Hawaiian Electric
Maui Electric
Hawai'i Electric Light

ATTACHMENT G – SAMPLE CONTRACT (PETROLEUM FUELS)

SUPPLY CONTRACT FOR PETROLEUM FUELS

This Supply Contract for Industrial Fuel Oil ("IFO"), No. 2 Diesel ("Diesel"), and/or Ultra-Low Sulfur Diesel ("ULSD") (this "Contract") is made this _____ day of _____, 2015, by and between **HAWAIIAN ELECTRIC CO., INC**., ("Hawaiian Electric"), a Hawaii corporation, **HAWAII ELECTRIC LIGHT COMPANY, INC.** ("Hawaii Electric Light"), a Hawaii corporation, and **MAUI ELECTRIC COMPANY, LTD**. ("Maui Electric"), a Hawaii corporation, (collectively, the "Companies") and _____, a _____corporation ("SELLER"), with principal place of business and mailing address at _____. The Companies and Seller are each a "Party" and collectively the "Parties" to this Contract. This Contract shall become effective as provided in Section 2.3 below.

WHEREAS, the Companies are in the business of generation, transmission and distribution of electrical power on the islands of Oahu, Hawaii, Maui, Molokai, and Lanai, State of Hawaii; and

WHEREAS, SELLER is a supplier of IFO, Diesel, and/or ULSD with delivery and transportation capabilities and desires to supply and deliver to Hawaiian Electric, Hawaii Electric Light and Maui Electric the IFO, Diesel, and/or ULSD that meets the Companies' requirements; and

WHEREAS, SELLER represents that it is equipped and has the ability to supply IFO, Diesel, and/or ULSD of such suitable type and quality and in a quantity sufficient to meet the Companies' requirements; and

WHEREAS, SELLER is willing to sell and deliver such suitable IFO, Diesel, and/or ULSD to the Companies and the Companies are willing to purchase and receive such fuel from SELLER under the terms and conditions set forth hereinafter.

NOW, THEREFORE, it is mutually agreed by the parties hereto as follows:

ARTICLE I
DEFINITIONS

Except where otherwise indicated, the following definitions shall apply throughout this Contract.

1.1 "affiliate", except where otherwise expressly provided, means a corporation controlling, controlled by or under common control with SELLER or Hawaiian Electric, Hawaii Electric Light and Maui Electric, as the case may be.
1.2 "API" means American Society for Testing and Materials, a long-established petroleum industry organization.
1.3 "ASTM" means the American Society for Testing and Materials, a long-established source of standard testing and evaluation methods for petroleum.

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1.4 “Barrel” means 42 American bulk gallons at 60 DF.
1.5 “BTU” and “BTU content” means British Thermal Unit and refers to the standard assessment of fuel’s gross heating value or gross heat content.
1.6 “Certificate of Quality” or “Quality Certificate” means the formal document recording the SELLER’s laboratory determination of quality and BTU content of a particular sample which represents a specific Delivery, said laboratory determinations having been performed in accordance with the test methods specified in Attachment B, C and/or D to RFP. .
1.7 "Commission" means the State of Hawaii Public Utilities Commission
1.8 "Commission Approval Order" is defined in Section 2.2 below.
1.9 "Commission Approval Order Date" is the date the Commission files the Commission Approval Order.
1.10 "Consumer Advocate" means the Division of Consumer Advocacy of the Department of Commerce and Consumers Affairs of the State of Hawaii.
1.11 “Contract” means this Petroleum Supply Contract between SELLER and Hawaiian Electric/Hawaii Electric Light/Maui Electric.
1.12 “Day” or “Days” means a calendar day of 24 hours.
1.13 “Deliver”, “Delivery”, “Deliveries” or “Delivered” refers to the transfer of title or physical movement of IFO, Diesel, and/or ULSD by SELLER and purchased by the Companies.
1.14 “DF” means degrees Fahrenheit.
1.15 “Diesel” means No. 2 Diesel produced in conformity with the provisions of the quality in the Specification which are set forth in Attachment C to RFP.
1.16 “DOT” means the Department of Transportation of the State of Hawaii and/or of the United States, as the case may be.
1.17 "Effective Date" is defined in Section 2.3 below.
1.18 "ETA" means estimated time of arrival.
1.19 "Extension" means any Contract term in addition to and after the Original Term, each of which is a 12-Month period beginning January 1.
1.20 “gallon” means a United States liquid gallon of 231 cubic inches.
1.21 “G.S.V.” means gross standard volume in U.S. Barrels at 60 DF.
1.22 “IFO” means Industrial Fuel Oil produced in conformity with the provisions of the quality in the Specifications which are set forth in Attachment B to RFP.
1.23 “Independent Inspector” means a qualified third-party petroleum inspection contractor acceptable to both parties providing petroleum sampling, measurement and other services before, during and after a Delivery.
1.24 “Month” means a calendar month.
1.25 “Nominated” and “Nomination” means the amount of IFO, Diesel, and/or ULSD specified by Hawaiian Electric, Hawaii Electric or Maui Electric to be sold and Delivered by SELLER and purchased and received by Hawaiian Electric, Hawaii Electric Light or Maui Electric for a specified Month.
1.26 "Original Term" is defined in Section 2.1 below.
1.27 "Party" and "Parties" are defined in the first paragraph above.
1.28 “Product” means Industrial Fuel Oil, No. 2 Diesel, and/or Ultra-Low Sulfur Diesel suitable for use as a fuel of the quality specifications per Attachments B, C, and/or D to RFP, respectively.
1.29 “Receiving Facility” means any of Hawaiian Electric, Hawaii Electric Light or Maui Electric’s generating facilities, storage facilities and/or other facilities used to receive,

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transport, store, or otherwise handle the IFO, Diesel, and/or ULSD located on the islands of Oahu, Hawaii, Maui, or Molokai as designated by the Companies.

1.30 "Specification" means the fuel quality specifications applicable to IFO, Diesel, and/or ULSD as set forth in Attachments B, C and D to RFP, respectively.

1.31 "Tank Final Sample" is defined in Section 6.5. below.

1.32 "ULSD" means Ultra-Low Sulfur Diesel produced in conformity with the provisions of the quality in the Specification which are set forth in Attachment D to RFP.

1.33 "USD" means currency denominated in U.S. dollars.

1.34 "Year" means a calendar year.

ARTICLE II
TERM

Section 2.1: Term. The term of this Contract (the "Original Term") shall be from the Effective Date through and including December 31, 2019, and shall continue in succession thereafter for an Extension, each a period of 12-Months, beginning each successive January 1, unless the Companies or SELLER give written notice of termination at least one hundred twenty (120) Days before the beginning of any Extension.

Section 2.2: Regulatory Approval.

(a) The Companies will file an application with the Commission requesting approval of this Contract following its execution. This Contract is contingent upon the issuance of a decision and order by the Commission that (i) approves this Contract and its pricing and terms and conditions, (ii) is in a final form deemed to be reasonable by the Companies, in their sole discretion; and (iii) allows the Companies to include the reasonable costs incurred by the Companies pursuant to this Contract in their revenue requirements for ratemaking purposes and for the purposes of determining the reasonableness of the Companies' rates and/or for cost recovery above those fuel costs included in base rate through the Companies' respective Energy Cost Adjustment Clause, hereinafter, the "Commission Approval Order".

