



Teaming Agreement

This Teaming Agreement ("Agreement"), dated this 11th day of February 2003, and effective as of February 11, 2003 ("Effective Date") is by and between Hess Microgen LLC, a Delaware limited liability company having offices at 12 Industrial Parkway, Unit B1, Carson City, Nevada ("Hess") and Hawaiian Electric Company, Inc. (including its subsidiaries, Maui Electric Company Ltd. and Hawaii Electric Light Company Inc.), a Hawaii corporation having offices at 900 Richards Street, Honolulu, Hawaii ("HECO"). Hess and HECO are individually referred to as "Party" herein and collectively as "Parties."

Recitals

Whereas, Hess is a manufacturer and provider of distributed energy generation and cogeneration systems designed to produce electrical and thermal energy for commercial and industrial establishments ("Systems");

Whereas, HECO is a public utility regulated by the State of Hawaii Public Utilities Commission, which, together with its subsidiaries, Maui Electric Company Ltd. ("MECO") and Hawaii Electric Light Company Inc. ("HELCO"), provides electricity to customers in its service territories in the State of Hawaii;

Whereas, HECO and Hess, because of their diverse capabilities, have determined that they would benefit from a Teaming Agreement for the purpose of offering the Systems and their related products and services, to certain commercial and industrial customers within the State of Hawaii ("Customers"); and

Whereas, the Parties wish to establish a cooperative and supportive team in order to achieve the maximum mutual benefit from providing Systems to the Customers.

Now therefore, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed and the mutual benefits to be obtained from cooperation, the Parties agree as follows:

1. **Definitions.** As used throughout this Agreement, the following terms shall have the meanings set forth below:
 - 1.1 "CEPA" means a Cogeneration Energy Purchase Agreement in existence as of the date of this Agreement between Hess and a Customer.
 - 1.2 "Customer(s)" means any governmental, commercial and/or industrial customer within the State of Hawaii.

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- 1.3 "Hess Customer(s)" shall mean those Customers who, as of the date of this Agreement, have signed a letter of intent or other written indication of their intent to purchase a System from Hess. Hess Customers are also those Customers who, as of the date of this Agreement, have entered into an agreement to purchase a System or have entered into a CEPA to purchase energy from Hess.
- 1.4 "HECO Customer(s)" shall mean those Customers who have indicated to HECO, MECO or HELCO a desire to utilize on-site cogeneration, other than Hess Customers
- 1.5 "Joint Customer(s)" shall mean those Customers who, as of the date of this Agreement, have not provided an indication of interest related to the Systems to either HECO or Hess, but who are or could be potential purchasers of the System.
- 1.6 "Facility" shall mean Customer on-site cogeneration and related equipment and fuel procurement system.

2. Responsibilities of the Parties as to Hess Customers

- 2.1 For Hess Customers who have signed a binding letter of intent with Hess containing agreement on all material terms and conditions, Hess will manufacture the Systems. If agreement is reached between HECO and Hess regarding the process and documentation described in section 5.1 below to effectuate a purchase, HECO will purchase the System from Hess. In such circumstance, HECO would operate the Systems and manage and pay for all fuel. Alternatively, HECO could arrange for the Hess Customer to operate the System and manage and pay for all fuel. Hess shall have the right to accept or reject any offer to purchase presented by HECO. The standard terms and conditions related to the sale of Hess products, as set forth in Exhibit A hereto, shall apply in each transaction.
- 2.2 For Hess Customers who have entered into a CEPA, Hess will manufacture and install the System or has manufactured and installed a system. If agreement is reached between HECO and Hess regarding the process and documentation described in section 5.1 below to effectuate a purchase, HECO will purchase the System from Hess and take assignment of the CEPA upon pricing terms to be negotiated. Hess shall have the right to accept or reject any offer to purchase presented by HECO. The standard terms and conditions related to the sale of Hess products, as set forth in Exhibit A hereto, shall apply in each transaction.
- 2.3 Subsequent to Hess presenting a Hess Customer to HECO, if the Hess Customer communicates that it declines to enter into a business arrangement with HECO, Hess will be free to pursue the opportunity to provide a System directly to such



Hess Customer with no liability or obligation to HECO. The Party in receipt of the communication from the Hess Customer regarding not working with HECO shall be obligated to inform the other Party in writing.

