

Figure 16

# West Oahu Solar Plus Storage Project

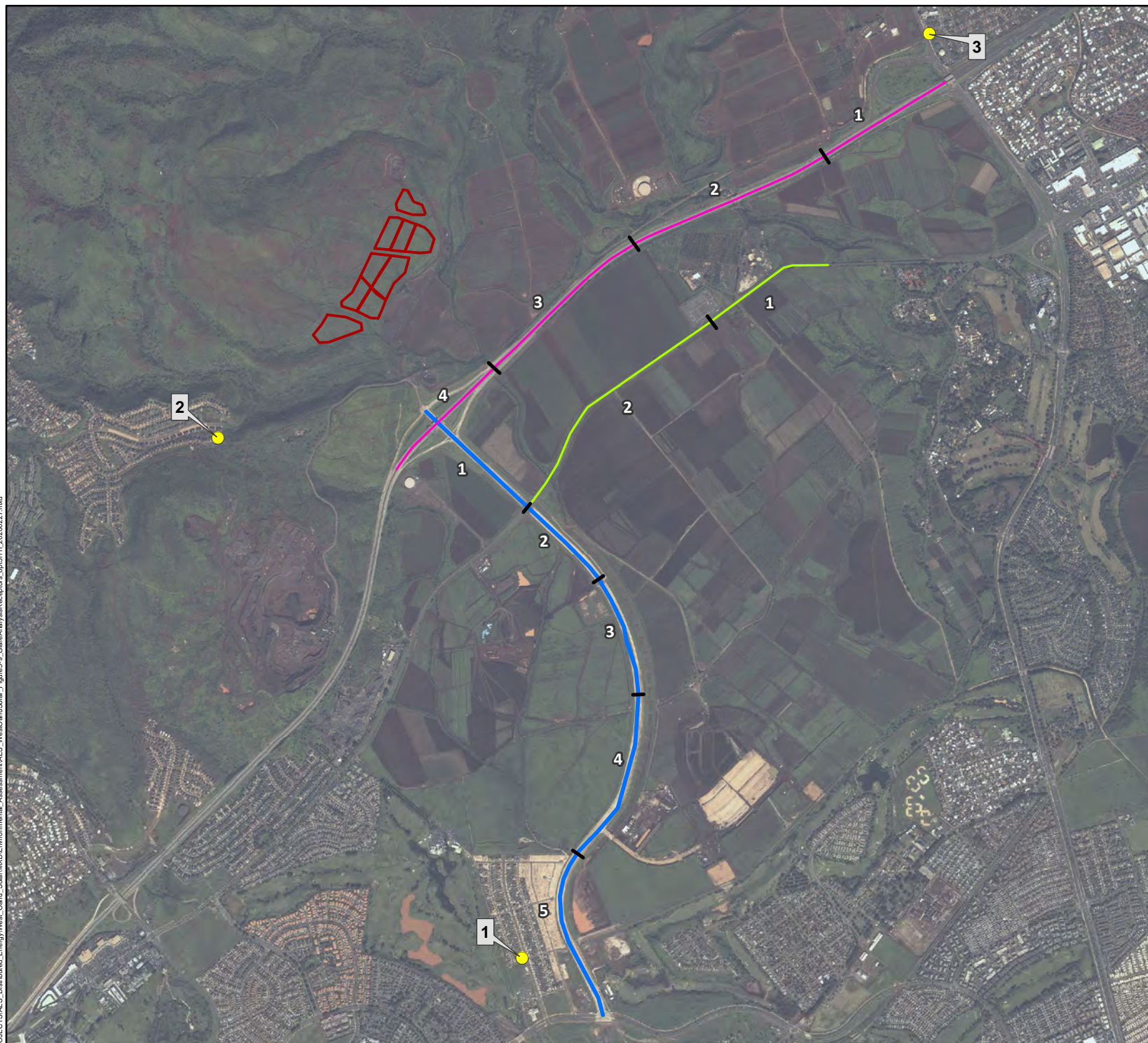
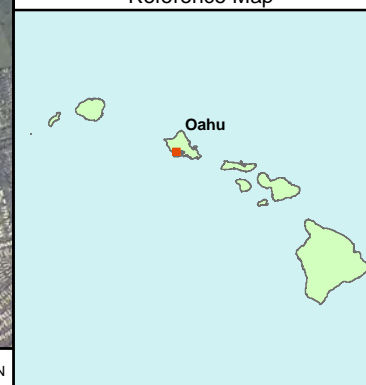
AES Distributed Energy  
Glare Analysis Receptors

HONOLULU COUNTY, HI

- Project Layout (Solar Arrays)
- Observation Point
- Road Segments
- Farrington Highway
- H-1 Freeway
- Kualakai Parkway



Reference Map



1:30,000 WGS 1984 UTM Zone 4N

0 0.25 0.5 1 Miles

NOT FOR CONSTRUCTION










Figure 17

## West Oahu Solar Plus Storage Project

AES Distributed Energy

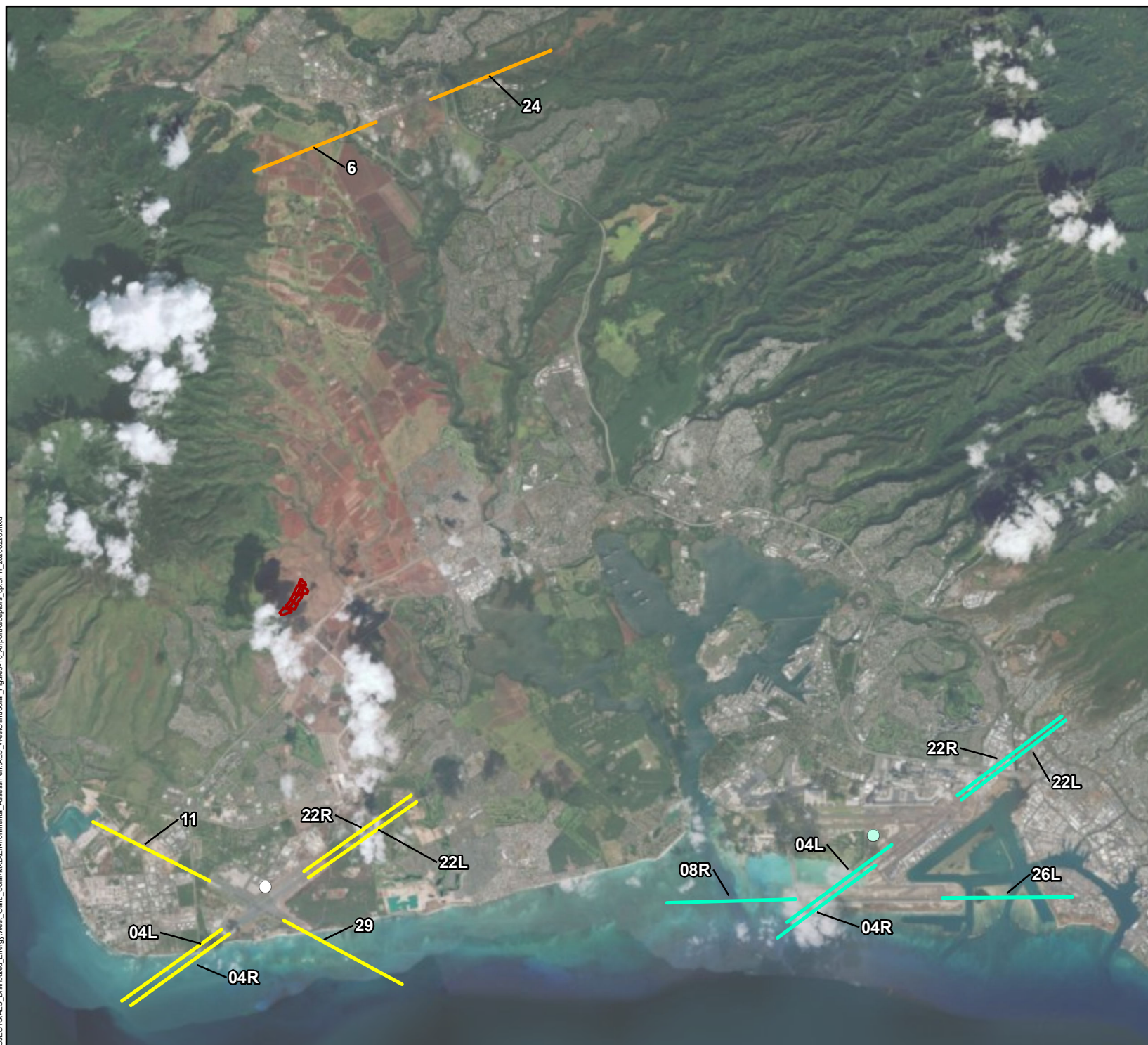
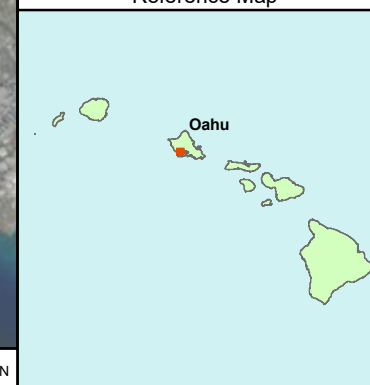
Airport Receptors

