	7,556

ATTACHMENT 3

Hawaiian Electric Fuel Price Forecast

Year	LSFO	Diesel	ULSD	Schofield ULSD	Biodiesel	Coal
	\$/MMBTU	\$/MMBTU	\$/MMBTU	\$/MMBTU	\$/MMBTU	\$/MMBTU
2020	\$7.38	\$10.11	\$10.52	\$11.31	\$26.84	\$2.00
2021	\$9.40	\$12.20	\$12.67	\$13.47	\$28.66	\$2.09
2022	\$11.45	\$14.33	\$14.84	\$15.66	\$30.50	\$2.14
2023	\$11.35	\$14.27	\$14.79	\$15.62	\$30.77	\$2.20
2024	\$10.38	\$13.32	\$13.82	\$14.66	\$30.38	\$2.25
2025	\$10.72	\$13.71	\$14.22	\$15.08	\$30.97	\$2.30
2026	\$11.84	\$14.89	\$15.43	\$16.30	\$32.14	\$2.35
2027	\$13.06	\$16.18	\$16.76	\$17.64	\$33.40	\$2.41
2028	\$13.43	\$16.60	\$17.19	\$18.08	\$34.03	\$2.46
2029	\$14.39	\$17.63	\$18.24	\$19.15	\$35.11	\$2.52
2030	\$13.68	\$16.94	\$17.54	\$18.46	\$34.94	\$2.58
2031	\$12.39	\$15.67	\$16.24	\$17.18	\$34.36	\$2.64
2032	\$13.39	\$16.73	\$17.33	\$18.28	\$35.48	\$2.70
2033	\$14.02	\$17.43	\$18.05	\$19.01	\$36.33	\$2.76
2034	\$14.18	\$17.64	\$18.27	\$19.24	\$36.84	\$2.82
2035	\$13.31	\$16.79	\$17.41	\$18.40	\$36.58	\$2.88
2036	\$13.41	\$16.95	\$17.57	\$18.58	\$37.06	\$2.94
2037	\$13.87	\$17.46	\$18.10	\$19.12	\$37.81	\$3.01
2038	\$14.37	\$18.02	\$18.67	\$19.71	\$38.59	\$3.08
2039	\$15.05	\$18.77	\$19.44	\$20.50	\$39.52	\$3.15
2040	\$15.81	\$19.60	\$20.29	\$21.36	\$40.51	\$3.22
2041	\$16.45	\$20.30	\$21.01	\$22.09	\$41.41	\$3.29
2042	\$17.15	\$21.06	\$21.80	\$22.90	\$42.37	\$3.36
2043	\$17.87	\$21.85	\$22.61	\$23.72	\$43.35	\$3.44
2044	\$18.60	\$22.66	\$23.44	\$24.57	\$44.34	\$3.52
2045	\$19.36	\$23.48	\$24.28	\$25.43	\$45.36	\$3.60
2046	\$20.13	\$24.33	\$25.15	\$26.32	\$46.40	\$3.69
2047	\$20.92	\$25.19	\$26.04	\$27.22	\$47.46	\$3.78
2048	\$21.73	\$26.08	\$26.95	\$28.15	\$48.54	\$3.87

ATTACHMENT 4

System Revenue Requirement NPV Differential

Year	Base Case Total System Costs (\$)	Alt Case Total System Costs (\$)	Differential of Total System Cost (\$)
	a	b	c = a - b
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
NPV	\$9,390,018,966	\$ 9,390,691,654	\$ (672,687)

ATTACHMENT 5

Hawaiian Electric System Fuel Consumption

Year	LSFO Avoided Fuel Consumption (Barrels)	Diesel Avoided Fuel Consumption (Barrels)	ULSD Avoided Fuel Consumption (Barrels)	Coal Avoided Fuel Consumption (tons)	Biodiesel Avoided Fuel Consumption (Barrels)
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					
2033					
2034					
2035					
2036					
2037					
2038					
2039					
2040					
2041					
2042					
2043					
Total	862,349	73,200	1,972,548	0	-2,390

ATTACHMENT 6

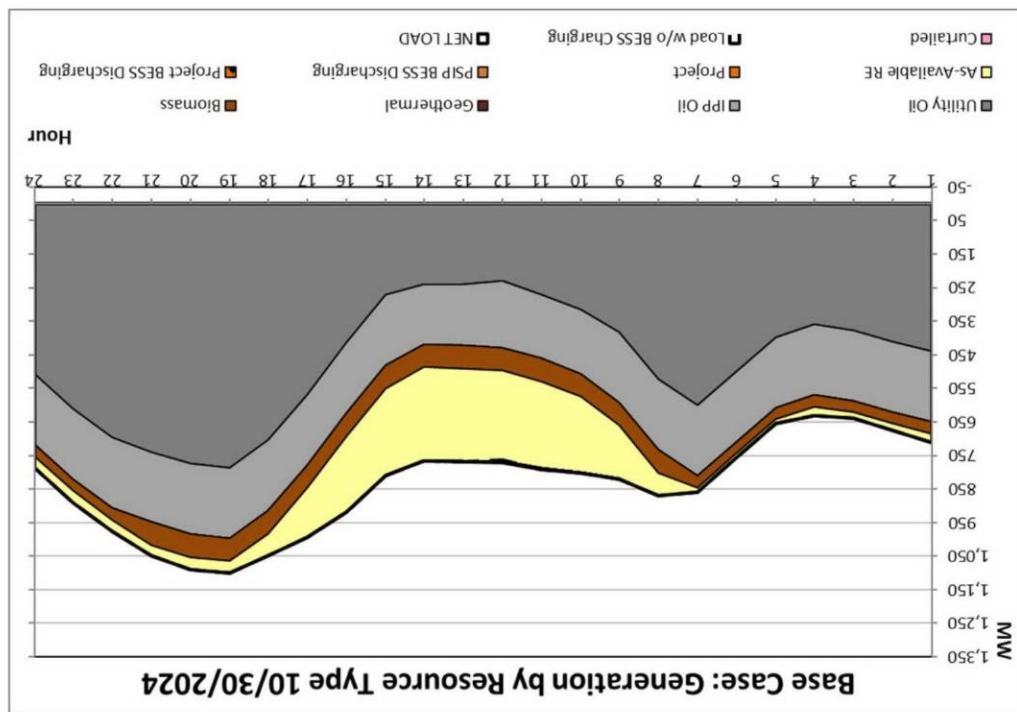
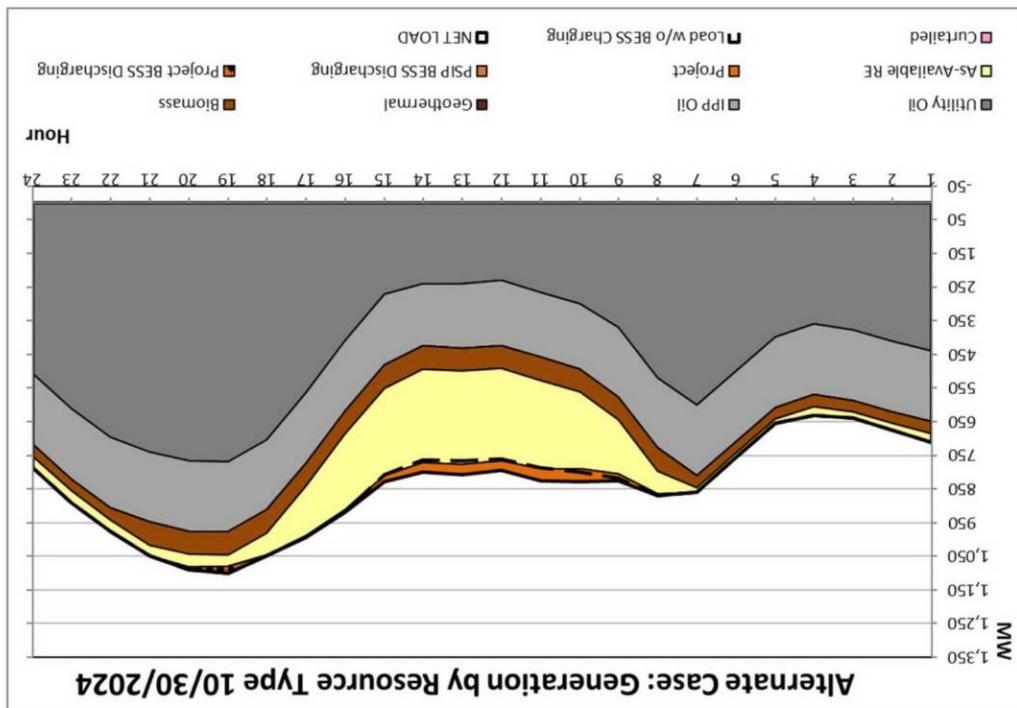
Typical Residential Bill Impact of Waiawa Phase 2 Solar

a Year	b Waiawa Phase 2 Solar Total Revenue Requirement (Current Year \$)	c = a - b Hawaiian Electric Total Avoided Revenue Requirement (Current Year \$)	d Incremental Revenues Required (Current Year \$)	e = (c/d)/10 Estimated Hawaiian Electric Sales (MWh)	f = (500 * e)/100 Est Impact on Typical Residential Bill of 500 kWh (Current Year \$)
2024	\$14,665,976		6,511,000		\$0.35
2025	\$14,665,976		6,536,000		\$0.18
2026	\$14,665,976		6,490,000		\$0.05
2027	\$14,665,976		6,424,000		\$(0.00)
2028	\$14,665,976		6,363,000		\$(0.05)
2029	\$14,665,976		6,277,000		\$(0.15)
2030	\$14,665,976		6,205,000		\$0.04
2031	\$14,665,976		6,166,000		\$0.07
2032	\$14,665,976		6,157,000		\$0.10
2033	\$14,665,976		6,168,000		\$(0.08)
2034	\$14,665,976		6,176,000		\$(0.21)
2035	\$14,665,976		6,196,000		\$0.02
2036	\$14,665,976		6,252,000		\$0.07
2037	\$14,665,976		6,270,000		\$0.02
2038	\$14,665,976		6,323,000		\$(0.16)
2039	\$14,665,976		6,414,000		\$(0.07)
2040	\$14,665,976		6,555,000		\$(0.16)
2041	\$14,665,976		6,620,000		\$(0.13)
2042	\$14,665,976		6,732,000		\$(0.30)
2043	\$14,665,976		6,856,000		\$(0.39)

ATTACHMENT 7

Typical Residential Bill Impact of Oahu Portfolio

Year	a Portfolio Total Revenue Requirement (Current Year \$)	b Hawaiian Electric Total Avoided Revenue Requirement (Current Year \$)	c = a - b Incremental Revenues Required (Current Year \$)	d Estimated Hawaiian Electric Sales (MWh)	e = (c/d)/10 Estimated Rate Impact (cents/kWh in Current Year \$)	f = (500 * e)/100 Est Impact on Typical Residential Bill of 500 kWh (Current Year \$)
2024	\$107,011,950			6,511,000		\$2.74
2025	\$107,011,950			6,536,000		\$1.54
2026	\$107,011,950			6,490,000		\$0.74
2027	\$107,011,950			6,424,000		\$(0.01)
2028	\$107,011,950			6,363,000		\$(0.79)
2029	\$107,011,950			6,277,000		\$(1.99)
2030	\$107,011,950			6,205,000		\$(0.89)
2031	\$107,011,950			6,166,000		\$(0.21)
2032	\$107,011,950			6,157,000		\$(0.82)
2033	\$107,011,950			6,168,000		\$(1.45)
2034	\$107,011,950			6,176,000		\$(1.66)
2035	\$107,011,950			6,196,000		\$(0.96)
2036	\$107,011,950			6,252,000		\$(1.21)
2037	\$107,011,950			6,270,000		\$(1.60)
2038	\$107,011,950			6,323,000		\$(2.06)
2039	\$107,011,950			6,414,000		\$(2.65)
2040	\$107,011,950			6,555,000		\$(3.10)
2041	\$107,011,950			6,620,000		\$(3.53)



Representative Dispatch of Project

ATTACHMENT 8

EXHIBIT 4

Key PPA Terms and Conditions

Exhibit 4

Key PPA Terms and Conditions

The specific terms and conditions of the PPA were negotiated by the Parties at arms-length, over a period of approximately four months. The PPA contains commercial and technical terms that are fair to both Parties while also serving to protect the Company and its customers from certain risks associated with the Seller's development, interconnection and operation of the Facility.

A. Model RDG PPA

For this Stage 2 Request for Proposals for Variable Renewable Dispatchable Generation (“RFP”), the Hawaiian Electric Companies¹ built upon the model PPA that was introduced in their Stage 1 RFP by incorporating into the Stage 2 model Renewable Dispatchable Generation PPA (“RDG PPA”) terms and provisions that the Companies believed to be commercially reasonable terms from the executed Stage 1 PPAs. In addition, among other differences from the Stage 1 PPA, the Stage 2 model RDG PPA includes provisions and/or revisions to address: (1) a more prescriptive and comprehensive community outreach plan; (2) a Performance Metric² for round trip efficiency to measure storage efficiency (i.e., the amount of energy lost between a complete charge and discharge of the battery);³ (3) the Companies' determination that the PV System and BESS are separate units of account for lease consideration and that the BESS portion of the RDG PPA is considered to contain a lease under the Financial Accounting Standards

¹ The “Hawaiian Electric Companies” or “Companies” are Hawaiian Electric Company, Inc. (“Hawaiian Electric”), Maui Electric Company, Limited (“Maui Electric”) and Hawai‘i Electric Light Company, Inc. (“Hawai‘i Electric Light”). Company as used herein refers to Hawaiian Electric.

² Capitalized terms used but not otherwise defined in this exhibit have the meaning given to them in the PPA.

³ See PPA § 2.10.

Board (“FASB”) Accounting Standards Codification (“ASC”) 842,⁴ and (4) the need for enhanced cybersecurity protocols.⁵ Several of the Performance Metrics were also revised upon developer request to make measuring points, time periods, and test procedures more clear. In addition, specific revisions were made to the Seller’s PPA to account for the fact that the Facility will be DC coupled, as the model RDG PPA was drafted assuming an AC coupled Facility.

As noted in Stage 1, the RDG PPA provides a contractual vehicle to integrate more renewable energy, provides flexibility on the Companies’ grids, and addresses curtailment uncertainty risks that developers previously assumed under past as-available power purchase agreements. The RDG PPA gives the Companies the contractual flexibility to dispatch renewable energy facilities, and, in exchange, developers are provided a monthly payment (“Lump Sum Payment”) based on the availability and performance of the Facility, i.e., the photovoltaic (“PV”) system and battery energy storage system (“BESS”). Receipt of the full Lump Sum Payment each month is conditioned on achieving agreed upon Performance Metrics, which are described further below.

The Companies’ previous as-available power purchase agreements required that the energy produced by the associated facility be accepted by the Companies based on the seniority of the project. This practice limited the contribution that as-available resources could provide in relation to grid operations and hindered the Companies’ ability to plan effectively for future renewable energy opportunities. In contrast, the RDG PPA provides the Companies with the flexibility to use the Facility in a manner that will more effectively meet the system’s energy and grid service requirements. This flexibility will be critically important over the 20-year term of

⁴ See PPA § 24.1 (note the deletion of Section 24.5(b) from the Stage 1 PPA addressing whether the PPA is a lease).