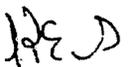
- 2.4 For Hess Customers who have a Hess System installed under this Agreement, HECO and Hess agree that any additional facilities of such Hess Customer which may benefit from a System utilizing equipment with individual face-plate ratings of up to 1 MW will be exclusively presented with the Hess Systems.
- 2.5 The Parties agrees that neither will attempt to influence the decision of the Hess Customer in any way or to interfere with any relationships which may exist between the Hess Customer and Hess or any relationships which may exist between the Hess Customer and HECO.

3. Responsibilities of the Parties as to HECO Customers

- 3.1 For HECO Customers, Hess will negotiate with HECO to manufacture Systems which HECO may purchase from Hess if agreement is reached between HECO and Hess regarding the process and documentation described in section 5.1 below to effectuate a purchase. HECO will then provide the Systems to the HECO Customer under prices, terms and conditions as may be negotiated between HECO and the HECO Customer. The standard terms and conditions related to the sale of Hess products, as set forth in Exhibit A hereto, shall apply in each transaction.
- 3.2 For HECO Customers who have a Hess System installed under this Agreement, HECO and Hess agree that any additional facilities of such HECO Customer which may benefit from a distributed generation system utilizing equipment with individual face-plate ratings of up to 1MW will be exclusively presented with the Hess Systems. The standard terms and conditions related to the sale of Hess products, as set forth in Exhibit A hereto, shall apply in each transaction.
- 3.3 The Parties agrees that neither will attempt to influence the decision of the HECO Customer in any way or to interfere with any relationships which may exist between the HECO Customer and Hess or any relationships which may exist between the HECO Customer and HECO.

4. Responsibilities of the Parties as to Joint Customers

- 4.1 For Joint Customers who enter into a binding agreement with HECO to have a System installed at their facility, Hess will manufacture the Systems. If agreement is reached between HECO and Hess regarding the process and documentation


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described in section 5.1 below to effectuate a purchase, HECO will purchase the System from Hess and provide the Systems to the Joint Customer under prices, terms and conditions as may be negotiated between HECO and Joint Customer. In such circumstance, HECO will operate the Systems and manage and pay for all fuel or arrange for the Joint Customer to manage and pay for all fuel. HECO will also be responsible to sell the output of the Systems to the Joint Customer under terms and conditions agreed to between HECO and the Joint Customer.

4.2 If HECO declines to enter into an agreement with the Joint Customer, or, within 150 days from the date the parties are (i) contacted by, (ii) make a sales call on, or (iii) make a joint marketing proposal to the Joint Customer, all regarding an on-site generation opportunity, is not able to enter into a signed agreement with the Joint Customer, Hess will have the option to do business with the Joint Customer directly.

4.3 If Hess declines to sell Systems for use by HECO with the Joint Customer, or, within 150 days from the date the parties are contacted by, make a sales call on, or make a joint marketing proposal to the Joint Customer regarding an on-site generation opportunity, is not able to enter into a signed agreement with the Joint Customer, HECO will have the option to do business with the Joint Customer directly or offer to serve the Joint Customer with systems manufactured by another manufacturer.

4.4 For Joint Customers who have a Hess System installed under this Agreement, HECO and HESS agree that any additional facilities of such Joint Customer which may benefit from a distributed generation system utilizing equipment with individual face-plate ratings of up to 1 MW will be exclusively presented with the Hess Systems.

4.5 The Parties agrees that neither will attempt to influence the decision of the Joint Customer in any way or to interfere with any relationships which may exist between the Joint Customer and Hess or any relationships which may exist between the Joint Customer and HECO.

5. **Purchase of the Systems by HECO.** For Customers to whom HECO provides a System, HECO will own and operate the System at the Facility, except under those circumstances where HECO and the Customer have contracted for the Customer to own the System.

5.1 HECO will purchase the Systems from Hess pursuant to the Standard Terms and Conditions for Hess products with individual face-plate ratings up to 1MW as set forth on Exhibit A attached hereto for each System or group of Systems. In each case, orders for sales of Systems will be binding on the parties only when a Purchase Order for the System is signed by both Hess and HECO. Hess will have the right to accept or reject any order. In the event Hess rejects an order, HECO will be free to purchase Systems from any vendor to satisfy that

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order. Furthermore, if a specific System requires any primary components not normally provided by Hess or not available through Hess in accordance with HECO's schedule, Hess shall have the right to reject the order for such component and supply the balance of the order. For that portion of the order rejected by Hess, HECO will be free to purchase such components from any vendor. All orders will be for delivery F.O.B. Carson City, Nevada, unless otherwise specified on Exhibit A, and will be subject to Hess' standard terms in effect as of the date of shipment.