HONOLULU COUNTY, HI

-  Project Layout  
(Solar Arrays)
-  Honolulu International Airport  
(HNL)
-  Final Approach
-  Air Traffic Control Tower  
Kalaeloa Airport (JRF)
-  Final Approach
-  Air Traffic Control Tower  
Wheeler Army Airfield
-  Final Approach



Reference Map



1:130,000 WGS 1984 UTM Zone 4N

0 1 2 4 Miles

NOT FOR CONSTRUCTION

Attachment B  
Option Agreement to Grant System  
Easement (redacted)

**Option Agreement to Grant System Easement  
University of Hawaii/AES West Oahu Solar, LLC  
UH West Oahu Mauka Lands**

THIS OPTION AGREEMENT TO GRANT SYSTEM EASEMENT (“**Agreement**”), made and entered into as of August 30, 2019 (“**Effective Date**”), by and between the **UNIVERSITY OF HAWAII**, the state university and a body corporate of the State of Hawai‘i, whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai‘i 96822 (“**UH**”) and AES West Oahu Solar, LLC, a Delaware limited liability company, whose business address is c/o AES Distributed Energy, Inc., 282 Century Place, Suite 2000, Louisville, Colorado 80027 (“**AES**”) (UH and AES, each a “**Party**”, and collectively, the “**Parties**”).

**RECITALS**

WHEREAS, UH is the owner of those certain parcels of land located mauka of the University of Hawai‘i West Oahu (“**UHWO**”) campus, 91-1001 Farrington Highway, Kapolei, Hawai‘i 96707, consisting of approximately 991 acres, designated as Tax Map Key Nos. 9-2-002:001, 003, 005, and 007 (“**Property**”), which are more particularly described in Exhibit 1 attached to the System Easement (as defined herein); and

WHEREAS, on or around March 12, 2018, the UH and AES entered into that Binding Letter of Intent and Option Agreement (“**LOI**”) Regarding Hawaiian Electric Company, Inc. (“**HECO**”) Request for Proposals (“**RFP**”) for the Supply of Qualified Renewable Energy under HECO’s Renewable Dispatchable Generation Power Purchase Agreement (“**RDG PPA**”); and

WHEREAS, pursuant to the LOI, in the event AES was awarded the RDG PPA under the RFP, the UH and AES agreed to negotiate a long term agreement for the use of a portion of the Property, consisting of approximately 80 acres (“**Premises**” or the “**Exclusive Area**”), which are more particularly described in Exhibit 2 attached to the System Easement (as defined herein); and

WHEREAS, AES has informed the UH that it has been awarded the RDG PPA under the RFP to develop, install, maintain, and operate an electricity generation project using a solar photovoltaic and battery energy storage system at the Premises of 12.5 MW AC solar plus 50 MWh battery energy storage system, with 1<sup>st</sup> year delivered power of 27,571 MWh (“**System**”), which System is further described in Exhibit 3 and Exhibit 4 attached to the System Easement (as defined herein); and

WHEREAS, UH and AES are preparing to enter into a Grant of System Easement Agreement (“**System Easement**”) under which AES will have the right to develop, construct, install, operate, maintain, repair, and replace the System upon and/or remove the System from the Easement Area; and

WHEREAS, AES will be required to meet certain conditions and complete performing certain obligations before UH will be obligated to grant the System Easement to AES and before AES will be entitled to obtain the System Easement from UH; and

WHEREAS, this Agreement is intended to set forth and describe the conditions that AES must satisfy and the obligations AES must complete in order to obtain the System Easement from UH; and

WHEREAS, as part of the AES Preconditions (defined in Paragraph II below), AES will file such petitions with the Assistant Registrar of the Land Court of the State of Hawaii (“**Land Court**”) and take such other action as may be necessary to designate the Exclusive Area as an easement, together with a non-exclusive access easement (“**Access Easement**”) over specified areas of the Property (“**Access Easement Area**”) and the non-exclusive easement to run and operate utilities (“**Utility Easement**”) over specified areas of the Property (“**Utility Easement Area**”) (with the Exclusive Area, Access Easement Area, and the Utility Easement Area comprising the “**Easement Area**”), including, without limitation, completing all survey and mapping work to prepare the required property descriptions and maps to support the filing of such petitions with the Land Court; and

WHEREAS, AES requires entry onto the Property, including the portions that will comprise the Easement Area, including the Access Easement Area and the Utility Easement Area, in order to complete its investigative studies and its due diligence efforts; and



WHEREAS, UH is willing to allow AES and its employees, consultants, contractors, agents, representatives, and any person or entity acting on behalf of AES (collectively the “**AES Agents**”) to enter onto the Property to perform and complete its investigative studies and due diligence efforts, upon the terms and conditions described herein; and

WHEREAS, UH and AES desire to enter into this Agreement to describe the AES Preconditions that are to be satisfied and completed in order for UH to grant to AES the System Easement (including the Access Easement and the Utility Easement).