(b) SELLER understands that the decision and order may not be in a final form deemed to be reasonable to the Companies if it (i) contains terms and conditions deemed to be unacceptable to the Companies, in their sole discretion, or (ii) is not final (or deemed to be final by the Companies, in their sole discretion), because the Companies are not satisfied that no Party, to the proceeding in which the decision and order is issued, or other aggrieved person with the right to appeal, intends to seek a change in such decision and order through motion or appeal.

(c) If the Companies have not received the Commission Approval Order within 180 Days of the date of this Contract, or if the Companies' request for Commission approval of this Contract is denied, then either SELLER or the Companies may terminate this Contract by providing written notice of such termination delivered to the other prior to the Effective Date, as it is defined in Section 2.3. In such event of termination, each Party shall bear its own respective fees, costs and expenses incurred prior to termination, if any, in preparation for performance hereunder, and the Parties shall have no further obligation to each other with respect to this Contract except for indemnity and any confidentiality obligations assumed by the Parties hereunder.

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Section 2.3: **Effective Date**. This Contract shall become effective (the "Effective Date") upon (a) receipt by the Companies of the Commission Approval Order and (b) notice of the same from the Companies to SELLER. Alternatively, the Parties may mutually agree in writing that some other date shall be deemed the Effective Date. Except for the obligations and provisions described herein, neither Party shall have any binding obligations under this Contract until the Effective Date, except that the Parties agree upon execution of this Contract to be bound by Sections 2.2 (Regulatory Approval), 11.1 (Force Majeure), 12.1 (Compliance with laws and regulations), 14.1 (Indemnity) and all provisions in Article 17.

ARTICLE III
QUANTITY

Section 3.1: **Quantity of Product To Be Supplied/Delivered**. Subject to the terms and conditions herein, SELLER shall sell and Deliver to the Companies, and the Companies shall purchase and receive from SELLER IFO, Diesel, and/or ULSD as ordered by the Companies. [It is estimated that nominations will begin as early as October 2016 for Delivery as early as January 1, 2017.]

Section 3.2: **Purchase Volumes**. During each Year that this Contract is in effect, SELLER shall sell and Deliver to the Companies, and the Companies shall purchase and receive from SELLER, IFO, Diesel, and/or ULSD in delivery volumes as specified in Attachment A per Company site.

Annual Average in Physical Barrels (volumes will be determined by delivery location/island).

Period	Minimum	Maximum
2017	0	TBD
2018	0	TBD
2019	0	TBD

The volumes for 2019 shall apply for each Year of any Extension, and the annual volumes of IFO, Diesel, and/or ULSD to be sold and Delivered by SELLER and to be Nominated, purchased and received by the Companies during each Year of any Extension shall remain at the 2019 volumes unless otherwise mutually agreed to in writing. Subject to availability, SELLER will sell and Deliver and the Companies shall purchase and receive such additional volumes as are mutually agreed.

ARTICLE IV
QUALITY

Section 4.1: **Quality Of Product To Be Supplied/Delivered**. The quality of IFO, Diesel, and/or ULSD to be sold and Delivered hereunder shall comply with the Specifications attached hereto as Attachment B (IFO Fuel Specification), Attachment C (Diesel Fuel Specification) and Attachment D (ULSD Fuel Specification) and made a part hereof (the "Specification"), and meet all Applicable Laws. If the quality does not comply with the

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Specification, Seller will bear all costs associated with its failure to comply. Costs will be determined at the sole and absolute discretion of the Companies.

ARTICLE V
PRICE

Section 5.1: Pricing. [To be determined.] **See Attachment F**

Section 5.2: Rounding. All prices, price formula component value averages and other sums payable with respect to IFO, Diesel, and/or ULSD purchased hereunder shall be stated in the nearest hundredths of a dollar unless specifically provided otherwise.

Section 5.3: Fees, Taxes, Assessments, Levies and Imposts. In addition to all other amounts payable by the Companies under this Contract, the Companies shall reimburse SELLER for all taxes, assessments, levies, and imposts of whatsoever kind or nature imposed on SELLER by any governmental or quasi-governmental body, as adjusted, modified or revised from time to time, including without limitation the Hawaii General Excise Tax, the Environmental Response, Energy, and Food Security Tax, and pertaining to sales and purchases of IFO, Diesel, and ULSD, the Hawaii Liquid Fuel Tax, with respect to the execution or performance of this Contract or the receipt by SELLER of payments hereunder. Notwithstanding the foregoing and any illustrative price calculation, such as contained in Exhibit D, the Companies shall not be required to reimburse SELLER for any tax measured by or based on the net income of SELLER or for real property taxes or to duplicate any item of expense of SELLER which is recovered by SELLER under the IFO, Diesel, and ULSD prices provided for in Section 5.1. The Companies shall not be required to reimburse SELLER under this Article V for any item expressly mentioned in a publication by a reputable quotation service. At the execution of this Contract, the taxes, assessments, levies or imposts which are currently in effect include the Hawaii General Excise Tax (4.712% for Oahu, 4.166% for Maui Electric and Hawaii Electric Light), the Environmental Response, Energy, and Food Security Tax and pertaining to IFO, Diesel, and ULSD, the Hawaii Liquid Fuel Tax. Also at the execution of this Contract, the Environmental Response, Energy, and Food Security Tax and Hawaii Liquid Fuel Tax are not subject to Hawaii General Excise Tax.

ARTICLE VI
DELIVERY

Section 6.1: Forecast.

(a) Prior to the 20th Day of each Month, the Companies shall give SELLER a forecast of each respective Company's Monthly quantity of IFO, Diesel, and/or ULSD for each of the coming three Months. In addition and also prior to the 20th Day of each Month, the Company shall provide the SELLER a schedule of the Company's Nominated Barge loadings (e.g., for Molokai) for the following Month. Such schedule shall show the expected place, date and time of the commencement of the vessel's loading. Each of the Companies should update SELLER of any changes as they might occur.

Section 6.2: Delivery of IFO, Diesel, and ULSD.

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(a) The Companies shall provide a three (3) Month fuel forecast to SELLER and shall coordinate Deliveries of IFO, Diesel and ULSD with SELLER:

1. **Deliveries in bulk to Company's Barge or from SELLER's Barge or pipeline:** SELLER agrees to Deliver and the Companies agree to receive Diesel and/or ULSD in bulk into the Companies' Nominated Barge at Kalaeloa Barbers Point Harbor at a minimum rate of 3,000 barrels per hour. The Delivery rate of IFO shall be a minimum of 1,600 barrels per hour. SELLER agrees to make a reasonable good faith effort to coordinate its loading of the Companies' fuel in concert with the Companies' concurrent loading of any other petroleum products.
2. **Liftings from truck rack:** SELLER agrees to Deliver and the Companies agree to receive IFO, Diesel and/or ULSD into the Companies' Nominated tanker trucks from SELLER's nominated terminal truck rack at a minimum Delivery rate of 190 barrels per hour.
3. **Deliveries by SELLER to Company Sites**: SELLER agrees to Deliver and the Companies agree to receive IFO Delivered by pipeline to designated site locations on the island of Hawaii. SELLER agrees to Deliver Diesel and/or ULSD, Delivered in SELLER's nominated tanker truck, into the Companies' tank at the designated site location, provided however that the size and capability of SELLER's delivery equipment is satisfactory to the Companies.