- 5.2 A description of the System in each case will be included in one or more Purchase Orders. Hess and HECO will agree on the design and specifications for the Systems to be installed at Customer's Facilities.
 - 5.3 HECO agrees to offer standard maintenance to Customer when a System is installed. HECO will maintain a staff of Hess certified and trained service technicians capable of start-up, maintenance, repair and overhaul of the Systems.
 - 5.4 HECO will, at its expense, provide the fuel necessary to operate the System or arrange with Customer for Customer to provide the fuel itself.
 - 5.5 HECO will have the right to sell to Customer the energy produced by the System.
6. **Term.** This Agreement will commence on the Effective Date and continue for a period of three (3) years ("Initial Term"). At the end of the Initial Term, the Agreement will continue for successive twenty-four (24) month periods (each a "Extended Term"), unless a Party terminates this Agreement by providing written notice to the other Party no later than one hundred twenty (120) days prior to the end of the Initial Term or any Extended Term.
7. **Warranty.** For any System purchased by HECO, Hess will provide its standard Limited Product Warranty set forth in Exhibit B hereto. **ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE ARE EXCLUDED AND DEEMED WAIVED.**
8. **Force Majeure.** Neither Party will be responsible for any damages arising out of any failure to perform, wholly or in part, due to any cause beyond its reasonable control ("Force Majeure"). Upon the occurrence of an event of Force Majeure, the affected Party will promptly provide notice to the other Party of the occurrence of such event. Upon providing such notice, the obligations of the Party giving such notice shall be suspended for as long as the Force Majeure event continues. Upon termination of the event of Force Majeure, the Party who was affected shall be entitled to an extension of time to perform its obligations equal to the time performance was suspended.

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9. **Damages and Termination.** Either Party may terminate this Agreement without cost or liability (a) as provided in this Agreement, or (b) upon material breach of the other Party. The nondefaulting Party must provide written notice of the breach to the breaching Party no less than thirty (30) days from the occurrence of the breach, and allowing a reasonable time for the breaching Party to cure the breach. The nondefaulting Party may pursue all other legal and equitable remedies available to it arising from a breach.
- 9.1 It will be a breach of this Agreement if HECO or Hess fails to perform or observe any material obligation hereunder on the part of HECO or Hess to be performed and the failure continues for thirty (30) days after receipt of written notice to the defaulting Party from the other Party; provided, however, that if the breach is of a nature that it cannot reasonably be cured within such thirty (30) day period, the time within which to cure will be reasonably extended up to an additional sixty (60) days (i.e., ninety (90) days after receipt of such notice) so long as the defaulting Party commences the cure within the thirty (30) day period and the defaulting Party thereafter diligently proceeds to complete the cure and the cure is completed on or before ninety (90) days after receipt of the notice.
- 9.2 In addition to the provisions set forth above, if any payment from HECO under any purchase order is more than fifteen (15) days overdue, then Hess may suspend deliveries of any Hess Systems ordered until all past due amounts are paid in full. If any payment due to Hess is more than sixty (60) days overdue, then Hess may terminate this Agreement on ten days written notice, unless HECO cures the default within ten days of receipt of written notice of the default.
10. **Confidentiality/Publicity.** Neither Party will use the name or trademark(s), or any part thereof, of the other Party in any advertising, publicity, endorsement, or testimonial related to the activities of the Parties under this Agreement without securing the prior written approval of the other Party.
11. **Limitation of Liability.** In no event shall either Party be liable for any indirect, special, punitive, incidental, exemplary, or consequential loss or damages of any nature arising out of their performance or non-performance hereunder.
12. **Assignment.** Neither Party shall assign, sell or transfer this Agreement without the written consent of the other Party, which consent may not be unreasonably withheld or delayed. Notwithstanding the above, either Party may assign, sell or transfer this Agreement or any of its rights or obligations to any of its subsidiaries or affiliates without the consent of the other Party, but with the agreement to provide notice of such assignment, sale or transfer to the other Party.
13. **Governing Law.** This Agreement will be governed by the internal laws of the State of New York.