## **AGREEMENT**

### **I. Preconstruction Right of Entry**

1. **Use Area.** AES and the AES Agents will be permitted to enter upon and temporarily use certain portions of the Property, including the Easement Area, from and after Effective Date, as more particularly described on the map attached hereto as Exhibit A and incorporated herein by reference (the “**Use Area**”). AES shall not use any other portion of the Property outside of the Use Area without obtaining UH’s prior written approval.
2. **Purpose of use.** AES and UH acknowledge and agree that AES will be entering and temporarily using the Use Area for the purpose of conducting feasibility and investigative studies, physical inspections, testing, measuring, and other due diligence efforts, including, without limitation, for the purposes of conducting geological, engineering, soil tests, archaeological and/or environmental studies or reports, investigating the grading, drainage and utility requirements necessitated by AES’ proposed development, construction, and operation of the System, and reviewing and evaluating any conditions of approval imposed by HECO and/or the City or any other governmental entity or agency relating to AES’ proposed development, construction, and/or operation of the System (collectively the “**Due Diligence**”). AES shall pay for all costs and expenses relating to and/or associated with the performance and completion of the Due Diligence and UH shall not be responsible for any such costs and expenses. As the Due Diligence may involve invasive testing (such a soil borings), Due Diligence activity is anticipated to or could result in damage to a portion of the Property and/or the Use Area or any facilities, structures, improvements, utility lines or facilities, walls, fences, paths, roadways, or items within the Use Area (collectively “**UH Facilities**”) situated within the Use Area. AES shall thereafter remove all trash, debris, and materials from the Use Area and the Property and repair any and all damage and restore the Use Area and the UH Facilities to the condition they were in prior to the start of the Due Diligence.
3. **Grant of entry** UH hereby grants AES and the AES Agents the non-exclusive right to enter and access the Use Area for purposes of conducting and completing the Due Diligence (“**Authorized Activity**”). For purposes of this Agreement, the Use Area shall also cover any areas on the Property that might be affected by AES’ Due Diligence and/or Authorized Activity, such as Property areas adjacent to the Due Diligence that might be affected by the Due Diligence. UH hereby grants AES access to the Use Area to conduct the Authorized Activity in accordance with the schedules to be approved by UH.
  - a. **No unreasonable interference.** AES’ access and use of the Use Area shall not unreasonably interfere with UH’s operation of the Property, including any access to the Use Area or the Property by UH or others authorized by UH. UH shall not unreasonably interfere with AES’s Authorized Activity.
  - b. **Site Specific Conditions and General Terms and Conditions.** In conducting the Authorized Activity, AES shall perform and comply and shall ensure that the AES Agents perform and comply with all of the Site Specific Conditions described in Exhibit B (the “**Site Specific Conditions**”) and the General Terms and Conditions described in Exhibit C (the “**General Terms and Conditions**”), both of which are attached hereto and incorporated herein by reference.
4. **Use time.** AES and AES Agents are hereby authorized to access and use the Use Area for the Due Diligence and the Authorized Activity beginning on Effective Date, and ending on that date that is two (2) years from the Effective Date (“**Term**”), unless this Agreement is extended by mutual written agreement up to one (1) additional year for a total Term of three (3) years or sooner terminated. Notwithstanding the foregoing, if AES is unable to obtain all governmental approvals and permits and any HECO and State of Hawaii Public

Utilities Commission approvals that may be necessary to develop, construct, and install the System, AES may automatically extend the Term for the one (1) additional year for a total Term of three (3) years by providing thirty (30) days written notice to UH prior to the expiration of the Term. If the Term is extended for one (1) additional year for a total Term of three (3) years, AES shall pay to UH [REDACTED] during the extended period.

5. Use fees. [REDACTED]
6. AES representation. AES hereby confirms that all information contained in this Agreement is true and correct. If UH discovers or learns that any such information is not true and correct in any material respects, UH may: (a) immediately terminate this Agreement, (b) hold AES responsible for all applicable fees and charges, including, without limitation, any cleanup and restoration charges, and (c) require AES to meet all of AES' obligations under this Agreement (such as AES' obligation to indemnify, defend, and hold harmless UH, obtain insurance, and clean up and restore the Use Area).
7. AES obligation to maintain. At all times herein, AES shall, and will ensure that the AES Agents shall, maintain and keep the Use Area in a strictly clean, sanitary and orderly condition.
8. [Reserved].
9. AES shall implement precautions. In its entry and use of the Use Area, AES shall use and implement and ensure that the AES Agents use and implement appropriate precautions and measures to minimize inconveniences to surrounding properties, residents, landowners, and the public in general, including, without limitation, implementing such preventative measures and best management practices to prevent or minimize adverse impacts and damage to the Use Area, the Property, and surrounding or nearby properties.
10. AES responsible for addressing/resolving Adverse Impacts. AES will be responsible and will ensure that the AES Agents shall be responsible, all at no cost to UH, for preventing, mitigating, and remediating (and compensating UH as appropriate for), to UH's reasonable satisfaction, all adverse impacts to UH, the Use Area, the Property, and UH operations, resulting from or attributable to entry onto the Use Area or the Property by AES and/or the AES Agents and/or the Due Diligence or the Authorized Activity (collectively the "*Adverse Impacts*").
  - (a) AES implementation of mitigation measures. AES will be responsible and shall ensure that the AES Agents are responsible, at AES' or their sole cost and expense, for implementing all management/operations/actions/improvements that are necessary to mitigate and resolve any impacts to the Use Area, the Property, and/or UH operations as a result of or attributable to the Due Diligence or the Authorized Activity.
  - (b) Types of mitigation measures. Such mitigation measures may include, without limitation: (i) scheduling adjustments to prevent or minimize the Adverse Impacts; (ii) dust control measures (such as erecting screens and frequent watering); (iii) sound mitigation measures (such as baffling, noise barriers, dampening of construction vehicles and equipment); (iv) access control measures (such as fencing, barriers, gated entry and exit points, and guard stations); (v) security control measures (such as security patrols, security lighting, and camera/video and motion sensor systems); and (vi) traffic control measures (such as traffic control officers, flagmen, police officers during peak traffic times, directory, warning, and caution signage/lights, and temporary traffic signals).
  - (c) AES responsible for claims. AES shall, and will ensure that AES Agents shall, indemnify, defend (with counsel reasonably acceptable to UH), hold harmless, and insure UH against such Adverse Impacts, including any claims, demands, suits, actions, causes of action, injunctions, judgments, penalties, fines, assessments, liens, losses, liabilities, damages, costs, and expenses (including Attorneys' Fees and Costs (as defined herein)), arising out of or relating to any act or omission by AES or AES Agents in connection with implementing or failing to implement any reasonably necessary mitigation measures to mitigate any Adverse Impacts, including, without limitation, repairing any damage caused by or attributable to the Due



Diligence.