⁵ See PPA, Attachment B § 1(b)(iii)(G).

the PPA due to the increasingly dynamic nature of the grid as Hawai‘i rapidly progresses toward its goal of reaching 100% renewables by 2045.

B. Term

The PPA, which is subject to approval by the Commission, commences upon the Execution Date and remains in effect for an initial term of 20 years following the Commercial Operations Date. Upon expiration of the Initial Term, the PPA automatically terminates.

C. Commission Approval and Associated Termination Rights

Upon the Execution Date, the Parties are required to use good faith efforts to obtain, as soon as practicable, a PUC Approval Order that satisfies the requirements of Section 29.20(a) (PUC Approval Order) in the PPA.⁶ If a satisfactory PUC Approval Order is not issued within twelve (12) months of the PUC Submittal Date⁷ or within a longer period agreed to by the Parties, Company or Seller may, by written notice delivered within one hundred eighty (180) days of such date, declare the PPA null and void.⁸

Additionally, if a PUC Approval Order or an Unfavorable PUC Order is issued but that order is appealed, and a Non-appealable PUC Approval Order is not obtained within twenty-four (24) months of the PUC Submittal Date, or within such longer period as Company and Seller may agree to by a subsequent written agreement (the “PUC Order Appeal Period”), then Company or Seller may, by written notice delivered within ninety (90) Days of the expiration of the PUC Order Appeal Period, declare the PPA null and void.

⁶ See PPA § 12.3.

⁷ The date of the submittal of the Company’s complete application or motion for a satisfactory PUC Approval Order pursuant to Section 12.3 (PUC Approval) of the PPA.

⁸ See PPA § 12.6(b).

Timeframes for Commission approval were set based on the Commission's goal to ensure timely execution of the competitive procurement process,⁹ in order to meet the aggressive timelines set for the Project to meet Commercial Operations, and the Project's need to move forward as expeditiously as possible to safe harbor the federal Investment Tax Credit ("ITC"), among other things. However, in the event Seller is unable to safe harbor the ITC and the PPA is not declared null and void pursuant to the terms of the PPA, the contract price negotiated in the PPA will not be increased or subject to adjustment.

D. Company Right to Declare PPA Null and Void Prior to Effective Date

Pursuant to Section 12.5 (Prior to Effective Date) of the PPA, Company has the right to declare the PPA null and void prior to the Effective Date for any of the following reasons:

- a. Seller implements material changes in the type of, or performance specifications of, the equipment that affects the results of the IRS or project schedule without the consent of the Company.
- b. Seller is in breach of Sections 22.2(c) or 22.2(d) of the PPA requiring Seller to have obtained certain Land Rights and Governmental Approvals, or the provisions of Attachment G (Company-Owned Interconnection Facilities) requiring the payment by Seller to Company of certain specified amounts for interconnection facilities.
- c. Seller, after making payment for the interconnection facilities, requests in writing that Company stop or otherwise delay the performance of work for which Company received such payment.
- d. The IRS Letter Agreement is terminated prior to the completion of the Interconnection Requirements Study.

⁹ See Docket No. 2017-0352, Order No. 36604, issued on October 9, 2019, at 25: "The commission has repeatedly expressed that timely execution of the competitive procurement process is a central objective of this proceeding."

E. Termination Rights

The Parties have agreed to certain conditions that would trigger PPA termination rights. Section 13.4 (Damages and Termination) and Section 21.6 (Termination for Force Majeure) of the PPA provide certain termination rights in the PPA. Additionally, the PPA may be terminated in accordance with the terms of Article 15 (Events of Default) of the PPA.

F. Energy Pricing Under the Renewable Dispatchable Generation PPA Model

1. Overview

Seller's project is comprised of a PV system and BESS, which Seller represents will be capable of generating up to 107,595 MWh per year ("Project" or "Facility"). As noted, under the RDG PPA, the Seller is paid a Lump Sum Payment for the Company's right to dispatch the Facility, subject to the Facility meeting certain agreed upon Performance Metrics. If the Facility fails to satisfy one or more of the Performance Metrics, liquidated damages will be assessed against the Lump Sum Payment amount. The Lump Sum Payment, as affected by availability of the Facility and other Performance Metrics, has the potential to be reduced down to zero if the Facility is completely unavailable or if the Facility is available but underperforming in other aspects as measured by the Performance Metrics.

Although the Facility is treated as a single resource (i.e., both PV system and BESS), there are separate Performance Metrics for the PV system and the BESS. As stated in the PPA, in order to provide the Company with reasonable assurance that the Facility will be available and perform as required, the following metrics are utilized: (i) the PV System Equivalent Availability Factor ("EAF") Performance Metric is used to evaluate the availability of the PV System for dispatch by Company; (ii) the Guaranteed Performance Ratio ("GPR") Performance Metric is used to evaluate the efficiency of the PV System; (iii) the BESS Capacity Performance

Metric is used to confirm the capability of the BESS to discharge as required by the terms of the PPA; (iv) the BESS EAF Performance Metric is used to determine whether the BESS is meeting its expected availability; (v) the BESS EFOF Performance Metric is used to evaluate whether the BESS is experiencing excessive unplanned outages; and (vi) the BESS RTE Performance Metric is used to determine the energy storage efficiency of the BESS.

In the event that the Seller fails to achieve one or more of the Performance Metrics, there is a liquidated damage amount that is associated with such failure. Liquidated damages relating to the BESS are calculated on the basis of the BESS Allocated Portion of the Lump Sum Payment for an applicable three-month period (which is referred to in the PPA as a “BESS Measurement Period”). For all Stage 2 PPAs, the BESS Allocated Portion of the Lump Sum Payment is equal to 50% of the then applicable total Lump Sum Payment, which reflects the proportional benefit of the BESS to the system.

Using the BESS Allocated Portion of the Lump Sum Payment as the basis to calculate the liquidated damages for failure to satisfy one or more of the BESS Performance Metrics allows the Company to utilize accelerating tiers of liquidated damages to more quickly “zero out” that portion of the Lump Sum Payment that is allocable to the BESS if it is substantially underperforming.

2. Lump Sum Payment and Net Energy Potential

The Lump Sum Payment specified in this Application was proposed by the Seller in its response to the Request for Proposals for Variable Renewable Dispatchable Generation and Energy Storage issued by the Company (“RFP Response”) for the ability to dispatch the MWh value of the Facility’s Net Energy Potential (“NEP”) specified in Seller’s RFP Response. The NEP represents the theoretical annual energy delivery of the Facility’s PV System to the Point of

Interconnection assuming “typical” availability and “representative” meteorological conditions at the site, with a probability of exceedance of 95%.

In effect, the Lump Sum Payment is made in exchange for the right to dispatch the Facility’s energy production. The Lump Sum Payment will be adjusted from time to time as the MWh value assigned to the Facility’s NEP is reassessed as provided in the PPA. Such adjustments in the Lump Sum Payment are to be made on the basis of the “Unit Price” of \$0.124196794 per kWh of NEP, as specified in the PPA. This Unit Price was calculated based on the Lump Sum Payment and the MWh value of the Facility’s NEP specified by the Seller in its RFP Response.

3. Energy Payment and Test Energy

The PPA does not provide for an energy payment of any kind, including Company acceptance of any test energy in accordance with Section 3.8.5 of the RFP and Section 4 (Test Energy) of Attachment J (Company Payments for Energy, Dispatchability and Availability of BESS) of the PPA.

4. Hawai‘i Tax Credit Pass Through

The Parties acknowledge in the PPA that, because the Hawai‘i tax treatment that will apply to renewable energy technologies on the Commercial Operations Date is uncertain, the Contract Pricing was set assuming Seller would not be eligible for the Hawai‘i Renewable Energy Technologies Income Tax Credit. Accordingly, Section 5 of Attachment J (Tax Credit Pass Through) to the PPA requires Seller to use commercially reasonable efforts to apply for and obtain the maximum reasonably available Hawai‘i Renewable Energy Technologies Income Tax Credit (either refundable or non-refundable) and pass through any credits received to the Company for the benefit of its customers. If Seller fails to apply for and to use commercially

reasonable efforts to obtain the maximum reasonably available Hawai‘i Renewable Energy Technologies Income Tax Credit as set forth in Section 5 of Attachment J (Tax Credit Pass Through), then Company will be entitled to liquidated damages in an amount equal to \$150,000 per MW of Contract Capacity. As noted in the Application, however, the 2020 Hawai‘i State Legislature recently passed S.B. No. 2820 S.D. 2 H.D. 2¹⁰ that will end the State tax credit for utility scale solar energy projects over 5 MW that require a power purchase agreement to be approved by the Commission. Accordingly, at this time, the Company does not expect there will be any State tax credits to pass through.

5. Liquidated Damages

As discussed above, liquidated damages will be assessed when the Seller’s failure to achieve certain Performance Metrics indicates that the Company is not receiving the benefit of its dispatch rights over the Facility’s energy production and storage.

6. Other Adjustments to Net Energy Potential and Lump Sum Payment

The Lump Sum Payment specified in this Application is subject to adjustment as the MWh value assigned to NEP is reassessed in two mandatory stages (and possible subsequent stages) during the Term of the PPA. The first such mandatory reassessment will occur prior to Commercial Operations, at the close of Seller’s construction financing. The Company will receive a copy of the report of the independent engineer (“IE Energy Assessment Report”) that is provided to the financing parties as part of their standard due diligence prior to financial closing, which will include a NEP estimate. If the NEP estimate in the IE Energy Assessment Report is equal to or greater than the NEP estimate provided in Seller’s RFP Response, the Lump Sum

¹⁰ This bill is currently enrolled to the Governor for signature and does not appear on the Governor’s intent to veto list.

Payment specified in this Application will apply for the first 15 months following Commercial Operations.

However, if the NEP estimate in the IE Energy Assessment Report is less than the NEP estimate in Seller's RFP Response, the Seller may either declare the PPA null and void or accept the IE Energy Assessment Report's NEP estimate. If the Seller accepts the IE Energy Assessment Report's NEP estimate, (i) that estimate is used to reduce the Lump Sum Payment based on the Unit Price during the first 15 months following Commercial Operations and (ii) Seller pays a one-time liquidated damage calculated on the basis of \$10/MWh of the differential between the two NEP estimates. The purpose of this liquidated damage provision was to incentivize Seller to provide a realistic NEP estimate in its RFP Response to facilitate evaluation by the Company of the various developer proposals.

G. Company's Right of First Negotiation to Purchase Facility and Other Purchase Rights

Company shall have the right of first negotiation prior to the end of the Term and option to purchase the Facility at the end of the Term, as provided in Attachment P (Sale of Facility by Seller) to the PPA.

In addition, under certain conditions in which Seller wishes to assign its interest in the Facility or effect a change in control of Seller, Company shall have a right of first negotiation to purchase the Facility from Seller.¹¹ Further, in the event that Company is subject to consolidation under FASB ASC 810, with respect to Seller and the Facility, in addition to such other efforts that may be taken by the Parties to eliminate such accounting treatment, the Parties shall effectuate a sale of the Facility to the Company.¹² Such sale shall be on commercially

¹¹ See PPA at § 19.1; PPA, Attachment P (Sale of Facility by Seller).

¹² See PPA at § 24.5; PPA, Attachment P at § 6.

reasonable terms at a Make Whole Amount or fair market value as provided in Section 24.5 (Consolidation) and Attachment P (Sale of Facility by Seller) of the PPA.

Any purchase of the Facility by Company shall be subject to application to the Commission for approval, and, prior to consummation, formal Commission approval of such purchase.

H. Compliance with Laws and Regulations

Seller is responsible for obtaining, at its expense, any and all necessary permits, government approvals, and land rights for the construction and operation of the Facility, including but not limited to rights-of-way, easements, or leases. Seller shall also install, operate and maintain the Facility safely and in compliance with all applicable Laws. Prior to commencement of construction of the Company-Owned Interconnection Facilities, Seller shall provide the necessary permits, government approvals, and land rights for construction, ownership, operation, and maintenance of the Company-Owned Interconnection Facilities.¹³

I. Site Restoration

After termination of the PPA, or if the PPA is declared null and void, upon Company's request, Seller will, at its expense, (1) remove all Company-Owned Interconnection Facilities and Seller-Owned Interconnection Facilities from the Land and recycle such Facilities to the fullest extent possible, and (2) restore the Land to its condition prior to construction. Company may elect to remove all or part of the designated Company-Owned Interconnection Facilities and/or Seller-Owned Interconnection Facilities itself because of operational concerns, in which case Seller will reimburse Company for the cost of removal.¹⁴

¹³ See PPA at §§11.1-11.3.

¹⁴ See PPA, Attachment G at § 7.

J. Company Dispatch

Pursuant to Article 8 of the PPA and Section 9(d) of Attachment B to the PPA, Company will have the contractual and operational discretion to dispatch the Facility, which includes the PV system and BESS, in Company's preferred manner. This will enable the Company to maximize the benefits of the Facility by giving Company flexibility to dispatch the Facility as needed (rather than only relying on conventional generation units), offset night-time customer demand, and assist in grid stabilization subject to discharge limits.

K. Credit Assurance and Security

Seller is required to post and maintain Development Period Security and Operating Period Security based on the requirements of Article 14.

L. Guaranteed Milestones and Commercial Operation

The Seller must meet agreed upon Guaranteed Project Milestones, including Commercial Operations, as set forth in Article 13 (Guaranteed Project Milestones Including Commercial Operations) of the PPA. Failure to meet Guaranteed Project Milestones subjects the Seller to daily delay damages and eventual termination for failure to cure.

M. Land Rights

Seller shall obtain, at its expense, any and all Land Rights required for the construction, ownership, operation and maintenance of the Facility and the interconnection of the Facility to the Company System as prescribed in Article 11.

N. Cybersecurity

Seller shall implement cybersecurity policies and standards in accordance with industry best practices and commensurate with the assessed level of risk for the Project, to include

segmenting and segregating networks and functions, hardening network devices, securing access to infrastructure, and protecting against malicious software or unauthorized code.¹⁵

O. Community Outreach Plan

To better address the significant public interest in these renewable energy projects, under Section 29.21 (Community Outreach) of the PPA, Seller was required to develop and provide a comprehensive community outreach and communications plan prior to the Execution Date that was to be made publicly available on Seller's Project-specific website for the term of the PPA. Seller is required to work with neighboring communities and stakeholders during all phases of the Project, including hosting a public meeting for the neighboring community, stakeholders, and general public to provide them with information, an opportunity to engage in a dialogue about concerns, mitigation measures, and potential benefits of the Project, and to receive their written unedited comments to be made a part of the Application. Seller must also consider the Project's potential impacts on historical and cultural resources and determine if any action should be taken to protect native Hawaiian rights.

¹⁵ See PPA, Attachment B at § 1(b)(iii)(G).

EXHIBIT 5

(Reserved)

EXHIBIT 6

Renewable Portfolio Percentage

Exhibit 6
Renewable Portfolio Percentage

Table 1 and Table 2 provide the impact to the island RPS and consolidated RPS when considering only the Project and no other proposals selected in the Stage 2 RFP process.