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14. **No Third Party Beneficiaries.** HECO and Hess do not intend to benefit any person or entity not a signatory to this Agreement. No third party beneficiaries are intended or will be created by operation of this Agreement.
15. **Arms' Length Negotiations.** This Agreement is the product of arms' length negotiations in which both HECO and Hess have been represented by legal counsel. Accordingly, any rule of judicial construction that ambiguities in a document will be construed against the drafter of that document will have no application to the interpretation or enforcement of this Agreement.
16. **Notices.** Notices will be given by (a) certified mail, return receipt requested, postage paid, or (b) recognized overnight delivery services such as Federal Express, or (c) by facsimile. All notices not given by mail will be deemed received upon actual receipt to the person to whom the notice is directed. Notices will be addressed as follows:

To HECO:

Dr. Karl E. Stahlkopf
Senior Vice President
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, HA 96840
808-543-7655
808-543-7657 fax

To Hess:

Mr. John B. Douglas
President
Hess Microgen
12 Industrial Parkway, Unit B-1
Carson City, NV 89706
775-884-1000
775-884-3417 fax

16. Intellectual Property.

- 16.1 Unless authorized in writing by Hess, HECO will not use any trademark, service mark, trade secret, design, production drawing, mechanical compilation or other intellectual property of Hess except in the normal course of installation, operation and maintenance of Systems. HECO agrees not to reverse engineer, decompile or otherwise disclose the design of a System except as authorized in writing by Hess. All such information (and any information or data obtained or developed in connection herewith) will remain strictly confidential and may not be disclosed without the written consent of Hess.
- 16.2 Unless authorized in writing by HECO, Hess will not use any trademark, service mark, trade secret, design, production drawing, mechanical compilation or other intellectual property of HECO. Hess agrees not to reverse engineer or otherwise disclose the process and procedures used by HECO in the development, design, engineering, construction, ownership and operation of a System. All such information (and any information or data obtained or developed in connection

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herewith) will remain strictly confidential and may not be disclosed without the written consent of HECO.

17. Dispute Resolution.

17.1 If a dispute arises under this Agreement, the parties will first promptly attempt in good faith to resolve the dispute by negotiation. After a period of ninety (90) days of negotiation, any unresolved disputes or claims will be settled by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") in effect at that time, at a location specified by HECO in the state where the System is located. A single arbitrator will decide all disputes. The arbitrator will not have been previously employed by either Party, will have knowledge and experience in the electricity generation and maintenance industry, and will not have a direct or indirect interest in either Party or the subject matter of the arbitration. The arbitrator will be designated as agreed by the parties within twenty (20) business days after either Party requests in a writing sent to the other Party that a dispute or claim be arbitrated. If the parties fail to select an arbitrator, the arbitrator will be selected under the expedited rules of the AAA.

17.2 Decision. The arbitrator will issue a scheduling order that will not be modified except by the agreement of the parties. The arbitrator will render a decision no later than sixty (60) days after his/her selection, and the arbitrator will state in writing the factual and legal basis for the award; provided that the award will be based upon "baseball arbitration" procedures whereby the arbitrator will select either one or the other Party's position and the decision will not be based upon any compromise settlement mechanism unless such mechanism is agreed upon by the parties in advance. Any award rendered by the arbitrator will be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator may award the prevailing Party its costs, including attorneys' fees, incurred as a result of the dispute.

18. Independent Contractor. Each Party to this Agreement is an independent contractor with respect to the other Party and is not an agent for the other Party. This Agreement will not be deemed to create any partnership, joint venture or principal-agent arrangement or relationship between the parties.

19. No Severability. If any provision of this Agreement is held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision will be of no force and effect, but the illegality or unenforceability of such provision will have no effect upon and will not impair the enforceability of any other provision of this Agreement.

20. Integration and Modification. This Agreement, and all Exhibits and Appendices referenced in this Agreement, represents the entire agreement and understanding of the

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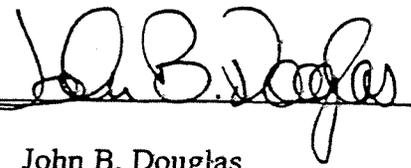
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parties with respect to the matters herein discussed. It supersedes in its entirety all prior or contemporary oral or written agreements. This Agreement may be amended only by a writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to signed this Agreement as of the date above written.