Section 6.3: <u>Determination of Quantity</u>.

a) Quantity determination of Product Delivered by SELLER in bulk on Oahu shall be made by the Independent Inspector gauging SELLER's Product issuing tanks before and after Delivery.
b) Quantity determination of Product Delivered by SELLER in bulk to the Companies' Nominated Marine Terminal at Kaunakakai, Molokai, shall be determined at the time of each Delivery by the Independent Inspector gauging the receiving tanks at said marine terminal before and after Delivery.
c) Quantity determination of Product Delivered by SELLER at SELLER's Nominated Terminal to the Companies' Nominated Truck(s) or in SELLER's Nominated Truck(s) to the Companies Site Locations shall be determined at the time of each Delivery by SELLER's calibrated load rack meters, converted in each instance to volume at 60 degrees Fahrenheit by the automated rack control system. Meters shall be calibrated on an annual basis or as required and agreed by SELLER and the Companies. The Companies shall have the right at its expense, and in accordance with procedures at SELLER's Nominated Terminal to independently certify said calibration. The Companies and SELLER shall have the right to have one representative present to witness such meter calibration.

Section 6.4: <u>Failure to Supply</u>.

(a) Except in the event of Force Majeure or an agreement by the parties to the contrary, if SELLER's anticipated Deliveries cannot be made or does not meet the quantity ordered, SELLER shall give prompt written notice to the Companies.

(b) In the event that the SELLER fails to supply the Companies' anticipated Deliveries and the Companies elect to purchase Product elsewhere, both the Companies and SELLER shall attempt to minimize the impact of the failed Delivery such that it does not

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impose an unreasonable risk to the Companies. The Companies will invoice, and the SELLER shall pay, the cost difference between the Product purchased by Companies, and the cost of the Product if it would have been Delivered by SELLER.

Section 6.5: <u>Disputes Regarding Quantity or Quality.</u>

(a) **<u>Quantity Disputes</u>**.

(1) Quantities of Product sold and Delivered shall be determined at the time of each Delivery by gauging the SELLER's tanks before and after pumping under the supervision of the Independent Inspector.

(2) Quantity determination of Product Delivered will be made in accordance with applicable API, ASTM and IP guidelines and shall be expressed in G.S.V., U.S. barrels @ 60 degrees Fahrenheit and U.S. gallons @ 60 degrees Fahrenheit.

(3) For Delivery of Product in bulk, the Independent Inspector shall (i) prepare and sign a Certificate of Quantity stating the quantity of Product determined according to the provisions of this Section 6.5 to have been Delivered to the Companies, (ii) furnish the Companies and SELLER each with a copy of such Certificate, and (iii) advise by facsimile or electronic mail the quantity of Product Delivered. The data in the Independent Inspector's Certificate of Quantity prepared as provided herein shall, absent fraud or errors and omissions, be binding and conclusive upon both parties, and shall be used for verification of the invoice and Bill of Lading for barge deliveries.

(4) If the Companies or SELLER has reason to believe that the quantity of Product for a particular Delivery is incorrect, the Party shall within five (5) Days of the date of Delivery, present the other Party with documentation supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes and adjust the quantity, if justified, for the Delivery in question as specified in Section 6.6 or 6.7.

(b) **<u>Quality Disputes</u>.**

(1) The quality of Product Delivered by SELLER to the Companies' Nominated Truck(s) or in SELLER's Nominated Trucks to the Companies' Site Locations shall be determined on the basis of a volumetric weighted average composite of samples drawn by an Independent Inspector or SELLER representative from SELLER's Nominated Terminal issuing tank(s) after the completion of each bulk receipt into such terminal tanks in such a manner as to be representative of the volume of the tank inventory from that time until the time of the next bulk receipt. Such samples of Product shall be divided into a minimum of two (2) parts one of which shall be sealed and dated and retained by SELLER, or an Independent Inspector at the option of SELLER, for a period of not less than three (3) months.

(2) The quality of Product Delivered by SELLER to the Companies' Nominated Barge or by SELLER to the Harbor terminal piping or by SELLER from its Nominated Barge to the Companies' Nominated Terminal shall be determined on the basis of a volumetric weighted average composite of samples drawn by an Independent Inspector

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or SELLER representative from SELLER's Nominated Terminal issuing tank(s) in such a manner as to be representative of the volume of the tank inventory. Such tank samples of Product shall be divided into a minimum of two (2) parts one of which shall be sealed and dated and retained by SELLER, or an Independent Inspector at the option of SELLER, for a period of not less than three (3) months.

(3) If SELLER or the Companies have reason to believe that the quality of Product stated for a specific Delivery fails to conform to the Specifications in Attachments B, C, or D, of this Contract, that Party shall within five (5) Days after the later of the date of the completed Certificate of Quality or the date of the final determination of quality, present the other Party with documents supporting such determination and the Parties will confer, in good faith, on the causes for the discrepancy and shall proceed to correct such causes and adjust the quality, if justified, for the Delivery in question. In the event of an unresolved difference between SELLER and the Companies, the sealed part of the representative sample in the possession of the Independent Inspector shall be provided to an independent laboratory for an official determination, which shall be final. SELLER and the Companies shall share equally the cost for such independent laboratory determination.

(4) If the quality of the Product received by the Companies fails to conform to the quality Specifications in Attachments B, C, or D, of this Contract, the Companies and SELLER shall attempt to minimize the impact of any quality problem. At the Companies' reasonable discretion, such efforts may include a Specification waiver if the use of the Product will not unreasonably cause harm to the Companies. Or, SELLER may attempt to remedy the quality problem by Delivering higher quality Product in a timely manner to produce a Specification quality blend in the Companies' storage tank(s) at the Companies' Receiving Facility. If all such and similar efforts fail to resolve the quality problem, then the Companies may return non-Specification Product to SELLER, in which case SELLER shall replace the non-Specification Product by Delivering an equal volume of the Companies' verified on-Specification Product to the Companies in a timely manner. Notwithstanding the preceding, the Companies shall always have the right to refuse Delivery of any Product with prior written notice to SELLER or its permitted agents if the Companies in good faith shall have reason to believe that the Product does not meet the Specification. The Companies may, at its option, seek other supplies of Product if in the Companies' reasonable discretion the Delivery of non-conforming Product may not be remedied in time to prevent a possible interruption of their operations. All costs and expenses of remedying the Delivery of non-conforming Product, or arising from non-conforming Product (including, without limitation, the testing, transportation, re-refining, and handling costs incurred in returning, replacing or otherwise correcting off-Specification Product, the emptying and cleaning of storage tanks containing non-conforming Product) shall be paid by SELLER. Any remedy of non-conforming Product accepted by the Companies under this Section shall not operate or be construed to remedy any similar non-conforming Product or to change the Specification of Product acceptable to the Companies under the terms of this Contract.

(5) All reasonable costs and expenses, including testing, transportation, re-refining, and handling costs incurred in returning, replacing or otherwise correcting off-specification Product shall be for the account of SELLER.

Section 6.6: <u>Records/Right to Audit.</u> SELLER shall retain any and all documents and records regarding the Delivery, quantity and quality of Product sold and purchased under

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the terms of this Contract for the twelve (12) Months after the date of the invoice for such Product, or until any dispute regarding such Delivery, quantity and quality is resolved. SELLER shall promptly make such records available for review to the Companies at its request.

Section 6.7: Inspection. The Companies may be represented and participate in all sampling, quality, inspection, measurements and tests of Product which may be conducted pursuant to this Contract and to inspect any equipment owned or controlled by SELLER and used in determining the quantity, quality or heat content of Product, provided that any such participation by the Companies shall not materially interfere with or otherwise disrupt such inspection, measurement and tests conducted by SELLER. The Companies may, upon reasonable notice to SELLER and during normal business hours and at the Companies' expense, inspect and audit any sample analysis of Product, including records and data used in the preparation of such analysis.