Table 1 – Waiawa Phase 2 Solar’s Projected Impact on O‘ahu’s RPS for Project Only

Year	Waiawa Phase 2 Solar Generation (GWh) [A]	O‘ahu Sales (GWh) [B]	Waiawa Phase 2 Solar’s Impact on O‘ahu RPS (%) [C] = [A] / [B]
2024	104.51	6,511	1.60%
2025	104.90	6,536	1.61%
2026	105.06	6,490	1.62%
2027	104.88	6,424	1.63%
2028	104.69	6,363	1.65%
2029	101.77	6,277	1.62%
2030	105.78	6,205	1.70%
2031	105.08	6,166	1.70%
2032	105.66	6,157	1.72%
2033	105.47	6,168	1.71%
2034	105.53	6,176	1.71%
2035	105.75	6,196	1.71%
2036	105.76	6,252	1.69%
2037	105.60	6,270	1.68%
2038	105.72	6,323	1.67%
2039	105.83	6,414	1.65%
2040	105.76	6,555	1.61%
2041	105.64	6,620	1.60%
2042	105.60	6,732	1.57%
2043	105.79	6,856	1.54%
Average RPS Impact			1.65%

Table 2 – Waiawa Phase 2 Solar’s Projected Impact on Consolidated RPS for Project Only

Year	Waiawa Phase 2 Solar Generation (GWh) [A]	Consolidated Sales (GWh) [B]	Waiawa Phase 2 Solar’s Impact on O‘ahu RPS (%) [C] = [A] / [B]
2024	104.51	8,518	1.23%
2025	104.90	8,527	1.23%
2026	105.06	8,466	1.24%
2027	104.88	8,388	1.25%
2028	104.69	8,327	1.26%
2029	101.77	8,229	1.24%
2030	105.78	8,157	1.30%
2031	105.08	8,124	1.29%
2032	105.66	8,137	1.30%
2033	105.47	8,168	1.29%
2034	105.53	8,200	1.29%
2035	105.75	8,251	1.28%
2036	105.76	8,345	1.27%
2037	105.60	8,389	1.26%
2038	105.72	8,476	1.25%
2039	105.83	8,603	1.23%
2040	105.76	8,790	1.20%
2041	105.64	8,885	1.19%
2042	105.60	9,039	1.17%
2043	105.79	9,206	1.15%
Average RPS Impact			1.25%

Table 3 and Table 4 provide the impact to the island RPS and consolidated RPS when considering the Project and the portfolio of proposals selected in the Stage 2 RFP process.

Table 3 – Waiawa Phase 2 Solar’s Projected Impact on O‘ahu’s RPS Including Selected Stage 2 RFP Portfolio

Year	Waiawa Phase 2 Solar Generation (GWh) [A]	O‘ahu Sales (GWh) [B]	Waiawa Phase 2 Solar’s Impact on O‘ahu RPS (%) [C] = [A] / [B]
2024	105.84	6,511	1.63%
2025	105.75	6,536	1.62%
2026	105.85	6,490	1.63%
2027	105.80	6,424	1.65%
2028	105.87	6,363	1.66%
2029	105.89	6,277	1.69%
2030	105.73	6,205	1.70%
2031	105.75	6,166	1.72%
2032	105.41	6,157	1.71%
2033	105.37	6,168	1.71%
2034	105.30	6,176	1.71%
2035	105.16	6,196	1.70%
2036	105.22	6,252	1.68%
2037	104.99	6,270	1.67%
2038	105.30	6,323	1.67%
2039	105.26	6,414	1.64%
2040	105.10	6,555	1.60%
2041	104.73	6,620	1.58%
Average RPS Impact			1.66%

Table 4 – Waiawa Phase 2 Solar’s Projected Impact on Consolidated RPS Including Selected Stage 2 RFP Portfolio

Year	Waiawa Phase 2 Solar Generation (GWh) [A]	Consolidated Sales (GWh) [B]	Waiawa Phase 2 Solar’s Impact on O‘ahu RPS (%) [C] = [A] / [B]
2024	105.84	8,518	1.24%
2025	105.75	8,527	1.24%
2026	105.85	8,466	1.25%
2027	105.80	8,388	1.26%
2028	105.87	8,327	1.27%
2029	105.89	8,229	1.29%
2030	105.73	8,157	1.30%
2031	105.75	8,124	1.30%
2032	105.41	8,137	1.30%
2033	105.37	8,168	1.29%
2034	105.30	8,200	1.28%
2035	105.16	8,251	1.27%
2036	105.22	8,345	1.26%
2037	104.99	8,389	1.25%
2038	105.30	8,476	1.24%
2039	105.26	8,603	1.22%
2040	105.10	8,790	1.20%
2041	104.73	8,885	1.18%
Average RPS Impact			1.26%

EXHIBIT 7

Site Map of Seller's Facility



EXHIBIT 8

Community Outreach Summary and Public Comments



**Waiawa Phase II Solar + Storage Project
COMMUNITY MEETING AND OUTREACH
SUMMARY REPORT**

Prepared For:
AES Distributed Energy

August 24, 2020

Background

As part of its Stage 2 Request for Proposals, AES Distributed Energy was recently selected by Hawaiian Electric Company (HECO) to develop its solar-plus-storage project in central Oahu at Waiawa near the Ka Uka Boulevard exit of the H-2 freeway, known as Waiawa Phase II Solar + Storage.

As an initial step in the process, HECO required all Stage 2 developers, including AES Distributed Energy, to conduct an online community meeting to describe the proposed project in further detail and gather input. AES Distributed Energy retained the services of Peters Communications to assist with this initiative.

This report is a summary of the strategic outreach activities leading up to, and the questions/comments received during the meeting itself as well as during the 30-day comment period that closed on August 8.

Early Education and Awareness Outreach - Elected Officials

On May 29, 2020 soon after the official selection by HECO of the Waiawa Phase 2 project, Peters Communications distributed a project factsheet (attached as Appendix A) to area elected officials. This strategy was adopted to ensure elected officials had the opportunity to learn about the project prior to the scheduling of any public meetings or media coverage so they could properly manage constituent inquiries.

Elected Officials Distribution List

Council Member Brandon Elefante
Council Member Ron Menor
Sen. Michelle Kidani
Sen. Clarence Nishihara
Sen. Breene Harimoto (office)
Rep. Val Okimoto
Rep. Greg Takayama
Rep. Ryan Yamane
Rep. Roy Takumi

Meeting Notice and Promotion

Due to social distancing requirements amidst the COVID-19 pandemic and the relatively short lead-time prior to the community meeting, the preferred strategy of actively

engaging individual leaders within the project region prior to a public meeting could not be as robustly executed as Peters Communications would typically advise.

Given these dynamics, an increased emphasis was placed on driving attendance to the meeting itself through various communications initiatives described below.

News Release/Media Advisory

As required, on Monday, June 8, 2020 a news release/media advisory (attached as Appendix B) and factsheet (Appendix A) were distributed to local media outlets 30 days in advance of the July 8, 2020 online public meeting for the Waiawa Phase II Solar + Storage project.

Media Distribution List

Civil Beat
Hawaii News Now
Hawaii Public Radio
KHON 2
KITV
MidWeek
Pacific Business News
Honolulu Star-Advertiser

Neighborhood Board and Elected Officials Distribution

In conjunction with the distribution of the news release/media advisory, AES Distributed Energy also sent a meeting flyer to the chairs and vice chairs of area neighborhood boards as well as area elected officials.

Elected Officials Distribution List

Council Member Brandon Elefante
Council Member Ron Menor
Sen. Michelle Kidani
Sen. Clarence Nishihara
Sen. Breene Harimoto (office)
Rep. Val Okimoto
Rep. Greg Takayama
Rep. Ryan Yamane
Rep. Roy Takumi

Neighborhood Board Distribution List

Chair Larry Veray, Pearl City NB No.21
Vice Chair Mitsuko Hayakawa, Pearl City NB No. 21
Chair Richard "Dick" Poirier, Mililani/Waipio/Melemanu NB, No. 25
Vice Chair Marilyn Lee, Mililani/Waipio/Melemanu NB, No. 25

Social Media – Facebook

In addition to the aforementioned news release/media advisory, AES Distributed Energy also established a dedicated Facebook page to further facilitate participation in the July 8, 2020 meeting. Community leaders and others were able to "like", "share" and visit the FB page to learn more and promote the meeting.

Advertising

As an additional promotional step, AES Distributed energy also advertised the meeting in the Honolulu Star-Advertiser on Sunday, June 28, 2020 and again on Wednesday, July 1, 2020. These ads were placed on high circulation days during the week preceding the meeting to ensure timeliness. Ad specifications: 7", three-column, full color ads (Appendix C).

Community Meeting Summary

MEETING DETAILS

Date: Wednesday, July 8, 2020

Time: 5:30 – 6:30 p.m.

Location: Zoom Online Meeting

Presenters: Nick Molinari – Senior Project Manager, AES Distributed Energy
Kirstin Punu – Community Relations Manager, AES Distributed Energy
Shane Peters – Consultant, Peters Communications

ATTENDEES

There were 45 registrants and 40 individual attendees for the meeting, representing community members as well as industry, utility, and landowner representatives.

COMMUNITY QUESTIONS/COMMENTS

Following the presentation by AES project representatives, meeting participants posed questions and comments (verbatim transcription).

- Will there be complementary activity on the site such as beekeeping, cattle grazing, food and/or landscaping plant production?
- In terms of the concrete pads, would you consider environmentally-friendly concrete options such as:
 - (1) Permeable Concrete (to allow rainwater to pass through to the ground below, reduce water runoff, and return the water to underground aquifers), or
 - (2) Carbon Sequestration Concrete (to inject CO₂ into the concrete when it's being mixed, sequestering the carbon when the concrete hardens)?
- Will the work force for the project be paid the Hawaii prevailing wages?
- Why did you choose 8 hours of storage with the batteries? Most other projects are 4 hours.
- Have you begun environmental or cultural studies for the site?
- What are your community benefits?
- You mentioned another project on this site. What project is that?
- I understand your commitment to local labor - what about union labor?
- I have some concerns re: the visual impact from the Waipio Gentry subdivision across of H2.
- Will there be any mitigation to minimize visual impact?
- Can you please share the number of attendees to this virtual meeting?

- Aloha, My name is [REDACTED] I am an active member of the Mililani Neighborhood Board, I am the Chair of the board's Military/Emergency Management/Climate Change Committee.
I was the individual who asked:

"Aloha, Mahalo for this insightful presentation.

In terms of the concrete pads, would you consider environmentally-friendly concrete options such as:

- (1) Permeable Concrete (to allow rainwater to pass through to the ground below, reduce water runoff, and return the water to underground aquifers), or
- (2) Carbon Sequestration Concrete (to inject CO₂ into the concrete when it's being mixed, sequestering the carbon when the concrete hardens)?"

Nick asked for my contact information for more information on this subject matter, he may reach me by email to [REDACTED]

Mahalo!

- Hi I represent a well-capitalized large power user [REDACTED] that has interest in partnering with an Oahu energy provider to purchase/obtain power.

Would someone be available to discuss options?

I can be reached at this email address or using the information below.

Mahalo,

- My testimony is attached (Appendix D) - The evidence is clear, that the State of Hawaii, its own DLNR- meant to protect the endangered sacred Pueo, is guilty of lying about the habitat Pueo uses.

The GREEN NEW DEAL- or rather Hawaii's Clean Energy Initiative is a farce- a hoax, and being promoted by ignorant, evil, uneducated greedy people who will rot in hell for killing by design, God's sacred being placed here to share the land with us with purpose.

The solution is ocean wave power- whereby the environment is left alone. We

don't need solar farms or wind mill farms- period.....wave oscillation is proven and will work here and protect our land, AND WAVE POWER save WILDLIFE from your asinine project.

Endangered everything has no where else to go- already existing in limited, rare habitat for them and these insane solar farm projects advanced by liberal left wing nut job Democrats simply compound the plight of the Pueo and others like the bats by extirpating all endangered and threatened wildlife from the region.

WHO WOULD EVER HAVE THOUGHT- it is the DEMOCRATS who despise wildlife and will lie for a buck to scam the people- while Republicans like me are trying to protect our wildlife.....proves how dirty the media is.

Please stop this project- in fact, to not even conduct an EIS makes you all corrupt and dirty.

No EA, no EIS- insane!! When the hell did you look for Pueo and Bats for this project? Answer: ZERO. Never. So how the hell do you know if you are wiping out their habitat? I rest my case.

Shame on all of you - take your land rape to the trash can.

Do include my testimony - attached --as I tell the truth with facts- exhibits proving you all are sick people- illustrating your ilk/ you folks are pure evil - lying through your teeth. Check out this article that exposes your ignoramus approach to energy use:

<https://cornwallalliance.org/2020/06/oahu-energy-irony-hypocrisy-or-both/>

Conclusion

AES deeply committed to continuing outreach efforts to raise awareness about the project and address issues identified by the community.

If you have any questions or concerns regarding this summary and report, please don't hesitate to contact Shane Peters at shane@peters-comm.com or (808) 421-9879.

APPENDIX A

Waiawa Phase 2 Solar + Storage

Join Us!
July 8, 2020
Virtual Community Meeting



Learn more and provide your input on an important renewable energy project in your community!

When: July 8, 2020
5:30 – 6:30 p.m.

How: Register online through Zoom
https://zoom.us/webinar/register/9715914074688/WN_jv4EIUtPTseCKd1pmDSU1A

Or, email waiawaphase2solar@aes.com to request a registration link and meeting information

Follow us on Facebook:
<https://www.facebook.com/WaiawaPhase2Solar>

What: A proposed Solar + Storage Project in Waiawa, near the Ka Uka Boulevard exit of the H-2 freeway in central Oahu.

- Capable of providing Hawaiian Electric with energy to power 18,000 homes annually
- 30 MW solar photovoltaic array
- 240 MWh battery energy storage system

Questions and comments may be emailed to the project team prior to the meeting. Questions and comments will also be taken live during the meeting via the “Zoom Webinar Q&A” function.

APPENDIX B



FOR IMMEDIATE RELEASE
Monday, June 8, 2020

Contact:
Shane Peters
808-421-9879
Shane@peters-comm.com

July 8 Online Community Meeting Scheduled for Proposed Solar and Storage Project in Waiawa

Communities near Waiawa in central Oahu including Mililani, Pearl City, Waipahu and Waipio are invited to participate, learn more and provide input

OAHU – AES Distributed Energy (AES DE) will host a virtual community meeting on July 8 for a proposed solar + storage project located in Waiawa, near the Ka Uka Boulevard exit of the H-2 freeway in central Oahu.

Area residents, businesses and interested parties are encouraged to participate in the event to learn more about the proposed project and provide their feedback.

The proposed Project will include a 60 MW solar photovoltaic array and a 240 MWh battery energy storage system (BESS), providing Hawaiian Electric with renewable energy generation capable of serving upwards of 18,000 homes annually.