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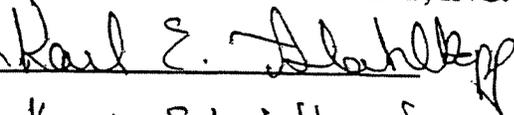
BY: 

Name: John B. Douglas

Title: President

Date: 2-10-03

HAWAII ELECTRIC COMPANY, INC.

BY: 

Name: Karl Stahlkopf

Title: Sr V.P. Energy Solutions

Date: 2/10/03

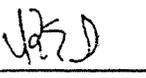






Exhibit A

Standard Terms and Conditions for the Sale of Hess Microgen Products:

HESS MICROGEN LLC – ATTACHMENT TO PURCHASE ORDER STANDARD TERMS AND CONDITIONS OF SALE OF GOODS AND/OR SERVICES

1. **AGREEMENT:** The following terms and conditions ("Terms") shall apply to the sale and purchase of the products, services, goods, materials, and/or equipment (collectively the "Goods") as identified on the Purchase Order, which is incorporated herein and to which these Terms are attached, between Hess Microgen LLC ("Seller") and its customer as identified on the Purchase Order ("Buyer"). This Purchase Order ("Order") is entered into pursuant to a Teaming Agreement by and between Seller and Buyer dated February 11, 2003 ("Teaming Agreement"). Except as otherwise stated herein, no other terms will be accepted or applicable to the Order. All other terms, including those of Buyer or Buyer's customer are hereby expressly rejected. Certain Job Specific Requirements for the ordered Goods, if applicable, are attached hereto and incorporated herein.
2. **FORMATION OF CONTRACT:** Seller hereby accepts Buyer's offer to purchase ("Offer") consisting of the Order (excluding Buyer's preprinted, conflicting or additional terms, if any), and these Terms. Seller neither waives these Terms nor accepts any of Buyer's terms by performance.
3. **CHANGE ORDERS:** The prices for any extras, changes to the Goods, or changes to the scope of work or modifications to the payment or performance schedule, will be agreed upon in writing before either party will be obligated to proceed with such changes.
4. **SHIPMENT AND DELIVERY:**
 - A. **TRANSPORTATION:** Unless otherwise stated in the Offer, prices are based on delivery F.O.B. Seller's facility in Carson City, NV. Seller will ship per Buyer's instructions of Best Way, Freight Billable, unless otherwise stated on Seller's acknowledgement. Title and risk of loss will pass from Seller to Buyer upon delivery to the carrier. Buyer will arrange and pay for any freight insurance.
 - B. **INSURANCE:** Notwithstanding the delivery terms, insurance coverage of any of Seller's Goods at Buyer's site prior to final acceptance will be provided by Buyer.
 - C. **DELIVERY SCHEDULE:** The schedule of delivery dates will be agreed on by the parties and is contingent upon prompt receipt by Seller of all necessary approvals and information on such dates or with such lead times as may be specified by Seller. Seller will use commercially reasonable efforts to achieve the schedule dates. Buyer's sole and exclusive remedy for Seller's failure to meet the delivery schedule, pursuant to the terms of this section, will be cancellation of the Order.
 - D. **PACKING AND CRATING:** Goods will be packed in accordance with Seller's standard commercial practice. Special packing or crating will be provided only at Buyer's request and expense.
 - F. **SHIPMENT DELAYS:** If shipment of Goods is delayed at the request of Buyer, Seller may store the Goods in any commercially reasonable manner at Buyer's expense. Any payments that would be due Seller, if the Goods had been shipped as scheduled, will be due, and Seller may invoice Buyer on schedule.
5. **SUPPORT SERVICES:**

Except as otherwise provisioned for in the Offer, technical support and services ("Technical Support") related to the installation or operation of Goods, or the design or operation of systems with which they will interact, will be provided on a time and material basis at Seller's standard rates.