Section 6.8: Independent Inspector. SELLER and the Companies shall mutually agree on the Independent Inspector. All samples, measurements and determinations samples shall be drawn, taken and made, respectively, with respect to each designated Delivery and any other provision of this Contract shall be under the supervision of the Independent Inspector, who shall attend designated Product Deliveries. Reasonable charges for services rendered by the Independent Inspector shall be borne equally by the Companies and SELLER.

ARTICLE VII
SELLER'S REPRESENTATIONS AND WARRANTIES

Section 7.1: SELLER's Representations and Warranties. The Companies are willing to purchase the Product on the condition that SELLER agrees, represents and warrants as follows:

(a) Ability to Supply. During the Term, SELLER shall commit to supply Product that meets the Specifications.

(b) Ability to Deliver.

(i) For Truck Rack Deliveries, SELLER shall own, lease or have the right to use facilities sufficient to meet SELLER's Delivery obligations under this Contract.

(ii) For SELLER Deliveries to the Companies' Site Locations, SELLER shall own, lease or have the right to use tanker trucks to meet SELLER's Delivery obligations under this Contract.

(iii) For Barge Deliveries, SELLER's nominated vessel employed to Deliver Product to the Companies shall comply with all regulations, pier operator's standards for vessel acceptance quality, pollution mitigation, required pollution liability, Protection and Indemnity Insurance ("P&I") and other insurance coverages, pier operators

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Operations Manual and accept liability for dues and other charges on said vessel.

ARTICLE VIII
INVOICING AND PAYMENT

Section 8.1: Invoicing.

(a) Invoices, which will show the price per physical Barrel of Product, will be prepared and dated following Delivery and shall be tendered from time to time each Month. Original invoices shall include full documentation, as approved by both parties including Certificate of Quality, report of the Independent Inspector, and price calculation; such documentation may, however, be provided by SELLER to the Companies separately.

(b) Invoices will be prepared and dated following Delivery of Product to the Companies and shall be sent by mail to each respective Company at the following address:

Hawaiian Electric: Hawaiian Electric Co., Ltd.
P. O. Box 2750
Honolulu, HI 96840-0001
Attn: Director of Fuel Operations, mailstop: CIP3- IG
Facsimile: 808-203-1796

Hawaii Electric Light: Hawaii Electric Light Co., Inc.
P. O. Box 1027
Hilo, Hawaii 96721-1027
Attn: Production Department
Facsimile: 808-969-0425

Maui Electric: Maui Electric Company, Ltd.
P. O. Box 398
Kahului, Hawaii 96732
Attn: Production Department
Facsimile: 808-422-4975

(c) Invoices, invoice documentation, laboratory analyses and other documents having to do with the quality, quantity and Delivery of Product or otherwise with the Product sold and purchased hereunder may be sent by first class mail, postage prepaid, by electronic transmission (facsimile or electronic mail) or by personal Delivery. The parties may substitute other addresses upon the giving of proper notice. Correspondence and documents of a similar nature may be sent to SELLER to the following address or as otherwise instructed:

SELLER's NAME
And address
_____
_____

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Section 8.2: Payment.

(a) Payment of SELLER's invoices shall be made by bank wire transfer of immediately available funds by the Companies in U.S. dollars. Timing of payments of invoices sent to each respective Company shall be based upon net 30 Days of the invoice issue date, which shall be the later of the invoice date or the postmarked mailing date of the invoice. Details about the SELLER's banking information will be mailed directly to Hawaiian Electric's Treasury Division before the first invoice is postmarked.

Due dates are dates payments are to reach SELLER. If the due date falls on a Friday, holiday or a Saturday, the payment shall be due on the preceding business day. If such date falls on a Sunday or a holiday falling other than on a Friday, payment shall be due the following business day.

(b) If a debit memo incorporating an adjustment to a previously issued invoice has been sent to the respective Company subsequent to said Company making payment of said original invoice, then said Company shall make payment in accordance with the provisions of this Section 8.2. If a credit memo incorporating an adjustment to a previously issued invoice has been sent to a respective Company subsequent to said Company making payment of said original invoice, the said Company shall have the option to apply such credit against payments to be made subsequent to the receipt of the credit, or if such payments are not expected to be made within twenty (20) Days, said Company shall be able to receive said credit in immediately available funds within three (3) business Days of SELLER's receipt of said Company's written instructions.

(c) If an invoice incorporating an item at variance with the documentation, or is disputed, has been sent to the respective Company, the said Company shall hold said invoice without penalty until such error, variance with documentation or dispute is resolved and said Company shall have received a corrected invoice or debit or credit issued subsequently to the original invoice. Said Company shall make payment for such subsequent invoices or debit in accordance with this Section 8.2.

ARTICLE IX
TITLE, CUSTODY AND RISK OF LOSS

Section 9.1: Title, Custody and Risk of Loss.

(a) **Deliveries to the Companies' nominated site locations** - For IFO, Diesel and ULSD delivered to the Companies' Site Locations, title to the Product and the risk of loss of Product Delivered shall pass from SELLER to the Companies at the Companies' Site Locations, at the flange of the receiving hose of the Companies' receiving storage tanks from SELLER's Nominated Tanker Truck or ISO Container(s). If Delivery is made to a Company Site Location where SELLER's hose is employed in the Delivery, then title to the Product and the risk of loss of Product Delivered shall pass from SELLER to the Companies at the connection flange of the receiving facility's piping, and said Diesel and/or ULSD shall be dyed by SELLER in accordance with State and Federal requirements for tax-exempt, off-road diesel fuel. If Delivery is made to a Company Site Location by pipeline, then title to the Product and risk of loss of Product Delivered shall pass from SELLER to the Companies at the connection flange of the SELLER's facility to the Companies' pipeline.

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(b) **Deliveries at SELLER's Nominated Terminals Truck Rack** - For Product lifted from SELLER's Nominated Terminal truck rack into the Companies' Nominated Truck(s), title to the Product and the risk of loss of Product so Delivered shall pass from SELLER to the Companies at the flange connecting the load rack arm/hose at SELLER's Nominated Terminal's truck loading facility to the receiving equipment of the Companies' Nominated Truck(s), and Diesel and/or ULSD shall be dyed by SELLER in accordance with State and Federal requirements for tax-exempt, off-road diesel fuel.

(c) **Deliveries to the Companies' Nominated Barge or to the Harbor Terminal piping [e.g., for delivery to Molokai]** – For Product delivered in bulk to the Companies' Nominated Barge at either (i) SELLER's Loading Pier, (ii) a Third-Party Pier, or (iii) Harbor Terminal piping, title, custody and risk of loss of Product so Delivered shall pass from SELLER to the Companies at (for i and ii) the flange of the receiving hoses of the Companies' Nominated Barge at SELLER's Loading Pier or Third-Party Pier, and (for iii) , title, custody and risk of loss of Product so Delivered shall pass from SELLER to the Companies at the flange of the pipeline segment interconnection junction between SELLER and Harbor Terminal piping. If required by the Companies, the Diesel and/or ULSD shall be dyed by SELLER, in accordance with State and Federal requirements for tax-exempt, off-road diesel fuel.