Date: Wednesday, July 8, 2020
Time: 5:30 pm – 6:30 pm
Location: Register online through Zoom
https://zoom.us/webinar/register/9715914074688/WN_jv4ElUtPTseCKd1pmDSU1A
Or, email waiawaphase2solar@aes.com to request a registration link and meeting information
Email: waiawaphase2solar@aes.com
Website: waiawaphase2solar.com
Questions/Comments: Questions and comments may be emailed to the project team prior to the meeting. Questions and comments will also be taken live during the meeting via the “Zoom Webinar Q&A” function.

#

About AES Distributed Energy

AES DE currently operates more than 50 megawatts (MW) of solar and solar + storage across Hawaii, including the 28 MW/100 MWh Lawai solar + storage project on Kauai as well as another 100 MW of solar + storage projects in development on Oahu, Maui and Hawaii Islands.

AES Distributed Energy (AES DE) is a wholly owned subsidiary of The AES Corporation, a Fortune 500 and publicly traded international energy company. Our daily mission at AES DE is to bring reliable and cost-effective distributed energy systems to utilities, municipalities, corporations, schools, and commercial and industrial customers. AES DE's proven project development, financing, and operating experience empowers energy consumers to benefit from the distributed energy solutions we deliver. To learn more, please visit www.aesdistributedenergy.com. Follow AES DE on Twitter @aes_d_energy.

APPENDIX C

A14 >> HONOLULU STAR ADVERTISER >> SUNDAY 6/28/20

FROM PAGE ONE

RENTALS

Continued from A1

people are breaking quarantine to stay in illegal rentals. I would not want to see visitors in our communities, where it is more difficult to monitor them," Caldwell said Friday.

The 14-day quarantine for out-of-state passengers runs through July 31, and it is expected to extend it. However, starting Aug. 1 passengers with approved negative COVID-19 tests taken within 72 hours of their trip to Hawaii may bypass it.

The quarantine isn't very appealing to travelers, who are required to confine themselves to a designated location for two weeks after arriving in Hawaii or face up to one year in jail and a \$5,000 fine.

Properties hit hard

While Hawaii's entire visitor industry is struggling, vacation rentals, especially on Oahu, have been among the hardest hit.

Only 9% of short-term units statewide were occupied in May, a month when emergency bans were active on all islands and occupancy experienced a 61.7 percentage-point drop, in comparison, Hawaii hotels, which are deemed essential businesses, were more than 18% occupied last month.

The loosening of emergency restrictions on Maui, Kauai and Hawaii Island already have bolstered performance on the neighbor islands. Given there's pent-up demand for vacation rentals in Hawaii and nationwide, further momentum is expected from the Aug. 1 testing program.

Loosening tourism restrictions have provided an opportunity for the closed Hokulea — A Timbers Resort, to reopen Wednesday, said Gary Moore, managing director of the 450-acre Kauai resort, which includes 47 luxury vacation rental residences and 72 two-share units.

"We were impacted by the fact that people couldn't come here," Moore said. "We shut down at the end of March like almost every other resort on Kauai. We had to furlough 180 out of 200 staff members. Now, we're taking a leap of faith. We're reopening the resort, Hualani's restaurant and our golf course. We've already brought back 50 employees and that number is increasing every day."

Andrea Grigore, vice president of property man-

VACATION RENTAL MELTDOWN

Hotels have been devastated by the drop in travel demand amid COVID-19 fears and government lockdowns, but at least they are essential businesses under emergency orders. Nearly all vacation rentals, even the legal ones, were sidelined for all of April and May. The emergency orders on vacation rentals were loosened in some counties in June, but they remain sidelined on Oahu.

State of Hawaii	Unit supply			Unit demand			Unit occupancy			Unit average daily rate		
	2019	2020	% change	2019	2020	% change	2019	2020	% change	2019	2020	% change
Oahu	120,823	314,668	+61.6%	11,278	225,954	+95.0%	9.3%	71.8%	+62.5%	\$148.18	\$281.05	+47.3%
Makaha	62,152	128,955	+51.8%	6,341	97,952	+93.5%	10.2%	76.0%	+65.8%	\$122.68	\$266.94	+54.0%
Miami County	104,781	232,119	+62.9%	7,511	214,740	+96.5%	7.2%	76.1%	+68.9%	\$242.93	\$396.57	+38.7%
Wailea/Kehi	42,507	136,623	+68.9%	2,682	104,460	+97.6%	5.8%	76.5%	+70.6%	\$201.04	\$378.70	+46.9%
Lahaina/Kaanapali/ Napili/Kapalua	47,319	110,598	+57.2%	3,894	84,751	+95.4%	8.2%	76.6%	+68.4%	\$282.28	\$445.39	+36.6%
Hawaii Island	74,177	214,291	+65.4%	7,676	131,551	+94.2%	10.3%	61.4%	+61.0%	\$144.46	\$281.56	+48.7%
Kona	31,869	98,296	+67.6%	3,280	65,419	+95.0%	10.3%	66.6%	+56.3%	\$147.79	\$258.85	+42.9%
Hilo/Honokaa	20,094	49,768	+69.6%	2,703	28,042	+99.4%	13.5%	56.3%	+42.9%	\$100.01	\$164.76	+39.3%
Kauai	26,395	115,120	+77.1%	4,155	85,992	+95.2%	15.7%	74.7%	+59.0%	\$258.58	\$457.17	+43.4%

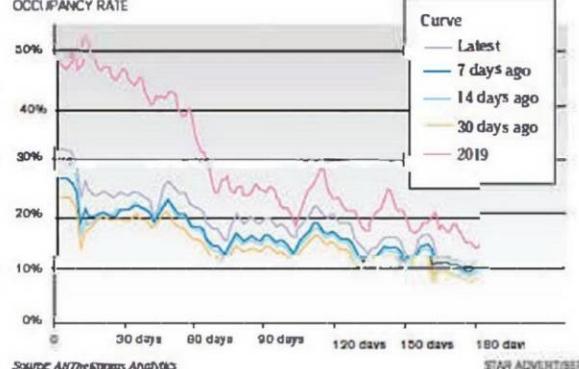
Source: Hawaii Tourism Authority

SLIGHT AIRBNB REBOUND

Although Hawaii 90-day Airbnb occupancy rates have recovered significantly in the past few months, they are still far from 2019 levels. As of June 21, 90-day Airbnb occupancy rates reached 23.5%, a week-on-week growth of 17.4% and a month-on-month growth of 31.4%. Compared to the previous year, 90-day occupancy rates in Hawaii are still down 39.5%.

Booking Index

OCCUPANCY RATE



Source: AllTheRooms Analytics

agement for Elite Pacific Properties, which manages approximately 300 short-term and 400 long-term properties statewide, said the company's vacation rental business is starting to show signs of recovery.

"New bookings have been climbing steadily for three weeks in a row, and while we still have a long way to go before we catch up to last year, we are finally on the path to recovery," Grigore said.

To be sure, AllTheRooms

Analytics' Forward Booking Index notes a rebound of Airbnb bookings in popular U.S. vacation rental destinations, including Hawaii — though it's near the bottom.

According to AllTheRooms, Airbnb's 90-day occupancy rates in Hawaii are down 39.5% from 2019. In comparison, nationwide occupancy during the same period only dropped 2.5% during the

same period.

While other counties are showing vacation rental improvements, Oahu's vacation rental industry is likely to continue bottoming out unless Caldwell has a change of heart.

Still, Grigore said even on the neighbor islands vacation rentals are not being treated equally to other businesses in the accommodations sector.

"While the mayors of Kauai, Big Island and Maui have allowed legal vacation rentals to reopen to guests who do not have to quarantine, visitors from out-of-state must quarantine in a hotel or motel before being allowed to stay in a vacation rental," she said.

For these reasons and others, Grigore and other property managers across the state are forming ahui of licensed professional managers to advocate for legal vacation rentals.

"Mayor Caldwell's glaring omission of legal vacation rentals from any reopening plans on Oahu is discriminatory against lawfully operating, tax-paying vacation rental owners and operators," Grigore said. "The obvious consequence of this is it's causing severe economic hardship for individual owners of vacation rentals as well as vacation rental management companies."

Another local member, Munro Murdoch, founder of Love Hawaii Realty and Love Hawaii Villas, said vacation rental losses, especially on Oahu, are mounting.

"From the end of March through June, we've lost \$300,000 as a management company for 30 owners," Murdoch said. "We're projecting well over \$2 million in losses for our owners."

He said unemployed hotel workers have gotten lots of attention but vacation rental industry employees also are struggling.

"I was initially able to bring 15 employees back to work with Paycheck Protection Program funds, but they've run out and my employees are laid off again," he said.

Other islands also have struggled to control the spread of illegal vacation rentals with varying degrees of success. Kauai County had a breakthrough Thursday when it entered into a memorandum of understanding.

standing with Expedia, which includes VRBO and HomeAway under its umbrella.

Amanda Pedigo, Expedia Group's vice president of government affairs, said Friday, "I don't recall us having a voluntary and proactive MOU with any location in North America that leads to balanced vacation rental policy that allows tourism to continue to thrive."

"We consider this to be the first step in a long partnership with Kauai to make sure that listings in Kauai are and continue to be permitted," she said.

Expedia has agreed to require that Kauai hosts provide a tax-map key property identification number to advertise on its hosting platform and to provide the county with monthly reports that include these numbers. If the county finds that a vacation rental has provided an invalid TMK or a TMK that isn't in a zone that allows vacation rentals, Expedia has agreed to remove the listing.

Grigore, who lives on Kauai, said she is a proponent of regulating illegal vacation rentals and supports the intent of the MOU between the county and Expedia Group, but has concerns about maintaining privacy and security for owners if the TMKs are publicly advertised.

"Expedia Group and other online travel agencies could collect the TMKs, permit numbers and tax ID numbers from each vacation rental owner and supply that information to the county without making this information public," Grigore said.

However, Larry Bartley of Save Oahu's Neighborhoods, said he's been "receiving complaints from the North Shore, Kahu, Waipahu residents that temporarily empty illegal vacation rentals are now filling up again and that the tourist are not quarantining."

Other islands also have struggled to control the spread of illegal vacation rentals with varying degrees of success.

Kauai County had a breakthrough Thursday when it entered into a memorandum of understanding.

"This is a good step in the right direction," Bartley said. "Can you imagine booking a hotel room that refused to divulge its location until after a deposit?"

"We are reviewing options including Kauai's agreement," Caldwell said.

Bartley said he'd like Oahu to consider entering into a similar agreement as Kauai.

"It's a good step in the right direction," Bartley said. "Can you imagine booking a hotel room that refused to divulge its location until after a deposit?"

Walawa Phase 2 Solar + Storage

Join Us!

July 8, 2020

Virtual Community Meeting



Learn more and provide your input on an important renewable energy project in your community!

WHERE: July 8, 2020
5:30 – 6:30 p.m.

HOW: Register online through Zoom: <https://zoom.us/webinar/register/F015814074288471420?pwd=ZzCKd1pmDSU1A>
Or email: walawa.phase2solar@gmail.com to request a registration link and meeting information

Follow us on Facebook: <https://www.facebook.com/WalawaPhase2Solar/>

WHAT: A proposed Solar + Storage Project in Waianae, near the Ka Iku Boulevard end of the H-2 Freeway in central Oahu.

- Capable of providing Hawaiian Electric with energy to power 18,000 homes annually
- 30 MW solar photovoltaic array
- 240 MWh battery energy storage system

Questions and comments may be emailed to the project team prior to the meeting. Questions and comments will also be taken live during the meeting via the "Zoom Webinar Q&A" function.

AES 



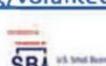
SCORE

Retired Entrepreneurs & Executives Share Your Expertise

BECOME A VOLUNTEER

Give Back To Your Community By Helping Local Entrepreneurs Start and/or Improve Their Businesses

Information/sign up: hawaii.score.org/volunteer

SCORE 

National Report



ASSOCIATED PRESS

GPS satellite heads into space

SpaceX on Tuesday launched the military's newest, most accurate GPS satellite after a two-month delay due to the pandemic. The Falcon 9 rocket blasted off at Cape Canaveral Air Force Station in Cape Canaveral, Fla., carrying the U.S. Space Force's new satellite.

Governor makes removal of divisive flag official

JACKSON, MISS. — Just a few weeks ago, as Mississippi lawmakers mobilized to take down the only state flag in the nation with the Confederate battle emblem embedded into it, Gov. Tate Reeves said the choice was not theirs to make.

"It should be the people who make that decision," Reeves told reporters then. "not some backroom deal by a bunch of politicians in Jackson."

But on Tuesday, Reeves signed into law a measure that removes the flag that has flown over the state for 126 years and been at the heart of a conflict Mississippi has grappled with for generations: how to view a legacy that traces to the Civil War.

The legislation mandates the "prompt, dignified and respectful" removal of the flag, which features the blue bars and white stars of the Confederate battle flag, within 15 days.

A commission will be charged with introducing a new flag design by September that could be included on the November ballot.

Mom of missing children faces new felony charges

BOISE, IDAHO — Prosecutors say the mother of two children who were found dead in rural Idaho months after they vanished in a bizarre case that captured worldwide attention had conspired with her new husband to hide or destroy the kids' bodies.

The new felony charges against Lori Vallow Daybell came late Monday, the latest twist in a case tied to the mysterious deaths of the couple's former spouses and their beliefs about zombies and the apocalypse that may have affected their actions.

A judge set Daybell's bail at \$1 million Tuesday during her first court appearance on the new felony charges. If convicted, she could be sentenced to up to 10 years behind bars.

Workers begin to clear protest zone of obstacles

SEATTLE — Seattle city crews used heavy equipment Tuesday to remove makeshift barriers around the city's "occupied" protest zone following two fatal shootings in the area.

Demonstrators dragged couches and other items to replace the structures, but those were largely gone later Tuesday.

Seattle police Assistant Chief Adrian Diaz said the large makeshift barriers would be removed in incremental steps to allow traffic to move through portions of a road that had been closed off.

People have occupied several blocks around a park and the Seattle Police Department's East Precinct for about two weeks after police abandoned the building following standoffs and clashes with protesters calling for racial justice and an end to police brutality.

Seattle police Assistant Chief

Adrian Diaz said the large makeshift

barriers would be removed in in-

cremental steps to allow traffic to

move through portions of a road that

had been closed off.

'It could get very bad,' Fauci warns lawmakers

By Sheryl Gay Stolberg
New York Times

WASHINGTON — The government's top infectious disease expert said Tuesday that the rate of new coronavirus infections could more than double to 100,000 a day if current outbreaks were not contained, warning that the virus' march across the South and the West "puts the entire country at risk."

Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, offered the grim prediction while testifying on Capitol Hill, telling senators that no region of the country is safe from the virus' resurgence. The number of new cases in the United States has shot up by 80% in the past two weeks, according to a New York Times database, with new hot spots flaring far from the Sun Belt epicenters.

"I can't make an accurate prediction, but it is going to be very disturbing, I will guarantee you that," Fauci said. "Because when you have an outbreak in one part of the country, even though in other parts of the country they are doing well, they are vulnerable."

NEW FLASHPOINTS have weighed down talk of a resumption of normal life and a quick economic rebound. The chairman of the Federal Reserve, Jerome H. Powell, issued his own gloomy assessment cautioning lawmakers Tuesday of an "extraordinarily uncertain" moment facing the U.S. economy.