 - A. **TRAVEL AND LIVING:** Buyer will pay expenses related to travel and living for the performance of Technical Support by Seller's personnel or contractors: air travel, automobile travel expenses at the rates in effect for Seller personnel at the time incurred; room and board; and travel time, portal to portal.
 - B. **WORKING CONDITIONS:** Seller reserves the right for its personnel to refuse to work under unsafe conditions.
 - C. **SCOPE.** Seller's personnel will act only as technical support. Buyer will defend and indemnify Seller against all claims, demands, obligations, and liabilities, including all personal injury and property damage, arising in connection with Technical Support activities.
6. **PAYMENT TERMS:** Net 30 days from date of invoice. Payments not received within 30 days of invoice will be subject to 1.5% per month interest on the unpaid amount from the date due.
7. **TAXES:** Unless specifically stated in the Offer, prices are exclusive of all taxes (federal, state, municipal, or other) related to this Agreement. Buyer will reimburse Seller for such taxes paid by Seller, except for taxes on Seller's income.
8. **BUYER INFORMATION:** Buyer will provide Seller with accurate and complete information as requested by Seller to permit Seller to successfully undertake and complete the work. Seller will be entitled to a price and delivery date adjustment if Buyer's information is incomplete or incorrect, resulting in delay or extra work.
9. **DOCUMENT APPROVAL:** Seller may request that Buyer review documents developed by Seller for conformity with Buyer's requirements or specifications. Unless Buyer advises Seller otherwise in writing within thirty (30) days after Seller submission, Seller may consider the documents approved and proceed with the work. Any changes thereafter made at Buyer's direction, will entitle Seller to a price and schedule adjustment.
10. **FINAL ACCEPTANCE:** Final acceptance occurs at completion of the last acceptance test. If no acceptance test is scheduled, final acceptance occurs ninety (90) days after delivery unless Buyer has given Seller notice in writing detailing any nonconformity. After final acceptance, Buyer's sole and exclusive rights and remedies for any nonconformity will be under the warranty provided in Paragraph 11.
11. **WARRANTY:** Seller hereby provides its Limited Product Warranty attached hereto and incorporated herein. In addition, Seller will pass-through any warranty on third party products making up part of the Goods. Seller makes no warranty regarding the accuracy or correctness of warranty claims or functionality claims made by third party producers.
12. **FORCE MAJEURE:** Neither party will be liable (other than for an obligation to pay sums due) to the other for any delay or failure to perform due to causes beyond its reasonable control. The party experiencing the force majeure will notify the other party promptly in writing.

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13. BUYER SUSPENSION OF WORK & DELAY: If Seller's performance is delayed by Buyer's suspension of work, in whole or in part, or by any act or omission of Buyer, Seller, in addition to any other remedies provided by law, will be entitled to an extension in the time for performance for the time required by Seller to return to the state of performance that existed before the delay. In addition, Buyer will pay an equitable adjustment in price based on a claim submitted by Seller for all reasonable costs, damages and expenses incurred by Seller incident to the delay or suspension. If the delay or suspension continues for sixty ("60") days or more, Seller has the right to cancel or renegotiate the Agreement.

14. TERMINATION: If there is a material breach, other than non-payment, and if a cure has not been satisfactorily commenced within thirty (30) days of receiving written notice detailing the breach or failure, the non-breaching party, by written notice to the other party, may terminate this Agreement. A wrongful termination or purported termination will be considered a material breach. Seller may, by written notice to Buyer, at any time, and without prejudice to any other rights or remedies provided by law or contained herein, suspend performance of or terminate this Agreement if Buyer has failed to make any payment due after three (3) business days written notice; prior to any resumption of work, Seller and Buyer will agree upon a change order for any adjustments to the performance dates, payment schedule and price that result from the suspension.

15. LIMITATION OF LIABILITY: Seller's maximum liability to Buyer, and Buyer's exclusive remedy for any cause, regardless of the form of action, whether in contract or in tort, including negligence, will be limited to the recovery of direct actual damages, subject to a maximum of the amount of the contract price hereunder. *NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.*

16. NOTICE: Any notice relating to this Agreement will be deemed given when sent to the other party by certified mail or receipted express courier service with proof of delivery to the carrier. Either party may change its address for notification upon written notice to the other party.

17. COMPLIANCE WITH LAWS: Buyer will secure and/or pay for any registration, licenses, permits, or other requirements of any governmental bodies, applicable to Buyer's industry. Seller will secure and/or pay for any registration, licenses, permits, or other requirements of any governmental bodies, applicable to Seller's industry. Any cost or expenses incurred by Buyer or Seller in meeting such requirements will be charged to Buyer or Seller respectively.

18. EXPORT CONTROL: The Goods may require a validated license from the U.S. government before export or reexport if shipped to a country other than the United States. Any license required to import the Goods to the United States shall be acquired by Seller and all costs of such licensing and/or importing shall be at Seller's expense. Any license required to export or reexport the Goods within the United States shall be acquired by Seller and all costs of such licensing and/or exporting or reexporting shall be at Seller's expense.