- (d) Attorneys' Fees and Costs. As used in this Agreement, "***Attorneys' Fees and Costs***" means and includes all reasonable attorneys' fees of outside legal counsel, expert witness fees and costs, discovery and pretrial costs, costs incurred in the investigation, prosecution, or defense of any action, costs for research relating to settlement or resolution, costs of implementing preventive measures necessary to protect and preserve the position of UH and/or UH's officers, employees, agents, representatives, and any person acting on behalf of UH (hereafter collectively the "***UH Agents***") with regard to any such claim or action, and all other reasonable fees and costs incurred or imposed upon UH or the UH Agents in connection with such claim or action.
  - (e) AES to ensure performance by AES Agents. AES shall be responsible and liable for the acts or omissions of the AES Agents, as though such acts and omissions were AES' own acts or omissions. AES, on behalf of itself and the AES Agents, including all who perform any activities in connection with the Due Diligence or within the vicinity of the Use Area or the Property, acknowledges and promises that AES will ensure that all of the AES Agents will be bound to perform and comply with all of the terms and conditions of this Agreement when performing any Due Diligence and/or work affecting or potentially affecting the Use Area or the Property. The failure of the AES Agents to perform or comply with any of the terms and conditions of this Agreement shall constitute a breach or default under this Agreement, entitling UH to exercise such rights and resort to such remedies as are available under this Agreement and by law.
  - (f) AES to accept Use Area "As Is". AES, on behalf of itself and the AES Agents agrees that UH is making available the Use Area to AES and the AES Agents on an "As Is With All Faults" basis, in its existing content and state of condition, except as modified by the election of UH in its sole discretion. AES and UH acknowledge and agree that UH is allowing AES, under the Agreement, to inspect and examine the Use Area and make its own determination regarding whether the condition of the Use Area is suitable for the construction and operation of the System. AES, on behalf of itself and the AES Agents, further agrees that UH shall not be liable for any latent, patent, or other defects in, on, or under the Use Area.
  - (g) UH may cure AES' failure to perform. If AES fails to properly perform and comply with or fails to ensure that any of the AES Agents properly performs and complies with any of its or their obligations under this Agreement, within a period of thirty (30) days (or such longer time period as may be agreed upon between UH and AES) after AES receives written notice from UH of such failure by AES and/or the AES Agents, UH may (but shall not be obligated to), at its option, and in addition to all other remedies which may be available to UH, perform and comply with any obligations that AES and/or the AES Agents have failed to perform or comply with and AES shall, and will ensure that the AES Agents shall immediately upon demand from UH, reimburse UH for the full cost of such performance and compliance, plus an additional ten percent (10%) to cover UH's administrative overhead costs.
11. AES responsible for Project costs. All costs associated with the Due Diligence and the Authorized Activity and use of the Use Area by AES and/or the AES Agents shall be the responsibility of AES. UH shall not be responsible for any of such costs.
12. AES responsible for pollution control. AES shall maintain and employ and ensure that the AES Agents maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams, waterways, and/or the Use Area or the Property resulting from the Due Diligence, Authorized Activity, and/or use of the Use Area by AES or the AES Agents. AES shall take and ensure that the AES Agents shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the Use Area, affected portions of the Property, and adjacent and nearby areas and waters of such pollutant or contaminant and shall restore to UH's satisfaction the areas affected by such pollution or contamination, including, without limitation, the Use Area, all at the cost and expense of AES and/or the AES Agents and at no cost to UH.

13. AES to employ BMPs. AES shall employ and ensure that the AES Agents shall employ best management practices during the Due Diligence, if appropriate, in its use of the Use Area to avoid having silt or dirt enter any drainage system, stream, or waterway, including any adjacent or nearby waterways, the ocean, or other bodies of water.
14. AES discovery of historic properties. In the event any historic properties or burial sites, as defined in Section 6E-2, Hawaii Revised Statutes, are found or discovered on any portion of the Easement Area or the Property, AES shall and will cause the AES Agents and the AES Assignees to: (1) immediately stop all work relating to any portions of the Easement Area or the Property upon which such a find or discovery is or has been made, (2) implement measures and take action to protect the find or discovery, and (3) contact the Historic Preservation Division of the State of Hawai‘i Department of Land and Natural Resources (hereafter the “**Historic Preservation Division**”) in compliance with Chapter 6E, Hawaii Revised Statutes (hereafter “**HRS**”). Neither AES, the AES Agents, nor the AES Assignees shall recommence the Authorized Activity, particularly the System construction work relating to the Easement Area and/or the Property upon which such find or discovery is made unless and until the Historic Preservation Division allows further Authorized Activity, particularly the System construction work to proceed in compliance with HRS Chapter 6E. AES shall and will cause the AES Agents, and the AES Assignees to, comply with HRS Chapter 6E, HRS and the National Historic Preservation Act (16 U.S.C. 440, et seq), and all other Federal and State laws pertaining to the protection of archaeological, historical, and cultural resources, including HRS Chapter 6E. AES and UH acknowledge and agree that during the conduct of the Due Diligence or the Authorized Activity, AES may discover historic properties and/or human remains (as defined in Section 6E-2, Hawai‘i Revised Statutes) on, within, or under the Use Area and/or the Easement Area. If such discovery occurs, AES and UH acknowledge and agree that AES has agreed to accept the Use Area and the Easement Area in its “as is” condition with no representations or warranties from UH. In no event or way whatsoever shall UH be obligated to remediate or share in the cost to protect and/or relocate any such historic properties and/or human remains, including implementing any mitigation or other protective measures required by the Historic Preservation Division or obtain any associated governmental approvals in order to allow AES, the AES Agents, and/or the AES Assignees to enter or use or occupy the Use Area, the Easement Area, or any portion of the Property or complete, operate, maintain, or remove the System.
15. AES may be subject to additional conditions. UH reserves the right to impose additional, but reasonable terms and conditions as UH deems necessary in connection with the Due Diligence, the Authorized Activity, and use of the Use Area by AES and/or the AES Agents.
16. AES’ use may be terminated. This Agreement and AES’s right to enter and use the Use Area is revocable and terminable by UH at any time upon thirty (30) days prior written notice for any material breach of terms and conditions herein by AES and/or the AES Agents, past any applicable cure period as set forth in this Agreement, all at UH’s reasonable discretion.
17. [Reserved].
18. Cooperation. AES shall be responsible for obtaining, at AES’ sole cost and expense and at no cost to UH, all governmental approvals necessary to conduct and complete the Due Diligence and the construction and operation of the System and enter and use the Use Area. AES will, at its sole cost, fully cooperate and ensure that the AES Agents shall fully cooperate with UH in the preparation and processing of any applications for governmental approvals which UH may be required to submit in connection with the use and operation of the Property. AES shall be obligated, at AES’ cost, to promptly and timely join in and execute and ensure that the AES Agents promptly and timely join in and execute appropriate applications, requests, and other similar documents.
19. Binding effect. The term “UH” as used herein shall mean the UNIVERSITY OF HAWAI‘I and its successors and assigns and the term “AES” as used herein shall mean AES West Oahu Solar, LLC and its successors and permitted assigns, such as each of the approved AES Assignees. This Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors, and permitted assigns.



20. Notice. All notices, request, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, sent by overnight carrier, or sent by email or similar electronic transmission (with proof of receipt or transmission) to the following numbers or addresses, as appropriate:

**To AES:**

[REDACTED]

[REDACTED]

**To UH:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

All notices, demands, and requests that may or are required to be given hereunder by either UH or AES shall be in writing and shall be (A) personally delivered to the receiving party at the addresses noted above, or (B) sent by registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (C) transmitted by an internationally recognized courier service, such as Federal Express, addressed as set forth above. Notices, demands, and requests shall be deemed served or given for all purposes hereunder at the time such notice, demand, or request is personally delivered or delivered by internationally recognized courier service, or three (3) days following such mailing thereof, as the case may be.

21. Site Specific Conditions and General Terms and Conditions. AES acknowledges and agrees that AES shall be bound by and shall perform and comply with all of the terms and conditions contained in Exhibit B (Site Specific Conditions) and Exhibit C (General Terms and Conditions) attached hereto and incorporated herein by reference.