"Full recovery is unlikely until people are confident that it is safe to reengage in a broad range of activities," Powell told a House committee, adding that a second wave "could force people to withdraw" and "undermine public confidence, which is what we need to get back to lots of kinds of economic activity that involve crowds."

The twin hearings on Capitol Hill mirrored concerns, rolling states where hospitalizations are rising, intensive care units are filling up and business establishments are again shutting their doors.

Fauci particularly implored



Dr. Anthony Fauci cleaned his hands Tuesday as he prepared to testify before a Senate Health, Education, Labor and Pensions Committee hearing on Capitol Hill

close again. In Texas the bar closures spurred protests Tuesday at the state Capitol and the governor's mansion.

In Arizona, officials identified more than 4,600 new coronavirus infections Tuesday, by far the state's most in a single day. California's case count has soared, surpassing 220,000 known infections.

With the virus not under control in the United States, the European Union announced Tuesday that it would open its borders to visitors from 15 countries — but not from America.

Even states that had reported improvements are starting to see the number of new cases rise, causing governors to refine their plans to get residents back to work.

"We are now having 40-plus-thousand new cases a day. I would not be surprised if we go up to 100,000 a day if this does not turn around," Fauci testified, adding, "I think it is important to tell you and the American public that I'm very concerned because it could get very bad."

Fauci and Redfield were among four top government doctors involved in the coronavirus response to testify Tuesday. Adm. Brett P. Giroir, assistant secretary for public health, and Dr. Stephen Hahn, commissioner of food and drugs, also appeared.

The official topic of Tuesday's hearing was how to get children safely back to school, but there seemed to be no agreement on that and no universal plan to do so.

Seaside Hotels

HAWAII

MAUI KONA HILO

KOMO MAI!

WELCOME BACK!

SANITIZED AND REFRESHED

NEW HEALTH & HYGIENE MEASURES

EXCLUSIVE KAMA'AJINA DEALS

REOPENING JULY 8!

MAUI SEASIDE

(808) 877-3311 www.mauiseasidehotel.com

KONA SEASIDE

(808) 329-2455 www.konaseasidehotel.com

REOPENING LATE SUMMER

HILO SEASIDE

(808) 935-0821 www.hiloseasidehotel.com

Locally Owned

PROUDLY • HAWAIIAN

[Facebook](https://www.facebook.com/maui-seaside-hotel-1000000000000000/) [Instagram](https://www.instagram.com/maui_seaside/) [Twitter](https://www.twitter.com/maui_seaside/)

Waiawa Phase 2 Solar + Storage

Join Us!

July 8, 2020

Virtual Community Meeting




Learn more and provide your input on an important renewable energy project in your community!

WHERE: July 8, 2020
5:30 – 6:30 p.m.

HOW: Register online through Zoom
https://zoom.us/webinar/register/971591407468/WN_jwELM97eGKd1pm0fSUHA
Or email waiawalp@hawaii.rr.com to request a registration link and meeting information

Follow us on Facebook: <https://www.facebook.com/WaiawaPhase2Solar>

WHAT: A proposed Solar + Storage Project in Waiawa, near the Ka Ika Boulevard exit of the H-2 freeway in central Oahu.

- Capable of providing 1 Hawaiian Electric kWh energy to power 18,000 homes annually
- 30 MW solar photovoltaic array
- 240 MWh battery energy storage system

Questions and comments may be emailed to the project team prior to the meeting. Questions and comments will also be taken live during the meeting via the "Zoom Webinar Q&A" function.

 AES
we are the energy

APPENDIX D

RE: REQUEST FOR ASSISTANCE TO ACCESS RECORDS (U RFA-P 20-19)

PREFACE

Hawaii's Attorney General Ms. Clare Connors opined in 2019 that the University of Hawaii West Oahu Non-Campus Private Development Land (UHWO/herein property) was properly assessed for pueo inhabitation in 2007 when the Final Environmental Impact Statement for the undeveloped state-owned property was executed and the results affirmed no pueo or its habitat was present. Subsequently, findings from recent survey(s) 2017/2018 by Project Pueo re-affirmed conditions have not changed. Therefore, per Connors, the property has been correctly classified as being void of pueo inhabitation and as such, no protective and or preservation measures are required to mitigate for pueo in preparation for the deveopment slated.

*See letter dated February 26, 2019 by Attorney General Clare Connors
to State Representatives Rida Cabanilla and Bob McDermott
<https://www.flipsnack.com/F6DAEF5BDC9/re-joint-pueo-ltr-to-ag.html>*

In contrast, Mr. Michael Kumukauoha Lee had advanced a narrative of the property that contradicted the assessment by Ms. Connors. Ms. Connors formulated her assesment on the information provided to her by Chair of Department of Land and Natural Resources (DLNR), Ms. Suzanne Case. Mr. Lee and I provided hundreds of hours of video and photographic documentation to Ms. Case spanning the period from September 2015 to December 2, 2019, that depicted multiple pairs of pueo active in a courship breeding ecology on the property- especially during the Fall Season. Ms. Case rejected the evidence, stating it carried "no weight, had no merit, and the claim pueo were at UHWO, a baseless claim."

Mr. Lee passed away on August 31, 2019, and provided the following message on my telephone answering machine that I discovered after his passing. His message revolved around the DLNR & Project Pueo not providing the data and specific details to how their Pueo studies (surveys) were conducted that had concluded: "...no Pueo utilize the property."

Video capture of call by Michael Lee August 2019: <https://www.youtube.com/watch?v=Z1d9I8df3As>

**AMEND THIS BILL PLEASE- BY TAKING THE PROPOSED HB2629 (2018) and making that
property at UHWO serve and satisfy the intent of SB2755- the sound, prudent, responsible
thing to do.**

The following is a brief of a complaint to OIP that involves the last study- Project Pueo, of which researchers are in hiding and refuse to disclose their methodology, protocol and release the data as requested.

Mahalo



Page 2

REQUEST FOR APPEAL WITH OFFICE OF INFORMATION PRACTICES
on the grounds DLNR did not address all matters of importance that effects
the very viability and existance of the pueo at UHWO in the
taxpayer funded Project Pueo exercise that was used as
the vehicle to justify the extirpation of the species.

The response by DLNR to answer questions regarding survey protocol deployed to the property to assess for pueo inhabitation are as follows:

1. Provide illustration and or map of where observer in survey exercise was stationed on property.

Status: DLNR provided GPS coordinates. This satisfies this segment of the inquiry since Project Pueo did not utilize any maps in their Reports.

Note: GPS coordinates provided in the EXCEL FILE of the Report substantiated the observer(s) not only failed to cover the areas where five nesting sites were documented by Mr. Lee, but also reveal that the observer(s) who were informed where to look for pueo by Mr. Lee, intentionally avoided those sites. This is very disturbing and most alarming- a sign of malice.

Conclusion: After being sent over one hundred videos of where pueo are on the property and provided with maps where to locate them, Project Pueo instead of taking heed, purposly shunned those sites and per the Report, never walked around, near, or through the five nesting sites for any observation exercise per the Report. Pueo feathers, germinating from both adult and fledgling, were often present at the five nesting sites for quantification and left intact by Mr. Lee in situ for the observers to identify and record.

Mr. Lee, on January 1st of 2018, performed a **Chant to Pueo** exactly where the Pueo have been witnessed for years as engaging in courting activities. This was the site where in the early morning hours from 4am to just before 7am, during the Fall Season, one could watch pairs of Pueo chase each other and flap their wings in mid-air as displays of courtship behavior.

Chant to Pueo @ Courting/Mating Site UHWO
<https://www.youtube.com/watch?v=d9yoxIGeNCA>

The aforementioned video was provided to Project Pueo in January of 2018 – however, per the GPS coordinates given by Project Pueo, it is clear, Project Pueo when on the property in 2018, ensured they avoided that very spot 100% in every and all observation exercises. This too, is another sign of malice as embraced by Project Pueo and its team of researchers that used our tax dollars to advance a false narrative that Project Pueo executed a thorough, extensive, and methodical survey for Pueo inhabitation on the property.... when the truth is, they did not.

Page 3

DLNR Chair Suzanne Case informed Attorney General Connors in the February 26, 2019 letter, that the property was surveyed for nests as well as for a courting and breeding ecology. Mr. Li states here, that is not accurate and as such, no survey to examine the property for nests and for a courting/breeding ecology actually transpired on the property.

Email from Mr. Li (DLNR) illustrating a conflict in the validity of the Report:

From: Li, Bin C <bin.c.li@hawaii.gov>
To: [REDACTED]
Sent: Thursday, January 9, 2020, 03:13:56 PM HST
Subject: RE: [EXTERNAL] Re: Your record request re UHWO Pueo project

Aloha [REDACTED]

The survey protocol was the same for both studies except for the second phase we were looking for signs of breeding such as wing clapping or prey provisioning to then hopefully find nests to monitor.

We never did find a nest or prey provisioning.

We also did some daily activity surveys where we surveyed for longer periods of time to get an indication of Pueo daily activity, **but these surveys did not occur on UHWO lands.**

Hope this info helps. Thank you.

Bin C. Li
Administrative Proceedings Coordinator
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Tel 808-587-1496, Fax 808-587-0390
Bin.C.Li@hawaii.gov

Page 4

Historical Context: In 1996, the State of Hawaii, after receiving an estimated 1,300 acres of fallow farmland to be added to its inventory- acreage that included the UHWO property, ordered a Biological Survey to see what plants and animals were present. This survey was conducted by Mr. Ken Nagata. Nagata stated he found owl pellets and turned them over to DLNR, of whom DLNR had jurisdiction of the entire 1,300 acres- DLNR was the property owner at that time.

FACT: DLNR refused to examine the pellets to determine if they were of pueo or barn owl origin.

This neglegence, or rather motive by DLNR to not give the pueo standing and extend its rightful protective measures on the property began in 1996 when Nagata concluded that the property “Would make an excellent bird refuge.” Unfortunately, DLNR ignored those findings.

DLNR responded to Nagata’s calling to protect that habitat with approving its destruction in the Final Environmental Impact Statement (FEIS) for the property. DLNR signed the FEIS in 2006 checking off a box that reads: No endangered or threatened species use the property and therefore, with no habitat present to serve any species of concern to the State on the property, DLNR approves the property being fully developed.

From the beginning of time, to August of 2017, DLNR never set foot on the property to determine for itself, if endangered plants and animals are on the property. When Nagata turned over the owl pellets to DLNR in 1996 for DLNR to examine - with the purpose to determine if the endangered Pueo were active on the property, DLNR discarded the pellets and disssed any and all potential of the property having worth to the endangered species.

To add injury, DLNR had signed off on the property in 2006 as being classified as “wasteland” in the FEIS- claiming the property in totality, served no purpose for wildlife.

Comment/Summary: When the raw, fallow agricultural land on the property sat idle for over 20-years, it blossomed into a haven for wildlife. Tall grasses and old growth trees lined the gulches and a 150-acre patch of a dense foliage thicket had matured. Nagata quantified over 18 species of birds - including the indigenous Black Crowned Night Heron using this dense foliage on the property where Kaloi Gulch converges with Hunehune Gulch.

Nagata was prohibited from investigating Pueo nests per his contract, and as such, when he found the owl pellets, he was elated- ecstatic, and went to the trouble to collect the pellets, bag them, and turn them over to DLNR for study to see if generated from the Pueo. For DLNR to ignore that effort, exhibits a pattern of deceit, fraud, and ill-will- nothing short of acting in bad faith.

This is why the request for where on the property did the survey by Project Pueo transpire is so important- since such question has revealed an answer- the answer being that DLNR refused to examine the Kaloi Gulch/Hunehune Gulch convergence area where DLNR was informed where to go.....and per the OIP complaint, we now know Project Pueo failed to cover the areas where Pueo were historically witnessed via the GPS coordinates provided by Project Pueo.

Page 5

2. Identify participants permitted on property for survey- what were their credentials and why and or how were these individuals chosen to participate in the survey conducted?

Status: DLNR provided initials of those on the property that participated. Listing of complete names are not necessary. However:

Lacking are listing the credentials of the participants for all survey exercises at UHWO. **I still request an answer to this inquiry.**

Lacking are the explanation of the procedures that allowed pre-selected member(s) of the community to be invited for the study.

Unanswered: How were participants from the public chosen for the study and what was the basis for excluding me from the study- with myself having firsthand accounts of where the pueo are? Such inquiry has gone unabated and **I still request an answer.**

I had obtained thousands of hours of time-lapse photography of Pueo @ UHWO- with an example here: <https://www.youtube.com/watch?v=GiHOev2uh7U>

In addition, I was constantly on the property- for both pre-sunrise and post-sunset periods, and was on the property on the dates Project Pueo claims they were on the property. And from my experience, no one from Project Pueo was actually on the property where the Pueo were - maybe they sat in their car, **for the Report does not disclose if the observer walked the property, or stayed stationary in one spot and I still request an answer.**

Mr. Lee and I had positioned 20-trail cameras around the nesting sites- cameras with wide angle lenses and with motion detectors taking a photo every ten-minutes, 24-hours a day, seven-days a week, for roughly three years. No personnel with Project Pueo were ever recorded as anywhere near the five known nesting sites. With this data, I honestly believe Project Pueo either acted with malice, or negligence, since certainly, the cameras would have captured their presence, and they did not, ever. Rather, the cameras picked up farmers and their tractors in motion besides wildlife.

What we do know, is Project Pueo never visited the five known nesting sites on the property per the GPS data.

Comment/Summary: It appears DLNR does not want to answer the OIP complaint regarding why Project Pueo refused to collaborate with me, and instead, chose to solicit KW who I contend, had no expertise and no firsthand evidence to warrant KW be the chosen one to contribute to the survey. *So why did Project Pueo pick KW and not me to help Project Pueo find Pueo on the property? I still request an answer as to why I was not allowed to participate with Project Pueo in the survey exercises.*

Page 6

3. Explain why the survey/study ceased in April of 2018 for the property and why Project Pueo failed to conduct the courting /breeding ecology aspect for the property during the Fall Season of 2018?

Status: DLNR came to UHWO three times in 2017 during the Fall Season - with no exercise thereof to examine the property for any nests, and or courting and or breeding ecology during that time.

So why did DLNR, having a 100% sighting rate of Pueo on the property in August of 2017, refrain from returning to the property in the Fall of 2018 to conduct the more extensive research? Why was UHWO excluded from the more detailed, in-depth survey? Who made that decision and on what grounds when DLNR had exhibited a 100% sighting rate in August of 2017 to work with for the next phase of the survey during the Fall of 2018?

On August 18, 2016, a town hall meeting was held on the pueo @ UHWO. In attendance were DLNR and USFWS that were shown evidence of pueo on the property by Mr. Lee. **During the course of the meeting, DLNR and USFWS stated they will not visit the property to observe for pueo unless they get funding to do so.**

Michael Kumukauoha Lee informs DLNR/USFWS pueo at UHWO on 8/18/2016
<https://www.youtube.com/watch?v=sfW8FG11XiI>

DLNR responds by stating, "We will not send any personnel from DLNR to the property."

USFWS states protocol/ inventory to be deployed needs to be YEAR-ROUND to be accurate- to cover all seasons.

At 3:42 in video, observation protocol is to be year-round and include ALL SEASONS- yet, Project Pueo failed to adhere to this protocol, why?