(d) **Deliveries by SELLER's Nominated Barge**– For Product delivered in bulk to the pier, title, custody and risk of loss of Product so Delivered shall pass from SELLER to the Companies at the connection flange of the receiving pipeline at Companies' Nominated Marine Terminal. If required by the Companies, the Diesel and/or ULSD shall be dyed by SELLER, in accordance with State and Federal requirements for tax-exempt, off-road diesel fuel.

ARTICLE X
INSURANCE

Section 10.1: Insurance Requirements. SELLER and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force and effect at all times during the term of this Contract the following insurance and all other forms of insurance that may be required by any applicable law, rule, ordinance or regulation of any governmental authority:

(a) If SELLER employs an ocean-going tank barge for the Delivery of Product, SELLER shall maintain or cause to be maintained with respect to said vessel full form Protection & Indemnity Insurance, including Excess Collision, pollution/ environmental risk coverage, upon the vessel pursuant to a standard Protection & Indemnity Club entry, with a Club which is a member of the International Group of Protection and Indemnity Clubs, with minimum limits for pollution/environmental risks to be $1,000,000,000 per occurrence, at least equal to the actual value of each vessel and barge, or the maximum commercially available, whichever is greater. Such insurance shall cover all of the risks covered under a standard Lloyd's Maritime Insurance policy, including all the denominated "Institute Cargo Clauses" (Free of Particular Average, F.P.A. and

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clauses referring to wars, strikes, riots and civil disturbances).

(b) Standard Workers Compensation and Employers Liability Insurance endorsed to be applicable to the State of Hawaii as well as the Longshore Act, with statutory limits for workers compensation and limits of $5,000,000 per occurrence for employers liability.

(c) Commercial General Liability Insurance with a bodily injury and property damage combined single limit per occurrence of at least $5,000,000.

(d) Automobile Liability Insurance on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Product to the Companies with a bodily injury and property damage combined single limit per occurrence of at least $5,000,000.

(e) Other Coverage. SELLER and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain in full force and effect at all times during the term of this Contract on all owned, non-owned and hired vehicles used in conjunction with the Delivery of Product to Hawaiian Electric, Hawaii Electric Light or Maui Electric, any other insurance or surety bonding that may be required under the laws, ordinances and regulations of any governmental authority, including the Federal Motor Carrier Act of 1980 and all rules and regulations of the DOT and/or the USDOT.

Section 10.2: **Insurance Paid.** Premiums for all necessary insurance policies are included in the Delivered price of Product as determined in Section 5.1. No special payments shall be made by the Companies to Seller in respect to such premiums.

Section 10.3: Waiver of Subrogation. SELLER and anyone acting under its direction or control or on its behalf will cause its insurers (except for Workers Compensation insurance) to waive all rights of subrogation which SELLER or its insurers may have against the Companies, the Companies' agents, or the Companies' employees.

Section 10.4: Hawaiian Electric, Hawaii Electric Light and Maui Electric As Additional Insured. Insurance policies (except for Workers Compensation insurance) providing the insurance coverage required in this Contract will name the Companies, the Companies' agents or the Companies' employees as an additional insured. Coverage must be primary in respect to the additional insured. Any other insurance carried by the Companies will be excess only and not contribute with this insurance.

Section 10.5: Certificates of Insurance. Before performance of this Contract, SELLER shall file with the Companies' designated representative certificates of insurance, or other documentary evidence acceptable to the Companies, certifying that each of the foregoing insurance coverages is in force, and further providing that the Companies will be given thirty (30) Days' written notice of any material change in, cancellation of, or intent not to renew any of the required policies. SELLER shall provide new insurance certificates reflecting the required policies prior to the expiration date of any coverage. Receipt of any certificate showing less coverage than required is not a waiver of SELLER's obligation to fulfill the coverage requirements.

SAMPLE

Section 10.6: **Failure to Procure Insurance.** In the event SELLER fails to procure and/or maintain an insurance as required above, an insurance fails for any reason (including, without limitation, breach of policy condition or warranty) and/or an insurer otherwise refuses or is unable to pay, the Party required to procure that insurance shall be deemed an insurer or self-insurer, shall accept and pay claims which would have otherwise been submitted to the failed insurance and shall indemnify and hold harmless (including legal fees and costs) the other Party of and from any loss, damage, expense, claim, liability and/or suit resulting from such failure.

Section 10.7: Performance Bond/Letter of Credit. A Performance Bond or an Irrevocable Standby Letter of Credit in the form reasonably acceptable to the Companies shall be furnished by SELLER and deposited with the Companies in the amount of $_____, guaranteeing SELLER's full compliance with and performance under this Contract. The Performance Bond or Irrevocable Standby Letter of Credit shall remain in effect from the Effective Date until the end of the Original Term or through any contract Extensions. Said Bond or Letter of Credit is to be submitted to the Companies no later than thirty (30) Days following the Effective Date. No special payments shall be made by the Companies to SELLER in respect to premiums for a bond or letter of credit.

ARTICLE XI
FORCE MAJEURE

Section 11.1: Force Majeure.

(a) Neither Party shall be liable in any manner for failure to Deliver or to receive Product hereunder or any other failure to perform or delay in performing any obligations herein imposed in this Contract for the time and to the extent such failure or delay is caused by an event or act of force majeure, which shall be defined as an act of God, hurricane, flood, volcanic eruption, earthquake; tsunami, war, rebellion, insurrection, lockout; fire, explosion, or destruction from any involuntary cause of SELLER's vessel, Terminal, container or of the Companies' Receiving Facility or any significant part thereof; or compliance, voluntary or involuntary, with a direction or request of any governmental authority or person purporting to act with government authority, including any such direction or request limiting the Companies' recovery of all fuel costs incurred under this Contract; or any other cause or causes (except financial) not within the control of the affected Party. A Party rendered unable to fulfill any obligation under this Contract due to an event or act of force majeure shall make all reasonable effort to remove such inability in the shortest possible time.

(b) The Party claiming force majeure agrees to give the other Party prompt written notice of an act or event of force majeure, specifying the anticipated effect and duration of any suspension or reduction of Deliveries of Product arising there from. The Party claiming force majeure shall use due diligence to cure any act or event of force majeure, and shall give the other Party prompt notice when it expects the act or event of force majeure to terminate.

(c) If Delivery is suspended or reduced by SELLER pursuant to an event or act of force majeure, it shall not be a breach of this Contract for the Companies to buy Product from a supplier other than SELLER for the quantities of Product which SELLER does not

SAMPLE

Deliver; and the Companies shall not be obligated to buy, after the period of suspension or reduction, the undelivered quantity of Product which normally would have been sold and Delivered hereunder during the period of suspension or reduction.

Section 11.2: Option to Terminate. If Delivery of Product is suspended or reduced pursuant to an event or act of force majeure for more than thirty (30) Days, the Companies shall have the option while such suspension or reduction continues to terminate this Contract on written notice to SELLER. If the Companies terminate this Contract pursuant to this Section 11.2, then this Contract shall be of no further force and effect and the Parties shall each be relieved of any and all further obligations to each other, save and except for any obligations and liabilities incurred by a Party prior to the date of termination.

ARTICLE XII
COMPLIANCE WITH LAWS AND REGULATIONS

Section 12.1: Compliance with Laws and Regulations.

(a) This Contract is subject to all applicable present and future laws, statutes, orders, rules, and regulations of governmental or quasi-governmental authorities having jurisdiction over the Parties. SELLER shall fully comply with all statutes, ordinances, rules, regulations, and requirements of all city, county, state, federal and other applicable government authorities which are now or may hereafter be in force.