## **II. Preconditions to UH Issuance of System Easement.**

All of the following are preconditions and obligations that AES must fully satisfy and fulfill, in UH's reasonable discretion, by the end of the Term, as may be extended as described in paragraph I.4 above, before UH will be obligated to issue to AES the System Easement (collectively, the "***AES Preconditions***"):

1. AES to provide Easement Plan and Petition to Designate Easements. AES will provide UH with a proposed plan for the designation of easements (the "***Easement Plan***"), showing the proposed designation of easements within the Property to create at least the following separate, non-overlapping easements: (a) the Exclusive Easement, (b) the Access Easement, and (c) the Utility Easement (collectively, the "***Easements***"):
  - a. Exclusive Easement. The Exclusive Area will be approximately sixty (60) to eighty (80) acres, with the area to be precisely set at the time UH will issue the System Easement based on an ALTA survey to be completed by AES at its cost and the mutual agreement of the Parties and will be more particularly shown on the map to be attached as Exhibit 2 to the System Easement and is preliminarily depicted on Exhibit A attached hereto and incorporated herein by reference.
  - b. Access Easement. The Access Easement Area will consist of approximately 9,600 linear feet and its location, alignment, and route will be more particularly shown on the map to be attached as Exhibit 2 to the System Easement and is preliminarily depicted on Exhibit A attached hereto and incorporated herein by reference.
  - c. Utility Easement. The Utility Easement Area will consist of approximately two (2) acres and its location, alignment, and route will be more particularly shown on the map to be attached as Exhibit 2 to the System Easement and is preliminarily depicted on Exhibit A attached hereto and incorporated herein by reference.
2. AES obligation to designate Easements. AES agrees to use its commercially reasonable efforts to: (a) obtain final approval from the City and County of Honolulu ("***City***") for the designation of the Easements within the Property to create the Easements and Easement Area ("***City Approval***") and (b) cause the approved map and legal descriptions of the Easements and Easement Areas to be recorded or filed in the Land Court ("***Land Court Order***"). AES shall pay for any and all costs and expenses to obtain the City Approval and the Land Court Order, including, without limitation, any surveying, mapping, engineering, and legal fees and costs associated with the preparation of necessary applications for City Approval and petitions to obtain the Land Court Order.
3. AES to confirm Utility Easement requirements. AES shall confirm with HECO the requirements for the Utility Easement in connection with the development, construction, and operation of the System. AES acknowledges and agrees that UH, upon terms and conditions acceptable to UH, will grant the Utility Easement to AES, and will permit AES to thereafter grant a sub-easement directly to HECO as needed in connection with the development, construction, and operation of the System, provided that AES' grant of the sub-easement to HECO does not: (a) impose any conditions and/or obligations that are binding upon UH and/or (b) require UH to perform and/or comply with any such conditions or obligations.
4. UH cooperation with designation of Easements. In connection therewith, UH agrees to reasonably cooperate and subject to the UH Limitations (as defined herein) execute any and all necessary applications, consents,

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University of Hawai'i/AES West Oahu Solar, LLC

Option Agreement for System Easement

University of Hawaii – West Oahu Mauka Lands



approvals and instruments required by the City or the Land Court, including, without limitation, an application for easement designation approval, as well as any and all petitions to the Land Court, to obtain the City Approval and the Land Court Order. UH agrees, subject to the UH Limitations, to consent to any reasonable modifications to the Easement Plan, the Easements, and/or the Easement Area (collectively the “**Plan Modifications**”) as may be required by the City or the Land Court provided that with respect to the Plan Modifications and any conditions and/or obligations relating thereto: (i) UH receives prior written notice before they become effective, (ii) they are not inconsistent with the terms of this Agreement and/or any Applicable Laws (as defined herein), and (iii) they do not impose any material additional cost, expense, or liability upon UH or require UH to waive or release any rights, powers, authorities, or claims that UH may have or acquire.

5. AES failure or inability to obtain City Approval or Land Court Order. If AES fails or is unable to obtain the City Approval and/or the Land Court Order within twenty four (24) months of the Effective Date herein, or fails to provide UH with the Easement Plan within ninety (90) days of the Effective Date herein, all as UH may reasonably determine, UH may terminate this Agreement upon thirty (30) days prior written notice to AES (“**Early Termination Date**”). Upon such termination by UH, from and after the Early Termination Date, both UH and AES will have no further obligations and be discharged and released from any further performance under this Agreement provided that AES will continue to be responsible for performing its surviving obligations, particularly its obligations herein to: (a) indemnify, defend, and hold harmless UH and the UH Agents, (b) clean up, repair, and restore the Easement Area and any other affected portions of the Property, and (c) remove and remediate any environmental conditions within the Easement Area, the Property, and/or any other affected areas involving the presence, discharge, escape, release, generation, and/or use of Hazardous Materials (as defined herein). To the extent that AES fails or is unable to timely obtain the City Approval and/or the Land Court Order, AES shall be responsible for reimbursing to UH any and all costs and expenses, including, without limitation, Attorneys’ Fees and Costs, incurred or payable by UH in connection with the performance of UH’s obligations under this Agreement. Such reimbursable costs to UH shall include all costs incurred or payable by UH related to UH’s review of applications, maps, petitions, property descriptions, and associated documents prepared and/or submitted to the City and/or the Land Court.

6. AES to complete review of Property related documents. Within ninety (90) days of the Effective Date herein, UH will provide to AES all maps, grading plans, surveys, conditions of approval, licenses, permits, studies, reports, encumbrances, leases, contracts, easements, use agreements and other documents relating to the Property (collectively the “**Property Documents**”) that are in UH’s possession. AES shall be deemed to have completed its review and evaluation of the Property Documents after the expiration of one hundred eighty (180) days from UH’s provision of the Property Documents to AES.

7. AES to obtain UH prior written approval for any AES assignment of interests.

a. AES Assignment. AES shall not assign or otherwise transfer any interest, right, or obligation under this Agreement (“**AES Assignment**”) without UH’s prior written consent, provided, that if AES is not in default or breach of this Agreement and/or the RDG PPA, UH shall not unreasonably withhold its consent to the AES Assignment if UH has been provided with sufficient proof (in UH’s reasonable discretion) that the proposed AES assignee (“**AES Assignee**”): (a) has comparable experience and expertise in operating and maintaining and comparable qualifications to operate and maintain photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by the RDG PPA between HECO and AES and the Easements between UH and AES and (b) has the financial capability, capacity, creditworthiness, and credit rating to maintain the System and provide the services contemplated by the RDG PPA in the manner required by the RDG PPA and to develop, construct, and operate the System in the manner required by the Easements. For purposes of this Agreement, each AES Assignee will be considered one of the AES Agents.

(1) AES Assignee. AES may make the AES Assignment to a qualified AES Assignee, as UH reasonably determines, who may be: (a) a person or entity directly or indirectly controlling, controlled by or under common control with AES, (b) a third party or parties in connection with a collateral assignment of rights, mortgage or pledge or any person or entity providing equity, debt or other financing for the System (collectively the “**Lenders**”), (c) any present or future purchaser of the power generated by the System under the RDG PPA, (d) any person or entity succeeding to all or substantially all of AES’ assets, or (e) a successor entity in a merger or acquisition transaction.

(2) AES Assignee must assume/perform all AES obligations under this Agreement. Each AES Assignment must be in writing and signed by each AES Assignee, who must assume and commit to performing and perform all AES obligations under the AES Assignment and this Agreement.

(3) AES remains responsible. Notwithstanding each AES Assignment and/or UH's written consent thereto, AES will remain responsible for performing all obligations under this Agreement and will not be released and/or discharged from such obligations and/or responsibility with respect to the portion of the Easement Area transferred, whether or not the AES Assignee effectively assumes and/or performs the obligations under this Agreement pertaining to the transferred Easement Area.