<https://www.youtube.com/watch?v=NR4v7TzkAmQ>

With the aforementioned information, it was expected that DLNR would adhere to a protocol and conduct observation exercises in equal fashion over the changing seasons- and not omit one season over another from its study.

Lacking are the explanation as to why the property was not included in any survey protocol during the Fall Season of 2018 and **I still request an answer.**

Lacking are the explanation as to why DLNR Chair Ms. Suzanne Case made the claim to Attorney General Clare Connors that pueo were not observed as present on the property when per Project Pueo, Project Pueo came to the property twice during the Fall Season in 2017 and on both visits, quantified and confirmed pueo are indeed on the property- a 100% sighting rate was substantiated for the property over the Fall Season- yet, DLNR advanced a falsified, fraudulent narrative, that the property had been void of any sightings as told to the Attorney General.

Page 7

Lacking are an explanation as to when did funding for Project Pueo- or any Pueo surveys or research efforts come to an end for the island of Oahu? **I still request an answer.**

Fact: Project Pueo came to the property only three times during the Fall Season in 2017- with two in August, and one visit in November. Project Pueo refused to go to UHWO during the Fall months of September and October in 2017, and avoided UHWO in totality for all of 2018 after April.

The schemata/chart below was not included in the Reports. It was through the OIP effort, that DLNR finally disclosed how lopsided and flawed its protocol was:

	A Site	B Date	C Pueo Observed Outside Survey?	D Pueo Observed During Survey?	E Courtship Seen?	F Survey Type?	G GPS coordinates	H Start Time	I Start (n)	J Stop Time	K Stop (n)	L Minutes	M Observers	N Cloud Cover	O Rain	P Wind	Q Species	R First observation of the day	S Detection Start Time
1																			
2	UHWO	8/2/17	N	Y	N	Evening	21.35117°N, 158.05527°W	18:00	1080	19:32	1172	92	JC, KW	MC	None	2	Pueo	Yes	19:34
3	UHWO	9/19/17	N	Y	N	Evening	21.35117°N, 158.05527°W	17:30	1050	19:00	1140	90	JC, KI, JH	PC	None	3	Pueo	Yes	18:55
4	UHWO	11/6/17	N	N	N	Evening	21.35117°N, 158.05527°W	16:50	1010	18:20	1100	90	JC, KD, SW	Clear	None	4			
5	UHWO	1/9/18	N	N	N	Evening	21.34739 N, 158.05822 W	16:33	993	18:30	1110	117	SW						
6	UHWO	1/9/18	N	N	N	Evening	21.35117°N, 158.05500°W	16:22	982	18:30	1110	128	KD	Mostly Clou Light Drizzl	3				
7	UHWO	1/11/18	N	N	N	Evening	21.34784 N, 158.05378 W	16:50	1010	18:40	1120	110	AS	Clear	None	2			
8	UHWO	1/17/18	N	N	N	Morning	21.34784 N, 158.05378 W	6:36	396	7:15	435	39	KD	Partly Clou None	3				
9	UHWO	1/20/18	N	N	N	Morning	21.34657 N, 158.05505 W	6:33	393	7:15	435	42	KD	Mostly Clou None	3				
10	UHWO	1/30/18	N	N	N	Morning	21.34739 N, 158.05820 W	6:35	395	7:25	445	50	KD	Partly Clou None	2				
11	UHWO	2/17/18	N	N	N	Evening	21.34552 N, 158.05822 W	17:59	1079	19:15	1155	76	KD	Partly Clou None	3				
12	UHWO	3/2/18	N	N	N	Evening	21.35118 N, 158.05504 W	17:49	1069	19:14	1154	85	KD	Mostly Clou None	3				
13	UHWO	3/7/18	N	N	N	Evening	21.35118 N, 158.05504 W	18:01	1081	19:11	1151	70	KD	Partly Clou None	5				
14	UHWO	3/10/18	N	N	N	Evening	21.35118 N, 158.05504 W	17:41	1061	19:26	1166	105	KD, LR	Partly Clou None	5				
15	UHWO	3/26/18	N	N	N	Evening	21.35118 N, 158.05504 W	17:48	1068	19:16	1156	88	KD	Partly Clou None	4				
16	UHWO	4/5/18	N	N	N	Evening	21.34784 N, 158.05378 W	18:03	1083	19:32	1172	89	KD, LR	Partly Clou None	4				
17																			

Fact: Pueo rotate its inhabitation sites in accordance with the changing seasons. It was proven by Mr. Lee and myself, that if an accurate and thorough inventory/observation exercise was to transpire for Pueo on the property, it needs to be performed during the Fall Season when Mr. Lee and I had proven that is the season the pueo utilize the property for a courting and breeding ecology.

Mr. Lee and I proved the Pueo are absent on the property after mid-December- with the Pueo taking a hiatus from UHWO for some five-months and return to find a mate in late June, and then engage in courting in August, and then raise a brood through September, October. Beginning in late November, sightings start to become less frequent and that is when activity slows down.

During late December through May months, Mr. Lee and I tracked the Pueo that used to be at UHWO during the Fall Season, moving on to Ho'opili property to the north and east of UHWO- whereby the Pueo would forage up Honouliuli Stream.

Predominately, the Pueo would only come to UHWO during the Winter/Spring season to “raid” the nests of barn owls and my cameras picked that activity up- with the visits being short stints, and most rare. Once fed, the Pueo would leave the property and not hang around during these months. **Why Project Pueo focused 40% of its time in the field on just one of the most unproductive months in the calendar year, January, proves the protocol used was amateurish, and not fully thought out/most incomplete.**

Project Pueo relied upon the January month as the main thrust for the basis of their surveys. And with that protocol, had demonstrated an inferior, flawed study methodology was used to improperly conclude, “No Pueo use the property.”

Page 8

Had Project Pueo exercised the same effort in the Fall Season as they had done for the month of January, such as visit the property six times in either the August, September, October, November months respectively, the observers would have recorded what I recorded- hundreds of hours of Pueo chasing each other with multiple pairs on the property seen in every direction near the five nesting sites and definitely engaged in a courting /breeding ecology.

Here is one of many examples of Pueo engaged in courting activity- with the chase, wing flaps, and overhead displays/dancing in air- performed during the Fall Season of 2017- **thus, why didn't Project Pueo, after seeing the Pueo in August of 2017, stick it out and remain on property for the complete Fall Season of 2017?** Instead, Project Pueo enacted a cease and desist policy to ensure no further examination of Pueo shall transpire in the Fall Season.

Had Project Pueo observers remained on the property, they would have recorded this- and such event as depicted here, would be the new narrative from DLNR to the Attorney General:

"What we have here, is proof Pueo are using UHWO as a courting ecology."

****September 16, 2017 /Courting Ecology Exhibit ****
<https://www.youtube.com/watch?v=mOP53byydds>

(I have dozens of videos covering the June through July months as well, but such are examples within the Summer Season, and for purposes here, the scope of subject is to include the Fall Season of 2017 to substantiate DLNR should have executed the more in-depth courting and breeding ecology survey for this property and done so in the Fall Season.)

Many of the videos listed here contain Pueo flying out of their nesting spots- like the September 9th video demonstrates.



The September 14, 2017 video illustrates the destruction of two Pueo nesting sites – whereby UHWO Chancellor Benham after being shown videos of Pueo active in their nests, immediately had ordered the area used by the Pueo to be defoliated in its entirety. Every old growth tree you see in these videos, was eventually cut down by Benham- every blade of grass removed. Truly, a spiteful act.

August 1, 2017 https://www.youtube.com/watch?v=63VGel6iH5Y	September 14, 2017 https://www.youtube.com/watch?v=BDjLE1Jn4zs
August 6, 2017 https://www.youtube.com/watch?v=fbC5od6ZnEo	September 20, 2017 https://www.youtube.com/watch?v=iSJUfj9Fknk
August 7, 2017 https://www.youtube.com/watch?v=rkvjLtaYx8	September 23, 2017 https://www.youtube.com/watch?v=czbgy2h0Gs
August 7, 2017 https://www.youtube.com/watch?v=hB5CodSYjlg	September 25, 2017 https://www.youtube.com/watch?v=LF3zIjhm6zU
August 10, 2017 https://www.youtube.com/watch?v=OH3iOLrpToA	September 28, 2017 https://www.youtube.com/watch?v=J5fjfbZatrs
August 18, 2017 https://www.youtube.com/watch?v=9fQTWOLsNj0	September 30, 2017 https://www.youtube.com/watch?v=FPm4pRVFFcs
August 20, 2017 https://www.youtube.com/watch?v=lizZJK3hNAA	October 3, 2017 https://www.youtube.com/watch?v=E2gjqMXFi8Q
September 5, 2017 https://www.youtube.com/watch?v=P2kv6PlckL8	October 4, 2017 https://www.youtube.com/watch?v=ghTgAtQEzCQ
September 6, 2017 https://www.youtube.com/watch?v=xJY4Fw9-F4	October 14, 2017 https://www.youtube.com/watch?v=SgsYEX6wUhE
September 9, 2017 https://www.youtube.com/watch?v=tod8TxZyVy8	October 16, 2017 https://www.youtube.com/watch?v=8-E1V5-doAs
September 10, 2017 https://www.youtube.com/watch?v=qgoLvJ9zgGk	October 17, 2017 https://www.youtube.com/watch?v=_IanAsZ1bWY

Page 9

Project Pueo, DLNR, USFWS, and UH Manoa were apprised by Mr. Lee and myself to evaluate the property during the Fall Season for a courting and breeding ecology. In response, Project Pueo, DLNR, USFWS, and UH Manoa took on a policy and directive (protocol) to purposely avoid the property during the Fall Season of 2018, and do so in totality.

I still request an answer as to why protocol was breached. The very protocol USFWS Ms. Jenny Hoskins had stated that in order for the survey/study to be accurate and be considered a thorough assessment - it would need to involve a protocol that would include examination year-round on the property, and this methodology- for the courting /breeding ecology study exercise, was not conducted at UHWO- **why?**

Project Pueo came to UHWO only three times in total during the Fall Season – and all in 2017 when no courting and breeding ecology study was undertaken by the researchers.

Fact: Researches stayed in one spot, not investigating the site for any courting or breeding ecology, and or to determine for the presence of nests, per the protocol, per the Reports. The population survey count exercise, was all that was done at UHWO- and it was a 100% confirmation – pueo are there.....yet, Project Pueo sought a policy to NOT ever examine the property for any pueo in the Fall Season beyond the intial 2017 population exercise for the property, period.

Of grave concern, and of legal issue, is that DLNR Chair Suzanne Case relayed falsified information to the Attorney General to sway the true narrative of the property with the egregious statement: “The property was thoroughly examined for pueo- extensive surveys were conducted - and no pueo are on the property- no pueo use the property.” This is patently false, and opens DLNR up for a lawsuit – by its fabricating and concocting a falsified narrative that no pueo were observed on the property.

Project Pueo, when they were sent scores of evidence by Mr. Lee and I to work with proving that in order to quantify the presence of a courting /breeding ecology at UHWO, the exercise needs to transpire during the Fall Season- **then why didn't it? I still await an answer.**

Micheal Kumukauoha Lee performed a chant on the property January 1, 2018, at the location where pueo were seen for years during the Fall Season; courting, mating, and raising a brood: <https://www.youtube.com/watch?v=d9yoxIGeNCA>

Project Pueo refused to coordinate, correspond, and reciprocate with this data provided to them. Per the Report, no observer was stationed near the known nesting sites as reflected in the GPS coordinates by Project Pueo.

Why did Project Pueo avoid investigating any of the five nesting sites in its Report? **I still request an answer.**

Page 10

Why did the exercise to determine if a courting and breeding ecology was present or not at UHWO, not transpire at all during the Fall Season when Project Pueo was informed: “*That’s when you can see pairs courting- chasing each other- feeding each other - and roosting/sleeping together- and frequenting the same nesting areas like clockwork each Fall Season flying in and out of the same patches in the tall grass.*” **I still await an answer.**

Of importance to note, is that the following videos from the Fall Season of 2016 were provided to DLNR and USFWS so as to prep them to set protocol for Project Pueo to conduct their survey(s) in the Fall Season for UHWO specifically. Unfortunately, Project Pueo deployed the opposite protocol, and was on the property the least during the Fall Season.

Maps of each sighting, including data as to where the sightings transpired and subsequently recorded, was provide to DLNR- with DLNR refusing to respond and ignoring all the video/time-lapse/photographic evidence in its entirety....and **I still await an answer** as to why did DLNR act with Malice of Aforethought, Institutional Bias, Administrative Prejudice, and Willful Indifference with its flagrant disregard and discriminatory practice to shun the evidence of the endangered Pueo under siege, threatened with encroachment and DLNR violate the State’s Endangered Species Law knowingly and willingly....**why did DLNR dismiss this evidence?**

August 9, 2016 @ UHWO

<https://www.youtube.com/watch? v=f3T-VhYEj2c>

August 15, 2016 @ UHWO

<https://www.youtube.com/watch? v=8DIYNDLYI6A>

August 17, 2016 @ UHWO

<https://www.youtube.com/watch? v=U4JYSOhFgV0>

August 20, 2016 @ UHWO

<https://www.youtube.com/watch? v= JS3GClmESc>

August 27, 2016 @ UHWO

<https://www.youtube.com/watch? v=dEqIzG26H24>

August 28, 2016 @ UHWO

https://www.youtube.com/watch? v=vzRWuv_0dyA

August 30, 2016 @ UHWO

<https://www.youtube.com/watch? v=XRFYH-OcEaM>

August 31, 2016 @ UHWO

<https://www.youtube.com/watch? v=AznT06PmzoA>

September 19, 2016 @ UHWO

<https://www.youtube.com/watch? v=4UzUmqU3IYM>

September 21, 2016 @ UHWO

<https://www.youtube.com/watch? v=VqxsK6Jpy9Q>

September 29, 2016 @ UHWO

https://www.youtube.com/watch? v=buFCNg_SWiU

October 7, 2016 @ UHWO

<https://www.youtube.com/watch? v=zRbGdGF6X1I>

October 11, 2016 @ UHWO

<https://www.youtube.com/watch? v=WsbeL8fR5yA>

November 2, 2016

<https://www.youtube.com/watch? v=SxmrXPuWyI4>

December 2, 2016

<https://www.youtube.com/watch? v=uDtwLzalxKc>

December 5, 2016 @ UHWO

<https://www.youtube.com/watch? v=dvOAggnCft4>

December 7, 2016 @ UHWO

https://www.youtube.com/watch? v=3X_5MB5nEu8

December 8, 2016 @ UHWO

<https://www.youtube.com/watch? v=yvyEEY4CyE>

December 9, 2016 @ UHWO

<https://www.youtube.com/watch? v=KkKphe2eNKc>

December 12, 2016 @ UHWO

<https://www.youtube.com/watch? v=VzWNryHImVw>

Super Moon December 13, 2016 @ UHWO

https://www.youtube.com/watch? v=zVxBZ_ws_qQ

December 18, 2016 @ UHWO

<https://www.youtube.com/watch? v=x4MRAY8VUiG>

Winter Solstice December 21, 2016

<https://www.youtube.com/watch? v=22GycOiaJzw>

Christmas Day December 25, 2016 @ UHWO

<https://www.youtube.com/watch? v=QfrDx7DVejA>

Page 11

Lacking are the dates for funding for the Reports- such as when did the funding start, and when did the funding stop for the endeavor to quantify for a courting/breeding ecology at UHWO – or did such not transpire at UHWO? **I still request an answer** –for DLNR Chair Ms. Suzanne Case stated to the Attorney General, Ms. Clare Connors, in the letter dated February 26, 2019, that UHWO had undergone extensive surveys- when per the Report, this is patently false.