(b) If the Delivery or supply of Product pursuant to this Contract conflicts with or is limited or prohibited by any federal, state of local regulations, statutes, rules or permits then to the extent of such conflict, limitation or prohibition, SELLER shall have no obligation to Deliver or supply the Companies with the Product under this Contract and the Companies shall have no obligation to purchase or receive the Product under this Contract. The Companies, in the Companies' discretion, may elect to complete and file any and all required Federal or State regulatory forms to permit, facilitate, or enable the supply of Product to the Companies under this Contract. SELLER shall fully cooperate with the Companies in the completion and filing of the foregoing forms. If the Companies' purchase, receipt or use of Product pursuant to this Contract, or the Companies' emissions from the Companies' use of Product conflicts with or is limited or prohibited by any Federal, State or local regulations, statutes, rules or permits then to the extent of such conflict, limitation or prohibition, the Companies shall have no obligation to purchase and receive the Product under this Contract.

Section 12.2: **Material Safety Compliance.** SELLER warrants that it is fully informed concerning the nature and existence of risks posed by transporting, storing, using, handling and being exposed to Product. SELLER shall furnish to the Companies health, safety and environmental information (including without limitation Material Safety Data Sheets, "HSE Data") concerning health, safety and environmental aspects of the Product purchased by the Companies, including health, safety and environmental warnings, if any, required by applicable law. SELLER shall not be entitled to rely upon such HSE Data as being an inclusive presentation of all potential health, safety and environmental risks associated with the Product to be Delivered. SELLER shall furnish HSE Data to, and otherwise inform, SELLER's nominated vessel of all such risks, and the Master shall advise and instruct all crew, seamen and employees about the hazards, if any, associated with the Product and

SAMPLE

the safe and proper methods of handling and storing of the Product. Compliance by the SELLER with recommendations in HSE Data shall not excuse the SELLER from its obligations under Article XIV and this Section 12.2.

Section 12.3: Permits and Licenses. SELLER shall secure and pay for all required permits and licenses, and shall comply with all federal, state and local statutes, regulations and public ordinances applicable to this Contract, (including the provisions of the Occupational Safety and Health Act of 1970 and all amendments thereto, and the DOT Hazardous Materials Regulations), and shall indemnify, defend and save the Companies harmless from any and all liability, fines, damage, cost and expense, including but not limited to reasonable attorneys' fees and costs, arising from SELLER's failure to do so.

Section 12.4: Compliance with Laws and Regulations.

(a) This Contract is subject to all applicable present and future laws, statutes, orders, rules, and regulations of governmental or quasi-governmental authorities having jurisdiction over the Parties. SELLER shall fully comply with all statutes, ordinances, rules, regulations, and requirements of all city, county, state, federal and other applicable government authorities which are now or may hereafter be in force.

(b) If at any time any of the said laws, rules, regulations, implementations or interpretations thereof are changed or if such laws, rules, regulations or new interpretations and implementations thereof come into existence and become effective after the date of execution of this Contract, and such change or such laws, rules, regulations, interpretations or implementations thereof have a significant economic effect upon either party, such that performance of this Contract would be inequitable or cause substantial financial hardship to the affected party, then the affected party shall have the option to call for renegotiation of the Product Price or any other provision of this Contract the performance of which by the affected party would be inequitable or cause substantial financial hardship. Such option shall be exercised by the affected party no later than one hundred eighty (180) Days after such a change or such law, rule regulation, interpretation or implementation thereof comes into existence and becomes effective by giving written notice to the other party of the call to renegotiate. Within ten (10) Days after the date of such notice, the parties shall enter into negotiations and in the event that the parties do not agree upon a new Product Price or other provision satisfactory to both parties within forty (40) Days after the date of such notice, the affected party shall have the right to terminate this Contract effective thirty (30) Days after giving notice of termination to the other party. Such notice of termination shall be given within thirty (30) Days immediately following the forty (40) Day negotiation period. Until a mutually satisfactory new Product Price or other provision has been agreed upon, or until this Contract is terminated as provided herein, the Product Price or other provision that was in effect when the request for renegotiation was made shall continue in full force and effect.

ARTICLE XIII
RELEASES

Section 13.1: Spills/Environmental Pollution. In the event any spill or discharge occurs from any nominated vessel, Tanker Truck or ISO Container, or pipeline, utilized by SELLER in the performance of this Contract, or if any spill, discharge, or pollution damage is caused

SAMPLE

by or is threatened in connection with the loading, transportation or Delivery of Product by SELLER, then all regulatory notifications and filings, as well as all efforts and costs of containment and clean up shall be the sole responsibility of SELLER, except to the extent that such spill, discharge, or pollution damage is directly attributable to the sole negligence, gross negligence, comparative negligence, or willful misconduct of the Companies in which case the Companies shall then participate in the efforts and costs of containment and cleanup.

Section 13.2: Pollution Mitigation.

(a) When an escape or discharge of oil or any polluting substance occurs in connection with or is caused by SELLER's or its agent's vessel or occurs from or is caused by discharging operations, SELLER or its agents shall promptly take whatever measures are necessary or reasonable to prevent or mitigate environmental damage, without regard to whether or not said escape or discharge was caused by the negligence or willful misconduct of SELLER's equipment or SELLER or the Companies or others. Failing such action by SELLER or its agents, the Companies, on SELLER's behalf, may promptly take whatever measures are reasonably necessary to prevent or mitigate pollution damage and notify SELLER as soon as practicable thereafter of such actions. Each Party in good faith shall keep the other advised of the nature and results of the measures taken, and if time permits, the nature of the measures intended to be taken.

(b) The cost of all such measures taken shall be borne by SELLER except to the extent such escape or discharge was caused or contributed to by the gross negligence or willful misconduct of the Companies, and prompt reimbursement shall be made as appropriate; provided, however, that should SELLER or its agents give notice to the Companies to discontinue said measures (and to the extent government authorities allow the Companies to discontinue said measures) the continuance of the Companies' actions will no longer be deemed to have been taken pursuant to the provisions of this clause. Each Party in good faith shall provide written notice to the other of such actions and measures taken.

(c) Notwithstanding any other provision in this Contract, the foregoing provisions shall be applicable only between SELLER and the Companies and shall not affect, as between SELLER and the Companies, any liability that either SELLER or the Companies shall have to any third parties, including the State of Hawaii and the U.S. Government, if either Party shall have such liability.

Section 13.3: Release Liability. Should the Companies incur any liability under Chapter 128D of the Hawaii Revised Statutes as a result of a spill from SELLER's nominated vessel during discharge, SELLER shall indemnify and hold the Companies harmless to the extent not caused by the Companies' gross negligence or willful misconduct.

Section 13.4: Operational Contacts. In the event of any accident, spill, or reportable incident incurred under the performance of this Contract, the following individuals shall be immediately contacted:

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Hawaiian Electric
Maui Electric
Hawai'i Electric Light

Hawaiian Electric	Name	Position	Phone	Cellular
Primary				
Backup				
Hawaii Electric Light				
Primary				
Backup				
Maui Electric				
Primary				
Backup				
SELLER				
Primary				
Backup				

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ARTICLE XIV
INDEMNITY

Section 14.1: Indemnity. To the fullest extent permitted by applicable law, SELLER shall forever indemnify, defend and hold harmless the Companies, its directors, officers, employees, agents (including but not limited to affiliates and contractors and their employees), successors and assigns, from and against all liabilities, losses, penalties, claims, demands, judgments, actions, costs and expenses (including reasonable attorneys' fees and costs of litigation), and proceedings of any nature whatsoever, based upon or arising out of damage to property or injuries to persons (including death), fines or penalties or other tortious acts (collectively, "Injury or Damage"), to the extent that they arise out of, are incident to or result directly or indirectly from (a) Product which does not meet the Specification or is contaminated; (b) operation of any motor vehicle used in the Delivery of Product to the Companies and owned or hired by SELLER, its agents or contractors; or (c) SELLER's performance or failure to perform its obligations under this Contract, including without limitation its obligation to comply with Article XII hereof; except to the extent that

such Injury or Damage is directly attributable to the gross negligence or willful misconduct of the Companies.