19. CHOICE OF LAW/JURISDICTION: This Agreement will be governed by the laws of New York, excluding its conflict of laws provisions. Jurisdiction and venue will be in the federal or state courts of New York.

20. ASSIGNMENT: Neither Party will assign or otherwise transfer its rights or obligations hereunder, in whole or in part, without the written consent of the other. Notwithstanding the above, Seller may assign its rights or obligations to any of its subsidiaries or affiliates without the written consent of Buyer.

21. GENERAL: No modification of any Term will be effective unless in writing and signed by the parties. Invalidation of any Term, in whole or in part, will not affect the validity of any other Term. Any failure to enforce any of these Terms will not constitute a waiver.

22. WAIVER: Buyer's and Seller's rights to require strict performance will not be affected by any previous waiver or course of dealing.

23. PROPRIETARY INFORMATION: All Seller information contained in this Agreement, including the pricing and terms, and any information, including drawings, instructions, design information, and specifications, attached or pursuant to this Agreement or otherwise provided to Buyer is proprietary. This information is supplied by Seller to Buyer for the sole and exclusive use of Buyer and Buyer may not furnish, reveal or impart this information to any third party for any reason without the written consent of an authorized representative of Seller, other than to Buyer's customers as reasonably necessary for installation, maintenance and repair or operation of the Goods only.

24. ENTIRE AGREEMENT: This Agreement, including all attachments and documents incorporated by reference, constitutes the entire agreement between the parties and supersedes all proposals, prior agreements, understandings and negotiations, oral and written, and any printed terms on Orders or invoices issued previously or in the future, concerning the matters specified herein. Oral or written communications, which vary, add, or subtract from this Agreement, its supplements or applicable plans or specifications, will not be binding unless accepted by the parties in writing. To the extent of inconsistency between the terms of this Agreement and any plans and specifications, the terms of this Agreement will control. No course of dealing, usage of trade or course of performance may be used to add to or amend the plain meaning of this Agreement.

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Exhibit B

LIMITED PRODUCT WARRANTY

This Limited Product Warranty is provided by Hess Microgen LLC ("Hess") to Hawaiian Electric Company, or its affiliates ("Buyer") for each System (as defined in the Teaming Agreement by and between Hess and Buyer). Hess warrants that the System is free from defects in workmanship and materials and will provide the rated kW output. Hess agrees to repair or replace, at its option and expense, components or parts which may be defective in manufacture or become defective through wear during the period this Warranty is in effect. Defects arising as a result of the operation beyond rated capacity or the improper use or application of any System will not be considered defects within the scope of this warranty. This Limited Product Warranty will include all labor associated with the repair or replacement of such components or parts. Freight charges associated with the replacement of parts are not included as part of this Warranty.

Warranty Period This Warranty will be in effect for the lesser of: twelve (12) months from the date of startup of the System, eighteen (18) months from date of System purchase, or six-thousand (6,000) run hours.

Exclusions This Warranty will not apply in any of the following circumstances:

1. Acts of God, war, floods, earthquakes, wind, lightning, freezing, fire, salt water, or operations at temperatures in excess of 112 °F (44 °C)
2. If System been subject to violence, negligence, vandalism, mishandling during freight or rigging, or accident
3. To all plumbing or electrical work not part of the System (in the event of installation services provided by Hess or its affiliates, all plumbing or electrical work not installed by Hess during installation of the System)
4. If the System has not been inspected monthly and serviced, at a minimum, every 2000 hours of run time by a Hess certified and trained service technician.
5. If any lubricant is used on or in the System that is not approved by Hess .
6. If any fuel other than commercial liquefied petroleum gas -HD5, or diesel is used in this System and is not approved by Hess .

Exclusive and Entire Product Warranty Hess makes no other warranty, expressed, implied, or statutory, including warranty of merchantability or fitness for a particular purpose other than that which is contained herein for the duration described. All other warranties are disclaimed. In no event will Hess be held liable for punitive, incidental or consequential damages or injuries, including but not limited to lost revenue or profit, commercial losses, or damage to structures or equipment to which the System is connected. No person other than the President of Hess is authorized to make any representations or promises on behalf of Hess or modify the terms and limitations of this warranty.

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