And furthermore, the email from Mr. Li, of DLNR, on January 9, 2019, confirms, all investigatory measures deployed for UHWO came to a close well before any courting/breeding ecology exercise was deployed- as in, it never transpired at UHWO....hence, Chair Case lied to Attorney General Connors when Case stated, “The property was given a rigorous, extensive, detailed study using professionals to gauge for Pueo activity and found no Pueo at UHWO.”

From: Li, Bin C <bin.c.li@hawaii.gov>
To: [REDACTED]
Sent: Thursday, January 9, 2020, 03:13:56 PM HST
Subject: RE: [EXTERNAL] Re: Your record request re UHWO
Pueo project
Aloha [REDACTED]
To the former question, the survey protocol was the same for both studies except for the second phase we were looking for signs of breeding such as wing clapping or prey provisioning to then hopefully find nests to monitor. We never did find a nest or prey provisioning. We also did some daily activity surveys where we surveyed for longer periods of time to get an indication of pueo daily activity, but these surveys did not occur on UHWO lands.
Hope this info helps. Thank you.
Bin C. Li
Administrative Proceedings Coordinator
Department of Land & Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Tel 808-587-1496, Fax 808-587-0390
Bin.C.Li@hawaii.gov

In addition, where and from what source, did DLNR get funds to go to Nanakuli and capture, tag, and band a pueo for tracking after April 2018 when DLNR and Project Pueo had exhibited the protocol to conduct research for UHWO had “run out of funds” and declined to investigate the property after April 2018?

Put another way, in August of 2016, when the town hall meeting had transpired on pueo at UHWO, DLNR had stated that there was zero funding to send any personnel to UHWO- as in no funding was available to confirm pueo inhabiting the site.

DLNR stated that monies are needed to conduct any and all on-site visits. The question then to ask is, **who funded the taging of pueo in 2019 in the Nanakuli area- who sponsored and paid for this exercise when the same effort was asked of DLNR/USFWS to do the same at UHWO?**

I still request an answer- when did the Project Pueo study formally come to a close- terminate, and why was the study aborted at UHWO (April 2018) ahead of other sites being evaluated for a courting /breeding ecology?

Page 12

When USFWS was apprised that if they came to UHWO and trapped a pueo- that such event would contradict the Final Environmental Impact Statement (FEIS) for the property that concluded, "No pueo inhabit the area," USFWS then decided to change its tune and made certain it did not visit the property so as to jeopardize the FEIS findings and create "a headache" for UH Systems by proving the pueo was indeed there.

Had USFWS come to the property, and then tagged a pueo, it would have triggered a Supplemental Environmental Impact Statement (SEIS) be executed for the property per HRS Chapter 343, Environmental Protection Law, and Adminsitritative Rules Chapter 200, Title 11.

Prior to the Nanakuli tagging in 2019 of a pueo- by DLNR, no pueo had ever been tagged in Hawaii and if such event had transpired at UHWO, the event would be a major, monumental exhibit that pueo are utilizing the property. UH Systems as the property owner, would then have to re-plan its development schemes and properly execute a Habitat Conservation Plan for the pueo and mitigate its habitat destined to be destroyed. UH does not want this expense and therefore, did everything in its power to ensure, no thorough examination of the property would actually transpire by USFWS, Project Pueo, UH Manoa, and DLNR.

From: Hoskins, Jenny <jenny_hoskins@fws.gov>
To: [REDACTED]
Sent: Friday, September 30, 2016, 09:14:47 AM
Subject: Re: THIS MORNING'S PUEO VIDEO: THREE SIGHTED @ UHWO

Hi [REDACTED]
I would like to go out to the site with you some time and see where you think Pueo are nesting. Since I live on Hawaii Island, rather than Oahu, I would need to schedule a flight over, possibly a little later this fall. Today is the end of our fiscal year, so we are in a blackout period with our travel system for about a week. After that ends we can talk about setting up a visit.

Mahalo
Jenny Hoskins, USFWS Migratory Birds and Habitat Programs, Hilo, HI

From: "Hoskins, Jenny" <jenny_hoskins@fws.gov>
To: [REDACTED]
Sent: Monday, October 24, 2016 7:25 AM
Subject: Re: URGENT NEWS

Aloha [REDACTED]
It isn't clearly known how much Pueo move between seasons, but if they are typical to their mainland short-eared owl relatives, then they may use different areas during the breeding and non-breeding seasons. The only way we will know this for sure is by trapping and radio-tagging one or more individuals and following them throughout the year.

From: Jenny Hoskins <jenny_hoskins@fws.gov>
To: [REDACTED]
Cc: [REDACTED]
Sent: Wednesday, December 7, 2016, 10:09:11 AM
Subject: Re: UHWO: I can confirm four Pueo at once- call it a flock!

Hi [REDACTED]
Thanks for this information. I'm contacting the person I would coordinate trapping on Oahu with to see what we can do. I will let you know if we can work something out.

Page 13

Per HRS, and as conveyed by the Hawaii State Senate Majority Research Office, a nesting site or active nest with eggs and fledglings is not required in order for DLNR to deploy protective measures for pueo.

Rather, the threshold, or directive by law, is that where pueo are found, that is considered pueo habitat. Per the law, endangered species habitat shall and must be protected when such species is on undeveloped, state-owned property, like UHWO non-campus, private development land.

See the link below that illustrates DLNR broke the law (illegal to destroy endangered species habitat) when DLNR knowingly and willingly permitted to let UH Systems destroy the pueo habitat confirmed by Project Pueo in its August of 2017 sightings on the property:

https://www.flipsnack.com/F6DAEF5BDC9/endangered-species-protection-on-state-land_senate-majority.html

OIP and the Ombudsman was provided with the documentation to substantiate UH Systems had acted in bad faith and broke the law when UH defoliated the pueo habitat after being apprised pueo are there using the property. The Ombudsman responded, “We are prevented by law, from investigating the Governor and his Cabinet /Administration – even if violating HRS Chapter 343. Our hands are tied.”

Lacking are an explanation from the Report by Project Pueo/DLNR/USFWS/UH Manoa on the encroachment of the study area to extirpate pueo from the property so that no pueo could be quantified in future, subsequent studies.

Evidence on UH Systems destroying pueo habitat (2017-2018) was provided to DLNR and DOCARE, and yet, no action to order a cease desist transpired- but rather, the pueo habitat was destroyed during the same time Project Pueo had commenced its research and stated it was on the property.

The following confirms, UH Systems in relation to pueo inhabitation being quantified on the property, had purposely, with intent, acted with Malice of Forethought, Administrative Bias, Institutional Predjudice and Willful Indifference as described in detail by Mr. Lee in the two-part video. The imminent harm to pueo was ignored in totality by DLNR and no charges were brought by DLNR to bring UH Systems into compliance:

Part One; Mike Lee Exposes DLNR

<https://www.youtube.com/watch?v=7z8-7u3Q0Bo>

Part Two; Mike Lee Exposes DLNR

<https://www.youtube.com/watch?v=Db46xPfazVQ>

Page 14

In August of 2016, the 150-acre pueo preserve as established per HB2629 (2018) was completely intact. **To stop pueo from being seen on the property, UH Systems reacted to Mr. Lee and my evidence of pueo on the 150-acres by orchestrating a policy to destroy and defoliate the property used by the pueo.**

Starting with the appointment of UHWO Chancellor Maenette Benham in January of 2017, Benham had deployed a practice to take all fallow agricultural lands that house pueo on the property, and destroy it as quickly as possible by bringing that land back into intensive ag production where trees and grasses once were. Pueo don't eat cash crops- they don't eat farm food, and are sickened by the farmer's chemicals and rat bait poison strewed about- and the farmer's dogs allowed to roam untethered, throughout the property.

Benham purposely, with full approval, allowed the dogs to remain on the property for months on end in order that the dogs could find, and kill/remove all evidence of any ground nesting Pueo that could delay UHWO's development plans for the non-campus, private development land.

Benham defoliated the 150-acre pueo habitat by design and with intent. She was recorded taking personnel to known pueo nesting sites and demanding the area be completely cleared of all foliage as seen in the photo at right- as was captured by a trail camera hidden on the property. Just a few weeks earlier- now bulldozed over clean, a nest used to exist 10-feet from where UHWO personnel are seen in the photo.

I still request an answer to the question – *why did DLNR/Project Pueo/UH Manoa and USFWS, not comment, or send any notice to UH Systems that upon the very first attempt by DLNR/USFWS/UH Manoa and Project Pueo setting foot on the property, the observer(s) saw the pueo? Why weren't protective measures immediately provided to the habitat where Project Pueo first saw Pueo, as the law dictates?*

<https://www.youtube.com/watch?v=QoE1bdaqUvg>



<https://www.youtube.com/watch?v=6U2-RErW6JM>



<https://www.youtube.com/watch?v=9l-Ozp7fwUM>



Page 15

And on the second visit, the observer(s) saw the pueo again, and then for some strange unaccountable reason, lacking any explanation, Project Pueo/DLNR/USFWS and UH Manoa waited three months to return to the property- why? **Why the delay- why the refusal by Project Pueo to return to the property in a timely fashion after having two immediate confirmed sightings of pueo on the property? Who directed the study to purposely avoid going back to the property in the Fall? I still await an answer.**

Could the answer be, that the destruction of pueo habitat by UH Chancellor Benham/UH Systems-would be witnessed by the observer(s) and that is why both parties conspired to ensure, no obervation takes place when trees and grasses are being removed from pueo nesting sites? In additon to the two videos on the previous page depicting pueo habitat destroyed, the evidence is clear, it was done knowingly and willingly:

September 11, 2017

<https://www.youtube.com/watch?v=ZfgHnT03x5Y>

June 6, 2017

<https://www.youtube.com/watch?v=EA1BAKu-FVQ>

June 24, 2017

<https://www.youtube.com/watch?v=oI9SbUqIJ2M>

January 7, 2018

<https://www.youtube.com/watch?v=i12dFN05924>

January 15, 2018

<https://www.youtube.com/watch?v=eYHhUpLyUxk>

January 24, 2018

<https://www.youtube.com/watch?v=QRKXnBUvnDs>

On May 23, 2018 -Michael Kumukauoha Lee revealed the destruction of pueo habitat being orchestrated by UH Systems when Lee gave a presentation to the Kapolei Neighborhood Board. The presentation illustrated when the known nesting sites were destroyed, by whom, and what known nesting site remains and where it is:

AGENDA

<http://www.honolulu.gov/cms-nco-menu/site-nco-sitearticles/31461-makakilo-kapolei-nb-may-agenda.html>

POWER POINT PRESENTATION; MIKE LEE

<https://www.flipsnack.com/F6DAEF5BDC9/kapolei-nb-may-2018-uhwo-pueo-habitat.html>

Yet, UH Systems, Project Pueo, DLNR, UH Manoa and DOCARE, refused to act on the presentation made by Mr. Lee. UH destroyed the last remaining habitat by design, with intent to extirpate the pueo from the property- DEAD OR ALIVE. And on December 2, 2019, UHWO Chancellor Benham had ordered the last nest, active it was, to be destroyed. As of today, not one inch remains of the original 150-acre Pueo preserve as identified in HB2629. Benham cleared every bit of it.

Page 16

Via this OIP complaint gone unanswered for the most part, I hereby still request an answer from DLNR/Project Pueo as to what was the reasoning for not coming to UHWO in the Fall of 2018 when all were apprised in 2016, 2017, and 2018- "That's when the pueo are here and most abundant. You will be gauranteed a sighting if you go to the property in the Fall," stated [REDACTED] to authorities monitoring the study.

In response, Project Pueo ensured, absolutley no site visit by any Project Pueo personnel wwould transpire on the property in the Fall of 2018. Who made this decision and why? When DLNR was given a vast pool of video /trail camera photos and timelapse recordings of pueo most active in the Fall Season at UHWO, why did DLNR respond with:

"We are not coming back to UHWO to study pueo that would include any Fall Season after our three visits in the Fall of 2017 had confirmed on two of the visits, pueo are there. We are not intersted in the property being abundant with pueo during the Fall Season of 2018, for such confirmation would prove the pueo are indeed returning to the same property and this act would require UHWO to execute a SEIS. For with such, a return of pueo in two subsequent years over the same period would qualify the property as serving pueo and classify the property as pueo habitat. And as such, we don't want that made known and thereby, we will not return to the property as that would jeopardize UHWO from making money on the property- by having to execute the SEIS.

Albeit Project Pueo, USFWS, UH Manoa and DLNR refused to examine the property during the Fall Season of 2017 beyond just three visits- with all visits being executed in the evening, here is what was present on the property during those five months of August, September, November, and December of 2017 that Project Pueo missed by design- due to Project Pueo refusing to be on the property in the morning hour period for the entire study when the study was performed in the Fall Season.

With the survey only transpiring during the evening for all of 2017, the protocol again, was breached. The protocol to detect pueo was grossly incomplete and not thorough at all by any degree- as courting displays were recorded during the sunrise period when Project Pueo, UH Manoa, DLNR, and USFWS refused to set foot on the property in all of 2017 (in the morning). And don't forget, the same cast of characters simply refused to visit the property in all of 2018 past April, ensuring the most abundant display of pueo behavior in the Fall Season, would be missed by those compiling the Report for Project Pueo.

Yet, the study, its resources used, and the personel paid, had extended the project scope well beyond April of 2018- so why then, is it that DLNR could not fund more than three visits to the property in all of 2017, and aborted going to UHWO after April 2018. *Was this the intent- to cease and desist examining the property at UHWO after April of 2018 while yet extending funding into 2019 for the same research to be conducted elsewhere- anywhere but UHWO?*

Page 17

In 2018, while Project Pueo aborted returning to the property past April 2018, the Pueo came back as it did for hundreds of years to make a nest in the Fall Season- its last nest on the property- due to UHWO Chancellor Benham bulldozing the nest with a backhoe after being emailed to please protect it.

All known Pueo habitat in existence at UHWO has been destroyed by Benham- and with video proof, I caught her UHWO hire/farmer commissioned to bulldoze every tree along the embankment of both Kaloi and Hunehune Gulch down- and they dumped the trees in the gulch itself, blocking the water drainage route- another violation of the Clean Water Act...all caught on camera. The trees are still in the gulch blocking the water/drainage for the entire southern portion of the property.