ARTICLE XV
DEFAULT

Section 15.1: Default.

(a) Breach by SELLER of any of its representations and warranties in this Contract or failure of either Party to promptly perform any obligation under this Contract shall constitute default. If the Companies or SELLER considers the other Party (the "Defaulting Party") to be in default under this Contract, such Party (the "Non-Defaulting Party") shall give the Defaulting Party prompt notice thereof, describing the particulars of such default. The Defaulting Party shall thereafter have thirty (30) Days from the receipt of said notice in which to remedy such default. If the default is not cured, the Non-Defaulting Party may, without prejudice to any other right or remedy of such Party in respect of such default, immediately terminate its obligations under this Contract by written notice to the Defaulting Party. Any termination shall be without prejudice to accrued rights, including without limitation the right of either Party to damages arising from such breach or prior breaches hereof. All rights and remedies hereunder are independent of each other and election of one remedy shall not exclude another. The prevailing Party in any action shall be entitled to recover its attorneys' fees and costs from the other Party.

(b) Notwithstanding the foregoing, if SELLER's default is not Delivering Product as required by this Contract, SELLER's time to cure shall be five (5) Days from the Companies' notice of default. Without limiting any other right or remedy, if SELLER does not cure the default in such time by Delivering compliant Product to the Companies and SELLER fails to provide alternative arrangements reasonably approved by the Companies, the Companies may immediately acquire substitute Product from another supplier ("Cover Supplies"), and, except as otherwise provided in this Contract, SELLER shall be liable to the Companies for the difference in cost between the fuel acquired from the other supplier and the price the Companies would have paid SELLER under this Contract for the same amount of fuel Delivered at the same time as the replacement fuel, plus all reasonable costs and expenses incurred by the Companies in obtaining such cover ("Cover Costs").

Section 15.2: Consequential Damages. In no event shall either Party be liable to the other for any prospective profits, or special, indirect, incidental or consequential damages of any kind, whether based in contract, tort (including negligence or strict liability) or otherwise.

ARTICLE XVI
NOTICE

Section 16.1 Notices. Except as otherwise expressly provided in this Contract, all notices shall be given in writing, by facsimile, electronic mail or first class mail, postage prepaid, to the following addresses, or such other address as the parties may designate by notice:

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-SELLER'S ADDRESS---

Hawaiian Electric Company, Inc.
PO Box 2750
Honolulu, HI 96840-0001
Attention: Director of Fuel Operations – mailstop CIP-IF
Facsimile: 808-203-1796

Hawaii Electric Light Co., Inc.
P. O. Box 1027
Hilo, Hawaii 96721-1027
Attn: Production Department
Facsimile: 808-969-0425

Maui Electric Company, Ltd.
P. O. Box 398
Kahului, Hawaii 96732
Attn: Production Department
Facsimile: 808-422-4975

Notice shall be deemed to have been Delivered upon the earlier to occur of actual receipt or two (2) Days after sending.

ARTICLE XVII
GENERAL PROVISIONS

Section 17.1: Waiver and Severability. If any section or provision of this Contract or any exhibit or rider hereto is held by any court or other competent authority or be illegal, unenforceable or invalid, the remaining terms, provisions, rights and obligations of this Contract shall not be affected. The failure of a Party hereunder to assert a right or enforce an obligation of the other Party shall not be deemed a waiver of such right or obligation. In no event shall any waiver by either Party of any default under this Contract operate as a waiver of any further default.

Section 17.2: Assignment. This Contract shall extend to and be binding upon the successors and assigns of the Companies and SELLER, provided, however, that no assignments of this Contract shall be made by the Companies or SELLER without the prior written consent of the other Party.

Section 17.3: Conflicts of Interest. Conflicts of interest related to this Contract are strictly prohibited. Except as otherwise expressly provided herein, no Party, nor any director, employee, or agent of a Party shall give to or receive from any director, employee or agent of the other party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, no Party nor any director, employee or agent of a Party shall enter into any business arrangement with any director, employee or agent of the

SAMPLE

other Party (or any affiliate), unless such person is acting for and on behalf of the other Party, without prior written notification thereof to the other Party.

Section 17.4: Applicable Law/Venue. This Contract shall be construed in accordance with, and all disputes arising hereunder shall be determined in accordance with, the law of the State of Hawaii, U.S.A. Hawaii shall be the exclusive venue for any litigation arising hereunder. Each Party agrees and consents that any dispute, litigation, action or proceeding arising out of this Contract, however defined, shall be brought exclusively in the State of Hawaii in a court of competent jurisdiction.

Section 17.5: Entire Agreement/Modification. This Contract shall constitute the entire understanding between the Parties with respect to all matters and things herein mentioned. It is expressly acknowledged and agreed by and between the Parties that neither Party is now relying upon any collateral, prior or contemporaneous agreement, assurance, representation or warranty, written or oral, pertaining to the subject matter contained herein. This Contract shall not be modified or changed except by written instrument executed by the duly authorized representatives of the Parties hereto.

Section 17.6: Contract Is Not an Asset. This Contract shall not be deemed to be an asset of either Party, and, at the option of a Party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings affecting the other Party.

Section 17.7: Status of the Parties. Nothing in this Contract shall be construed to constitute either Party as a joint venturer, co-venturer, joint lessor, joint operator or partner of the other. In performing services pursuant to this Contract, SELLER is acting solely as an independent contractor maintaining complete control over its employees and operations. Unless otherwise provided in this Contract, neither the Companies nor SELLER is authorized to take any action in any way whatsoever for or on behalf of the other.

Section 17.8: Headings. The headings or captions are for convenient reference only and have no force or effect or legal meaning in the construction or enforcement of this Contract.

Section 17.9: Confidentiality and Non-Disclosure.

(a) Each Party may have a proprietary interest or other need for confidentiality in information that may be furnished to the other pursuant to this Agreement ("Confidential Information"). The Party disclosing such information shall be referred to in this section as the "Disclosing Party," and the Party receiving such information shall be referred to as the "Receiving Party."

(b) The Receiving Party will hold in confidence and, without the consent of the Disclosing Party, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the Disclosing Party except as permitted herein. The Receiving Party may only disclose the Confidential Information to its officers, directors, employees, professional advisors and independent contractors and consultants with a direct need to know the information for the implementation or exercise of rights and/or performance of obligations under or arising from this Contract, provided that such persons/entities (other than officers, directors and employees) are bound by written confidentiality agreements with terms and conditions that are no less restrictive than those contained in this section. Without limiting the foregoing, the Receiving Party agrees that it

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will exercise at least the same standard of care in protecting the confidentiality of the Disclosing Party's Confidential Information as it does with its own Confidential Information of a similar nature, but in any event, no less than reasonable care.