(4) AES Assignment to Lenders. UH hereby expressly consents to AES making an AES Assignment: (a) to an affiliate of AES through which AES is obtaining capital financing for the System from one or more Lenders and (b) collaterally assigning this Agreement to the Lenders, provided that Lenders: (i) perform or expressly commit in writing to perform AES' obligations under this Agreement, (ii) attorns to and recognizes UH's rights under this Agreement and as to the Easement Area and the Property, and (iii) agrees not to seek to place UH in default or otherwise terminate UH's rights under this Agreement. In connection with any such AES Assignment, UH agrees to execute a consent to assignment in customary form and reasonably acceptable to UH and the Lenders, which consent will not be unreasonably withheld. UH acknowledges that AES may obtain construction and long-term financing or other credit support from Lenders in connection with the development, construction, installation, ownership, operation, maintenance, repair, improvement, upgrade, renovation, replacement, removal and security of the System. UH and AES agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Lenders; provided, that such changes do not alter the fundamental economic terms of this Agreement as reasonably determined by UH.

(5) Lenders protections. UH, upon providing AES with written notice of (a) default under this Agreement, (b) termination of this Agreement or (c) a matter on which UH may predicate or claim a default, shall at the same time provide a copy of such notice to any Lenders that has delivered to UH a notice countersigned by AES that sets forth the Lenders' identity and address for notices (collectively the "Confirmed Lenders"). UH shall not be obligated to issue a notice of AES default to any Lender who has not qualified as a Confirmed Lender. Lenders may become Confirmed Lenders by transmitting written notice to UH countersigned by AES, all in accordance with the requirements of this paragraph 7a(5). AES and UH acknowledge and agree that UH's notice for AES default shall be valid if sent to AES and all Confirmed Lenders. After such notice has been given to such Lenders, such Lenders shall have the same period as is given AES (plus, in each instance, an additional sixty (60) days) to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice specified in any such notice. UH shall accept such performance by or at the instigation of such Lenders as if the same had been undertaken by AES. UH and AES authorize Lenders to take any such action at Lenders' option and hereby authorize entry upon the Property by the Lenders for such purposes, provided that AES shall release and discharge UH from any and all liability and/or claims that AES may have relating to UH accepting any performance from and/or by the Lenders in curing or remedying any AES default and AES shall indemnify, defend, and hold harmless UH against any and all claims and actions that might arise relating to such performance by the Lenders, including, without limitation, any claims connected with any dispute or disagreement between AES and the Lenders.

(6) UH protections. UH shall be protected and shall incur no liability in acting or proceeding in good faith upon any such approved AES Assignment and any written notice and direction by or from the Lenders which UH shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to UH. UH shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such notice or direction by or from the Lenders, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

b. UH Transfer. UH is not required to obtain AES' consent before UH sells, conveys, leases, assigns, or otherwise transfers (collectively a "**UH Transfer**") portions of the Easement Area and/or the Property to an assignee or transferee subject to the provisions of this Agreement that may affect the portion of the Easement Area and/or the Property transferred.

(1) UH Assignee's rights and obligations. In making such UH Transfer, UH may elect to require the assignee or the transferee (hereafter collectively the "**UH Assignee**") to assume and be responsible for



performing all of UH's obligations under this Agreement with respect to the interest in or portion of the Easement Area or the Property acquired by the UH Assignee and as enumerated in transaction documents between UH and the UH Assignee. If UH makes such election, the UH Assignee shall be entitled to AES' compliance with the terms of this Agreement with respect to the transferred portion of the Easement Area and/or the Property.

(2) AES may review assignment documents. UH and AES acknowledge and agree that AES does not have the right to approve or consent to the UH Transfer to the UH Assignee, provided, that AES may review the provisions of the transactional documents relating directly to an assignment of rights under this Agreement if UH assigns any interest in or under this Agreement.

(3) UH released upon UH Transfer. Upon and to the extent of each UH Transfer, and from and after the effective date of the UH Transfer by UH to the UH Assignee, UH will be released and discharged from any further obligation or responsibility to AES with respect to the portion of the Easement Area or the Property transferred, whether or not the UH Assignee assumes the obligations under this Agreement pertaining to the transferred Easement Area or the Property.

(4) UH/AES responsible for remainder. Even if UH transfers a portion of the Easement Area or the Property to the UH Assignee as part of the UH Transfer, UH and AES shall remain responsible to each other for all obligations with respect to the portions of the Easement Area not yet transferred by UH as part of the UH Transfer.

8. AES has complied with all applicable Environmental Laws. AES is in compliance with all applicable Environmental Laws (as defined in paragraph 9e (Hazmat definition) of Exhibit C (General Terms and Conditions) herein) including, without limitation, conducting an environmental assessment in compliance with HRS Chapter 343 covering AES' proposed construction, operation, maintenance, repair and removal of the System and the issuance of the System Easement by UH to AES.

9. AES has obtained all HECO and governmental approvals. AES has obtained, at no cost to UH, any and all governmental approvals and permits and any HECO and State of Hawaii Public Utilities Commission ("**PUC**") approvals that may be necessary to develop, construct, and install the System, and to allow UH, without cost, risk, or adverse impacts to UH, to grant to AES the System Easement over the Easement Area, which will include the Exclusive Easement, the Access Easement, and the Utility Easement.

10. AES and AES Assignees are in compliance. Neither AES nor any of the AES Assignees shall be in breach or default of this Agreement, including but not limited to, performing and complying with AES obligations contained in Section I (Preconstruction Right of Entry), such as the Site Specific Conditions and the General Terms and Conditions.

11. AES has submitted traffic mitigation plans. AES shall have provided UH with AES' written traffic mitigation plans addressing the expected traffic impacts arising from the Due Diligence, the Authorized Activity, and/or any Adverse Impacts attributable thereto. AES shall consider and implement any reasonable comments on such plans submitted by UH.

12. AES has not materially adversely affected UH's existing use/access. AES shall verify and certify that UH's right to use and use of roads, easements, and utility facilities are not materially adversely affected by the Due Diligence or the Authorized Activity, except as otherwise agreed in writing by the parties from time to time. AES shall ensure that at all times UH and its invitees shall have reasonable access from and to all roadways, driveways, and parking areas within the Property, except as otherwise agreed in writing by the parties from time to time.

13. AES has implemented mitigation measures to resolve Adverse Impacts. AES and all of the AES Assignees shall have implemented, at no cost to UH, all management actions, operations, actions, improvements that are or were necessary to mitigate and resolve any and all of the Adverse Impacts, including obtaining all governmental approvals or permits and HECO approvals that are or were necessary to have implemented any required or recommended measures to mitigate the Adverse Impacts and allow UH operations to continue, as may be minimally modified to address any Adverse Impacts.

14. AES Agents bound. AES shall have caused the AES Assignees and the AES Agents to covenant and commit, to perform all obligations under this Agreement, including providing to UH sufficient assurance that AES incorporated into any agreements between AES and the AES Assignees and AES and the AES Agents such provisions from this Agreement as were necessary for AES to comply with its obligations under this Agreement.

15. AES inspection/investigation completed. AES shall have completed and caused the AES Assignees and the AES Agents to have completed all of the Due Diligence, including, without limitation, completing all inspections, examinations, investigations, studies, and testing of the Easement Area and the Property and the evaluation of the condition, status, and title to the Property and the Easement Area.

16. AES Certification. Before UH shall be obligated to grant the System Easement to AES (which will include the Exclusive Easement, the Access Easement, and the Utility Easement), AES shall and will ensure that any AES Assignee shall certify in writing to UH that AES and/or the AES Assignees, as of the date of certification, have fully satisfied and fulfilled each of the AES Preconditions.

17. Title Policy. Title Guaranty of Hawaii, LLC shall issue or be committed to issue to AES, at AES's expense, an ALTA owner's title policy, together with such endorsements thereto as AES shall require, in such amount as AES shall require, insuring the interests of AES in the System Easement.