Benham was shown these videos, of which she then used as the tool to locate the Pueo and kill them on December 2, 2018, and wipe out their habitat in totality:

June 28, 2018- Pueo Pair Arrive Early in Season to Mate
<https://www.youtube.com/watch?v=jyCaWHkHwK8>

September 4, 2018
<https://www.youtube.com/watch?v=OkwZJyEwfVU>

September 5, 2018
<https://www.youtube.com/watch?v=9Ofhq71RpI0>

September 11, 2018
<https://www.youtube.com/watch?v=srsf3V6z-7w>

September 15, 2018 /Time-lapse of Nest Site
<https://www.youtube.com/watch?v=vXpDKMWJ2BY>

October 9, 2018
https://www.youtube.com/watch?v=7aUOQ_s6Fso

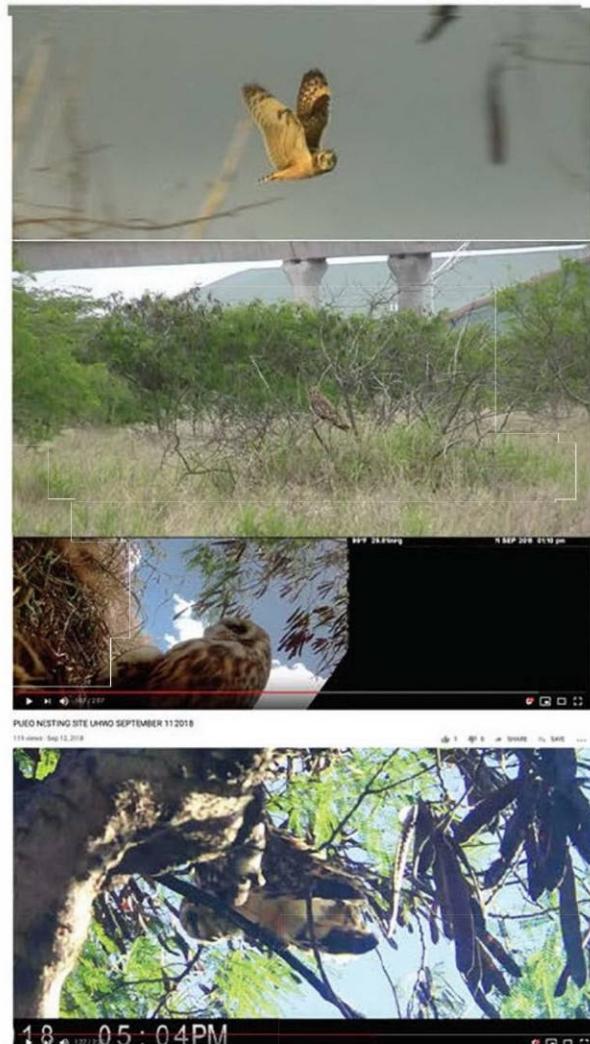
October 19, 2018
<https://www.youtube.com/watch?v=bPfL0CeiA9Q>

November 1, 2018
<https://www.youtube.com/watch?v=3Us2iAscYeY>

November 6, 2018
<https://www.youtube.com/watch?v=uTPGo64JkW4>

November 8-11/Time-lapse 2018
<https://www.youtube.com/watch?v=NzrQ9oQNGdc>

November 22, 2018
https://www.youtube.com/watch?v=vSB_5xW2J7A



Page 18

ATTORNEY GENERAL/DLNR CHAIR MALICE

Attorney General Ms. Clare Connors, wants the public to believe, that Pueo were never quantified on the property, either by DLNR, Project Pueo, USFWS, UH Manoa or by any other means. That no documentation exists of substance that would exhibit otherwise to change that opinion.

Ms. Connors wants people to believe this narrative, that the property was void of any presence of any endangered species habitat because she relied on the information regarding the property's characteristics from the FEIS of 2007, and the Reports by Project Pueo of 2018/2019.

Furthermore, Ms. Connors came to such findings on the narrative provided directly to her from DLNR's Chair, Ms. Suzanne Case- with Ms. Case claiming, "The property was extensively surveyed," when we now know, that is a not a truthful statement- no courting and or breeding ecology survey was ever conducted on the property. As such, Ms. Case advanced a deceitful statement made in bad faith and with intent to defraud the Attorney General of the truth. The truth being, the very minute Project Pueo came on the property for the very first time in August of 2017, they had a 100% confirmed sighting of the Pueo on the UHWO property. On the second visit- again, another confirmed sighting. Yet, Ms. Case wrote to Ms. Connors, that no such identification on the property transpired.

When USFWS announced at the August 18, 2016 Town Hall Meeting held at UHWO on the subject of Pueo on the property, USFWS stated that in order to properly assess if a property is being utilized by the Pueo, the observer should conduct the observation exercise year-round, due to the Pueo being a "plot-hopper," using one patch of land for one activity during one season, and then moving to another patch to engage in another activity during another seasonal period, otherwise, the observer is apt to "miss that bird."

For the FEIS, PBR Hawaii conducted the observation exercise to quantify if Pueo were present on the property with an observation exercise that transpired in the month of April only----no other months were used to observe---and with that, the observation only for a few hours, on just two mornings, and never done at sunrise, and or the sunrise period.

Hence, with DLNR stating that it was a satisfactory FEIS exercise to look for Pueo for just 6 hours in total, and done by driving in a car to look on just two mornings, very disturbing indeed when DLNR /USFWS has stated, the inventory needs to be conducted year-round.

Yes, DLNR signed-off on the FEIS stating in writing, that this effort by PBR Hawaii was a perfect inventory exercise- a model of great thoroughness, a model of extensive research deployed, and conclusive at that.

When DLNR was apprised by Mr. Michael Kumukauoha Lee that DLNR should have intervened, and ordered an amended FEIS to require PBR Hawaii to expand its inventory efforts and observe for Pueo inhabitation in other seasons as well, DLNR ignored that plea, claiming the 6-hours done over two-day's time to look for Pueo on 500-acres of raw land, extremely thorough.

Page 19

RECAP

The Office of Information Practices is being summoned to assist me have DLNR answer the three points of inquiry included herein and delivered in previous emails asking for answers.

DLNR has thus far, not complied to the request to identify those on UHWO property doing the observation exercise – such as who was chosen for the study, what were their qualifications to be chosen- such as who is KW, and why was KW chosen to accompany Project Pueo on the property, and I was rejected- denied participation? What justified DLNR/Project Pueo not allowing me to show them directly, where the Pueo are active and nesting on the property? To date, DLNR will not answer this, and is withholding this information from the public.

Also gone unabated, ignored by DLNR, is the answer as to why Project Pueo aborted expending resources to do more in-depth surveys at UHWO, while yet expending resources past 2018, to even tag a Pueo elsewhere in 2019?

What was the basis for a cease and desist – the termination of the survey for UHWO in April of 2018? Why were other surveyed properties provided with more extensive research, studies past April of 2018, and UHWO avoided?

Why did Project Pueo refuse to observe for Pueo in the morning hours in the entire Fall Season of 2017, and only conduct its survey in the evening hours, during the population survey count exercise? It is in the morning hours I have evidence of the courting ecology- dozens of videos proving it- yet DLNR refused to go to the property in the morning hours in the entire Fall Season of 2017, and refused to even go to the property in the Fall of 2018 at all. And still, Project Pueo told the DLNR Case, who told the Attorney General, the surveys executed at UHWO were exhaustive, in-depth, thorough, and most extensive. This is patently false and DLNR's email to me on January 7, 2020, reflects that- with DLNR saying, "We did not do those more in-depth types of surveys at UHWO."

Of grave concern, is I have commissioned other ornithologists from the mainland to observe my videos depicting Pueo chasing each other and engaged in wing flapping displays and the mid-air stationary flapping of wings over the head of a stationed Pueo on the ground- and after viewing these videos, these ornithologists have concluded 100%, that was evidence of a courting ecology, period.

In contrast, Ms. Case of DLNR, Afsheen Siddiqi of DLNR, David Smith of DLNR, and all of Project Pueo, and including USFWS Ms. Hoskins, have exclaimed that after watching the same videos– saw no evidence of Pueo in chase, saw no Pueo in wing flapping activity. It appears Ms. Case, USFWS, and UH Manoa/Project Pueo, has an agenda to do harm and violate the intent of HRS Chapter 343.

Hence, what we have here, as Mr. Michael Kumukauoha Lee has clearly demonstrated and proven without a doubt, is that DLNR has acted with Malice of Aforethought, Willful Indifference, Administrative Bias, and Institutional Prejudice to knowingly cause harm to an endangered species that DLNR is by statute bound to protect.

Page 20

CONCLUSION

Albeit Mr. Michael Kumukauoha Lee is deceased and cannot continue to expose DLNR for malice, all one has to do, is look at the videos and decide for yourself- who is telling the truth, Mr. Lee, or DLNR's Project Pueo with Project Pueo concluding the property does not contain one inch of Pueo habitat.

Connect the dots- if Project Pueo were comprised of honest people, they would have conducted observation exercises during the morning hours in 2017 and again in 2018 during the Fall Season when the taxpayers of Hawaii have proved, the Pueo are there- with hundreds if not thousands of hours of eye witness accounts and surveillance to back it up. Project Pueo, on purpose, avoided the property when Lee and I proved, Pueo are thriving there. Why would Project Pueo screw the Pueo at UHWO- can you say paid off? I got proof.

Mr. Lee, and many, many others have testified to various government entities for a decade plus, we got Pueo in Ewa, and dammit, protect them.

In response, DLNR refused to go to the state-owned undeveloped property to confirm this- for years, claiming, "We will only go to investigate that property if you (Legislature) give us money and fund the exercise." And when the funds came, DLNR ensured, the protocol used, was flawed, and incomplete.

In this closing example, **I have thousands of hours of two-Pueo using this one tree cluster FOR THREE SOLID YEARS OVER THE FALL SEASON-** with one Pueo coming during the Spring /Summer Season- waiting for its mate- and then around Fall Season, with its mate substantiated on the property, they court/mate and raise their broods in the August, September, October, and November to early December months- then leave – take a hiatus. **I have the photo of its fledgling.** Here is the loner Pueo engaged at the property in a foraging ecology- all new videos- not included in any previous page. Note, I have dozens of other videos showing Pueo feeding each other – but they are night shots and the video is dark, but show them going in and out of same tree cluster where you see Pueo here to feed each other:

This tree – where you see the Pueo fly out of, was ordered cut down by UHWO Chancellor Benham December 2, 2018 after she was notified the Pueo live here at this spot-

<https://www.youtube.com/watch?v=n8MXcYcQFL8>

Pueo leaving a tree ten yards from the very tree in the video above- Benham defoliated this entire habitat:

<https://www.youtube.com/watch?v=IckLukGfV0E>

Pueo flying out of same cluster of trees Benham had ordered cut down December 2, 2018:

<https://www.youtube.com/watch?v=t233RGXKN88>

Pueo leaves same tree cluster Benham had ordered cut down- Pueo flees to rail structure:

<https://www.youtube.com/watch?v=Uu9e2G4xttw>

Same trees as in above videos Benham had ordered removed:

<https://www.youtube.com/watch?v=IcrXqcdnYHI>

Pueo taking exit over Kaloi Gulch from same patch of tree cluster- all trees removed by Benham:

<https://www.youtube.com/watch?v=1iUasy9EV6w>

Pueo same patch of trees removed by Benham:

<https://www.youtube.com/watch?v=f3T-VhYEi2c>

EXHIBIT 9

Confidentiality Justification Table

EXHIBIT 9: CONFIDENTIALITY JUSTIFICATION TABLE

Hawaiian Electric Company, Inc. (“Company”) hereby identifies redacted confidential and/or proprietary information that is being submitted confidentially until the issuance of a Protective Order in this docket. The following table: (1) identifies, in reasonable detail, the confidential information’s source, character, and location; (2) states clearly the basis for the claim of confidentiality; and (3) describes, with particularity, the cognizable harm to the producing party or participant from any misuse or unpermitted disclosure of the information.

Reference	Identification of Item	Basis of Confidentiality	Harm
Exhibit 3 – Project Benefits Analysis	Pricing evaluations in Attachments 4, 5, 6, and 7 of Exhibit 3.	Confidential financial and cost information which falls under the frustration of legitimate government function exception of the Uniform Information Practices Act (“UIPA”)	<p>Exhibit 3 (Project Benefits Analysis) shows the detailed pricing analysis and associated methodology for the Waiawa Phase 2 Solar LLC utility-scale photovoltaic and storage project. The exhibit shows the revenue requirement, avoided fuel consumption, and typical residential bill impacts of the Waiawa Phase 2 LLC project over the PPA term. Public disclosure of the subject information could harm the Company by placing it at a competitive disadvantage, and may jeopardize the Company’s current or future contract negotiations. The Company believes that if the subject information is disclosed to third parties, such information could be used to derive pricing proposals for potential projects and third parties would receive an unfair business advantage resulting in prejudice to the Company and its customers.</p> <p>The Company maintains that the subject information falls under the frustration of legitimate government function exception of the UIPA as disclosure of subject information would impair the Commission’s ability to obtain necessary information to properly perform its review of this regulatory proceeding (as the Company would not have submitted the confidential information in this docket but for: (1) the governmental function of reviewing the Company’s request</p>

Reference	Identification of Item	Basis of Confidentiality	Harm
			<p>for approval of the PPA; and (2) the Company's belief and reliance that the information would not be publicly disclosed).</p> <p>The confidential information: (1) has not been previously disclosed or otherwise publicly disseminated; (2) is not of the kind of information that the Company would customarily disclose to the public; and (3) is of a nature that its disclosure could (a) impair the Commission's ability to obtain necessary information from similarly situated parties in the future, and (b) cause substantial harm to the Company and/or its customers as previously described above.</p>
Exhibit 8 - Community Outreach Summary and Public Comments	Personal email addresses and/or telephone and facsimile numbers contained in Public Comments.	Personal identification information which falls under the unwarranted invasion of personal privacy exception in Section 92F-13(1) of the UIPA.	Public disclosure of the information could constitute an invasion of personal privacy and expose the person(s) to, among other things, potential victimization, and potentially expose the Company to potential liabilities, as well as the cost of addressing any potential untoward uses of the confidential information, and could also harm the Company's relationships with existing and/or prospective vendors and customers.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.) Docket No.
)
For Approval of Power Purchase Agreement)
for Renewable Dispatchable Generation with)
Waiawa Phase 2, LLC)
)

)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application, Verification and Exhibits 1 through 9, together with this Certificate of Service, was duly served on the following party, by electronic mail service as set forth below:⁴²

Division of Consumer Advocacy
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawai'i 96813
dnishina@dcca.hawaii.gov
consumeradvocate@dcca.hawaii.gov

DATED: Honolulu, Hawai'i, September 15, 2020.

/s/ Andrew Nojiri
Andrew Nojiri
HAWAIIAN ELECTRIC COMPANY, INC.
Regulatory Affairs

⁴² As stated in Order No. 37043 *Setting Forth Public Utilities Commission Emergency Filing and Service Procedures related to COVID-19* (non-docketed), issued on March 13, 2020 at 11: Service of all documents filed by any parties, participants, utilities, stakeholders and/or other entities or individuals shall be via email. All entities making filings before the commission will be required to supply an email address that can be used for service. Any Certificates of Service for docketed or other matters that previously had listed the entity's name and the physical address where a document was served via first-class mail, shall instead reflect the entity's representative's name, entity name, email address where served, as well as the date of service.

FILED

2020 Sep 15 PM 13:01

PUBLIC UTILITIES
COMMISSION

The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).