(c) Confidential Information for purposes of this Contract shall not include information if and only to the extent that the Receiving Party establishes that the information: (i) is or becomes a part of the public domain through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure. Confidential Information may also be disclosed by the Receiving Party pursuant to a requirement of a governmental agency, regulatory body or by operation of law, provided that the recipient shall disclose only that part of the Confidential Information that it is required to disclose and shall notify the Disclosing Party prior to such disclosure in a timely fashion in order to permit the Disclosing Party to lawfully attempt to prevent or restrict such disclosure should it so elect, and shall take all other reasonable and lawful measures to ensure the continued confidential treatment of the same by the party to which the Confidential Information is disclosed.

(d) Any provision herein to the contrary notwithstanding, the Companies may disclose Confidential Information to the Commission, the Consumer Advocate, and/or any other governmental regulatory agency with notice to, but without need of prior consent by SELLER, provided that the Companies takes reasonable steps to obtain approval to submit the same under seal or under other procedures designed to preserve the confidentiality of the Confidential Information.

Section 17.10 <u>Financial Compliance/Capital Lease/No Consolidation:</u>

(a) SELLER shall provide or cause to be provided to the Companies on a timely basis, as reasonably determined by the Companies, all information, including but not limited to information that may be obtained in any audit referred to below (the "Information"), reasonably requested by the Companies for purposes of permitting the Companies and its parent company, Hawaiian Electric Industries ("HEI"), to comply with the requirements (initial and on-going) of (a) identifying variable interest entities and determining primary beneficiaries under the accounting principles of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, Consolidation ("FASB ASC 810"), (b) Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX 404"), (c) FASB ASC 840 Leases ("FASB ASC 840"), and (d) all clarifications, interpretations and revisions of and regulations implementing FASB ASC 810, SOX 404, and FASB ASC 840, Securities and Exchange Commission, the Public Company Accounting Oversight Board, Emerging Issues Task Force or other governing agencies. In addition, if required by the Companies in order to meet its compliance obligations, SELLER shall allow the Companies 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 that the Companies shall be responsible for all costs associated with the foregoing, including but not limited to SELLER's reasonable internal costs.

(b) If there is a change in circumstances during the Term that would trigger consolidation of SELLER's finances on to the Companies' balance sheet, and such

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consolidation is not attributable to the Companies' fault, then the Parties will take all commercially reasonable steps, including modification of the Contract, to eliminate the consolidation, while preserving the economic "benefit of the bargain" to both Parties. Notwithstanding the foregoing, if for any reason, at any time during the Term, the Companies (and/or the Companies' affiliates or HEI) in their good faith analysis and sole discretion are required to consolidate SELLER into its financial statements in accordance with U.S. generally accepted accounting principles, then the Companies may take any and all action necessary to eliminate consolidation, including without limitation, by immediately terminating this Contract without fault or liability.

(c) If there is a change in circumstances during the Term that would trigger the treatment of this Contract as a capital lease under FASB ASC 840, and such treatment is not attributable to the Companies' fault, then the Parties will take all commercially reasonable steps, including modification of the Contract, to eliminate the capital lease treatment, while preserving the economic "benefit of the bargain" to both Parties. Notwithstanding the foregoing, if for any reason, at any time during the Term, the Companies' (and/or the Companies' affiliates, or HEI) in their good faith analysis and sole discretion are required to treat this Contract as a capital lease under FASB ASC 840, then the Companies may take any and all action necessary to eliminate this capital lease treatment, including without limitation, by immediately terminating this Contract without fault or liability.

(d) The Companies shall, and shall cause HEI to, maintain the confidentiality of the Information as provided in this Section 17.10. The Companies may share the Information on a confidential basis with HEI and the independent auditors and attorneys for the Companies and HEI. (The Companies, HEI, and their respective independent auditors and attorneys are collectively referred to in this Section 17.10 as "Recipient.") If either the Companies or HEI, in the exercise of their respective reasonable judgments, concludes that consolidation or financial reporting with respect to SELLER and/or this Contract is necessary, the Companies and HEI each shall have the right to disclose such of the Information as the Companies 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 the Companies or HEI disclose Information pursuant to the preceding sentence, the Companies and HEI shall, without limitation to the generality of the preceding sentence, have the right to disclose Information to the Commission and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs of the State of Hawaii ("Consumer Advocate") in connection with the Commission's rate making activities for the Companies, and other HEI affiliated entities, provided that, if the scope or content of the Information to be disclosed to the Commission exceeds or is more detailed than that disclosed pursuant to the preceding sentence, such Information will not be disclosed until the Commission first issues a protective order to protect the confidentiality of such Information. Neither the Companies nor HEI shall use the Information for any purpose other than as permitted under this Section 17.10.

(e) In circumstances other than those addressed in the immediately preceding paragraph, if any Recipient becomes legally compelled under applicable law or by legal process (e.g., deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose all or a portion of the Information, such Recipient

SAMPLE

shall undertake reasonable efforts to provide SELLER with prompt notice of such legal requirement prior to disclosure so that SELLER may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section 17.10. If such protective order or other remedy is not obtained, or if SELLER waives compliance with the provisions of this Section 17.10, Recipient shall furnish only that portion of the Information which it is legally required to so furnish and shall use reasonable efforts to obtain assurance that confidential treatment will be accorded to any disclosed material.

(f) The obligation of nondisclosure and restricted use imposed on each Recipient under this Section 17.10 shall not extend to any portion(s) of the Information which (a) was known to such Recipient prior to receipt, or (b) without the fault of such Recipient is available or becomes available to the general public, or (c) is received by such Recipient from a third party not bound by an obligation or duty of confidentiality.

Section 17.11: Miscellaneous. No use of the pipelines, facilities or equipment used in connection with this Contract shall be construed as having been dedicated to public use and it is hereby acknowledged by the Parties that the owner of any pipelines used to transport Product under this Contract retains the rights to determine who, other than the Parties to this Contract, shall use said pipelines, facilities, and equipment.

Section 17.12: Attorneys' Fees. If there is a dispute between the Parties and either Party institutes a lawsuit, arbitration, mediation, or other proceeding to enforce, declare, or interpret the terms of this Contract, the prevailing Party shall be awarded its reasonable attorney's fees and costs.

Section 17.13: Offsets. In the event that a Party owes the other Party ("Offsetting Party") any amount under this Contract, the Offsetting Party owed such amount may at any time offset any and all amounts that are due and owed to the other Party against such amount that the other Party owes the Offsetting Party. The Offsetting Party asserting an offset shall provide a prompt written explanation of the amount and the basis for the offset.

Section 17.14: Counterparts. This Contract may be executed in as many counterparts as desired by the Parties, any one of which shall have the force and effect of any original but all of which together shall constitute the same instrument. This Contract may also be executed by exchange of executed copies via facsimile or other electronic means, such as PDF, in which case – but not as a condition to the validity of the Contract – each Party shall subsequently send the other Party by mail the original executed copy. A Party's signature transmitted by facsimile or similar electronic means shall be considered an "original" signature for purposes of this Contract.

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Hawaiian Electric
Maui Electric
Hawai'i Electric Light

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the day and year first above written.

HAWAIIAN ELECTRIC COMPANY, INC.

By_____

Its

By_____

Its

[SELLER]

By_____

Its

By_____

Its

HAWAII ELECTRIC LIGHT COMPANY, INC.

By_____

Its

By_____

Its

MAUI ELECTRIC LIGHT CO., LTD.

By_____

Its

By_____

Its

SAMPLE