### **III. UH Obligation to Issue System Easement to AES**

1. UH to issue if/when AES meets Preconditions Deadline. Once AES fully satisfies and fulfills all of the AES Preconditions and certifies in writing to UH that AES has fully satisfied and fulfilled all of the AES Preconditions by the end of the Term ("***Preconditions Deadline***"), UH will issue the System Easement to AES, substantially in the form attached hereto as Exhibit D and incorporated herein by reference, which grant shall include UH granting the Exclusive Easement, the Access Easement, and the Utility Easement. UH will also execute, notarize and deliver a memorandum of the System Easement substantially in the form attached to the System Easement.

2. Key terms of System Easement. To the extent that AES fully satisfies and fulfills all of the AES Preconditions by the Preconditions Deadline and UH is obligated to issue the System Easement to AES, AES and UH agree that in addition to the System Easement being substantially in the form attached hereto as Exhibit E, the System Easement shall contain at least the following terms and conditions:

- a. Easement Area. The Exclusive Area will be approximately sixty (60) to eighty (80) acres, with the area to be precisely set at the time UH will issue the System Easement based on an ALTA survey to be completed by AES at its cost and the mutual agreement of the Parties and will be more particularly shown on the map to be attached as Exhibit 2 to the System Easement and is preliminarily shown on Exhibit A attached hereto and incorporated herein by reference.
- b. Authorized Activity. AES shall use the Exclusive Area only for the Authorized Activity (as defined in the attached System Easement) and for no other purpose or activities without UH's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.
- c. Term. The term of the System Easement shall commence on the effective date of the System Easement and shall continue for twenty-five (25) years from the Commercial Operation Date (as defined in the attached System Easement and the RDG PPA) of the System ("***Easement Term***"), unless sooner terminated as hereinafter provided. AES shall have two (2) options to extend the Easement Term by five (5) years each.
- d. Rent. [REDACTED]

(2)

- [REDACTED]
- e. Construction. Construction and installation of all System Improvements (as defined in the attached System Easement) shall be: (i) at AES' sole cost and expense; (ii) performed by contractors properly licensed in the State of Hawaii who are obligated via written agreement with AES to construct and install the System Improvements; (iii) in compliance with all Applicable Laws (as defined in the attached System Easement), including any applicable county building codes; (iv) in compliance with all government approvals and permits, (v) performed only after AES installs and/or implements all required Mitigation Measures (as defined in the attached System Easement); and (vi) in compliance with the System Plans (as defined in the attached System Easement) submitted to UH by AES.
  - f. Operation/maintain. AES shall perform the Maintenance Work (as defined in the attached System Easement), at its sole cost. AES shall, with respect to UH Facilities and UH Research (all as defined in the attached System Easement) repair or replace any damaged portions and restore the Exclusive Area. AES and UH acknowledge and agree that AES shall repair and restore, at AES' cost, the Access Easement Area to its condition existing as of the System Easement effective date, promptly after System construction is completed, and maintain and keep the Access Easement Area in condition suitable for its required access during the Easement Term, at AES's cost, provided that AES will not be responsible for repairing any damage caused by others. AES shall pay to UH its pro rata share of any maintenance costs for the Access Easement Area, as reasonably determined in good faith by UH and AES.
  - g. Removal and restoration. Upon expiration or termination of the System Easement, UH may require AES to remove or cause the removal of all System Improvements, all at their sole cost and expense, and restore the Exclusive Area to a condition substantially similar to that which existed as of the System Easement effective date, reasonable wear and tear excepted. AES shall complete such removal of the System Improvements in accordance with the provisions contained in the attached System Easement.
  - h. Security Deposit. AES shall pay to UH a security deposit, or provide a letter of credit the terms of which are reasonably acceptable to UH, in the amount of [REDACTED]  
[REDACTED] "*Security Deposit*").
  - i. Compliance with Applicable Laws. AES shall comply and shall ensure that the AES Agents comply with all Applicable Laws and shall be responsible for obtaining all necessary governmental and other approvals necessary to establish, develop, construct, install, operate, maintain, repair, improve, upgrade, renovate, replace, remove, and secure the System Improvements, including, without limitation, all land use, subdivision, easement, and construction approvals from the City and County of Honolulu and subdivision and easement approvals from the Office of the Assistant Registrar of the Land Court of the State of Hawaii.
  - j. AES Guarantee. [REDACTED]  
[REDACTED]

3. UH no longer obligated to issue if Preconditions Deadline not met. If AES fails or does not otherwise meet the Preconditions Deadline, UH will not be obligated to issue or grant the System Easement to AES, unless UH and AES mutually agree to extend or modify the Preconditions Deadline.

#### IV. Other Provisions

1. Confidentiality. From time to time, AES may provide or disclose to UH information that AES may claim is either confidential or proprietary (collectively “**AES Confidential Information**”) which AES shall clearly mark and separate from the non-confidential information. The AES Confidential Information shall not include information already known to UH, that is or becomes generally known or available to the public through no fault of UH, and/or that is disclosed to UH by a person or entity not under a confidentiality obligation. AES may orally request that UH keep such AES Confidential Information confidential if such information is not in a written format, and in such case shall identify and confirm such AES Confidential Information in writing to UH no later than fifteen (15) days after such disclosure. If the AES Confidential Information is in a written format, AES shall label, clearly mark, separate, and segregate such information as either confidential or proprietary.

a. UH will not disclose without AES permission. UH will not disclose AES Confidential Information without first obtaining AES permission unless (and to the extent that) UH is required to disclose any or all portions of the AES Confidential Information pursuant to any applicable public disclosure and open governmental records laws, including, without limitation, Chapter 92F, Hawaii Revised Statutes (collectively the “**Public Disclosure Laws**”).

b. UH subject to Public Disclosure Laws. UH, as an agency of the State of Hawai‘i, is subject to and must comply with all applicable Public Disclosure Laws. Under such Public Disclosure Laws, there is a presumption that all government records are subject to disclosure, unless and to the extent that one of the statutory disclosure exemptions are deemed to apply.

c. UH cannot guarantee confidentiality. As a result, UH agrees to reasonably preserve and protect the confidentiality of information obtained from AES during the term of this Agreement in the same or similar manner as UH preserves and protects UH’s own information of similar form or nature; provided, however, AES acknowledges and agrees that in light of UH’s obligations to comply with applicable public disclosure and open governmental records laws, UH cannot covenant or guarantee that any information that AES designates as proprietary or as AES Confidential Information and submits to UH will be kept confidential by UH in all situations and that UH may be required under such laws to publicly disclose such information submitted by AES.

d. UH to notify AES of requests to disclose records. UH understands AES’ concern about not publicly disclosing any AES Confidential Information. In recognition of AES’ concern, UH is willing to promptly use reasonable efforts to notify AES in writing if and when UH receives a notice or request to disclose any records relating to this Agreement, including any of the Due Diligence performed or to be performed by AES.

e. AES may take further protective action. After receiving such notice or otherwise becoming aware of a disclosure request, AES may, at its sole cost and expense and at no cost to UH, take such further action as it may deem necessary, including seeking a protective or other order that would limit, restrict, or prohibit disclosure of any records relating to this Agreement.

f. UH may disclose to government agencies/bodies. Notwithstanding UH’s agreement to notify AES of any notice or request to disclose records relating to the Agreement, UH may, if required by law, disclose the Agreement, any of the terms contained therein, any supporting, backup, or related documents, and/or any portion of AES Confidential Information that UH deems responsive any request from federal, state, or county government agencies or bodies, including the Hawai‘i State Legislature, without first notifying AES.

g. UH response procedure. The parties have agreed to the following procedure for responding to any requests to inspect or disclose any AES Confidential Information:

- (1) Prompt notice. UH will use reasonable efforts to promptly notify AES upon receipt of a disclosure request.
- (2) AES opportunity to challenge. After receiving UH’s notice, AES may initiate or file a court or other challenge to limit, restrict, or prevent disclosure.



- (3) AES responsible for costs. AES shall and will ensure that the AES Agents and AES Assignees shall be responsible for all costs and fees associated with such challenge.
- (4) AES to reimburse UH. AES will reimburse UH for reasonable costs incurred by UH in cooperating with AES' efforts to limit, restrict, or prevent disclosure.
- (5) AES to indemnify, defend UH. AES will indemnify, defend, and hold harmless UH from any costs and/or liability arising out of AES' efforts to limit, restrict, or prevent disclosure

h. Disclosure to HECO and PUC. AES may submit a fully executed copy of this Agreement to HECO or the PUC; provided that all confidential information, as reasonably determined by the Parties, is redacted from the copy of the Agreement shared with HECO or the PUC.

2. Brokers. UH represents that UH did not retain or use a broker in connection with this Agreement or the granting of the Easements. AES acknowledges that AES does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent payable hereunder. AES shall indemnify, defend and hold harmless UH from the claims of any broker(s), representatives, employees, agent(s) or other intermediary(ies) claiming to have represented AES or otherwise to be entitled to compensation hereunder. This paragraph shall survive the expiration or the earlier termination of this Agreement.

3. Dispute resolution. If any disputes arise between UH and AES concerning any aspect of this Agreement, AES and UH will use their best efforts to address and resolve such disputes and the Parties agree to negotiate face-to-face within thirty (30) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of this Agreement. The meeting will be held on the island of Oahu, Hawaii at the place of business of the Party receiving the letter unless the Parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the Parties shall engage a mediator and attempt to mediate the dispute. The Parties agree to try in good faith to settle the dispute by mediation under the mediation rules of a mutually acceptable alternative dispute resolution firm, before resorting to litigation. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the Parties may agree to, or if a Party does not cooperate with mediation, any Party may commence a legal action in the First Circuit Court, State of Hawaii, located in the City. The Parties will equally share the cost of the mediator services and the mediation sessions but each Party will bear the cost and expense of making its presentation to the mediator.

#### 4. AES Default/UH Remedies.

a. Types of AES Defaults. The occurrence at any time of the following events shall constitute an "AES Default":

(1) Failure to Perform Obligations. AES's failure to timely perform or cause to be performed any obligation required to be performed by AES under this Agreement or any other agreement or commitment with UH, including, without limitation, the failure of any certification, representation and warranty set forth herein or otherwise delivered by or on behalf of AES to be true and correct at any time; provided, however, that if such failure by its nature can be cured, then AES shall have a period of sixty (60) days after receipt of written notice from UH of such failure of AES to perform its obligations and cure the AES Default.

(2) Failure to Obtain Sufficient Funding. AES's failure to obtain or caused to be obtained sufficient funding to complete the Due Diligence and/or the Authorized Activity, particularly any portion within or affecting the Use Area or the Property and AES fails to submit to UH documentation showing or proving, to UH's reasonable satisfaction, that AES has obtained or has caused to be obtained a commitment (within sixty (60) days of the Effective Date) to furnish sufficient funding to complete the Due Diligence and/or the Authorized Activity with respect to the Use Area or the Property.

(3) AES fails to timely complete Due Diligence. AES's failure to complete the Due Diligence upon the Use Area by the end of the Term, as may be extended from time to time upon UH's consent, which consent shall not be unreasonable withheld, delayed, or conditioned ("**Completion Deadline**"), or at any time AES fails to

submit to UH written evidence or documentation sufficient to show or prove, to UH's reasonable satisfaction, that AES will complete the Due Diligence and the Authorized Activity by no later than the Completion Deadline.

(4) AES Bankruptcy Actions. (a) AES admits in writing its inability to pay their debts generally as they become due; (b) AES files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district, or territory thereof; (c) AES makes an assignment for the benefit of creditors; (d) AES consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) AES has a petition in bankruptcy filed against it, and such petition is not dismissed within 120 days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of AES' assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of the assets of AES and such custody or control is not terminated or stayed within sixty (60) days from the date of assumption of such custody or control (collectively "***AES Bankruptcy Actions***").

(5) Abandonment. When AES shall abandon, desert, or vacate the Use Area and/or the Property, or any relevant portions thereof, or discontinues conducting the Due Diligence and/or the Authorized Activity on or at the Use Area and/or the Property.

(6) Suspension. The happening of any act that results in the suspension or revocation by any governmental authority or HECO of any of AES' rights, powers, licenses, permits, or authorities, including any governmental or HECO approvals, necessary for the conduct and operation of AES' business for a period of more than sixty (60) consecutive days.

(7) Liens. Any Liens (as defined herein) are filed against or affecting the Use Area and/or the Property because of any act or omission of AES, AES Assignees, and/or AES Agents and such Liens are not removed or enjoined or a bond or other security for satisfaction of such Liens is not posted within sixty (60) days.

(8) Insurance Default. AES fails to obtain or keep in force or cause to be obtained or kept in force any insurance coverage identified in paragraph 2 (Insurance) of the General Terms and Conditions (Exhibit C) herein at all times that such insurance policy or policies is/are required to be obtained and/or kept in force or caused to be obtained and kept in force hereunder.

b. Notice of default. If AES defaults on or otherwise fails to perform any of their material obligations under this Agreement, UH shall issue a written notice of default to AES in accordance with paragraph I.20 (Notice) of the Agreement.

c. Time to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to UH's reasonable satisfaction expeditiously (with special efforts made by AES whenever there is any hazard to health or safety arising out of a AES Default), but not later than sixty (60) days of the date of UH's written notice to AES. In cases when, through no fault of AES, it is not possible to cure a AES Default within sixty (60) days of UH's notice of default, then AES's obligations under this paragraph III.4 (AES Defaults/UH Remedies) shall be deemed satisfied if AES commences, within sixty (60) days of the notice of default, efforts necessary to cure the AES Default as soon as reasonably possible and diligently continues such efforts until the AES Default is cured or resolved to UH's reasonable satisfaction. If AES fails to cure the AES Default or either fails to perform within the required time period or fails to immediately pay to UH said costs and expenses incurred by UH (plus 10% for UH's administrative overhead) in performing said cure or remedy, UH may by written notice immediately terminate AES's rights under this Agreement which shall be effective upon AES's receipt or imputed receipt of such notice.

d. UH remedies upon AES Default. All UH remedies described herein shall be cumulative and not exclusive and UH may pursue one or more of such remedies.

(1) Termination of AES Rights. If an AES Default has occurred and is continuing, then, unless AES shall cure the AES Default before the end of the applicable cure period (if any), UH may terminate AES's rights under this Agreement and pursue all other applicable remedies for claims arising out of the AES Default.

(2) Suspension of AES's rights to use. If an AES Default has occurred and is continuing, then, unless AES shall cure the AES Default before the end of the applicable cure period (if any), UH may suspend AES's rights under this Agreement and any other agreement relating to the Authorized Activity and pursue all other applicable remedies for claims arising out of the AES Default.

(3) Other Rights and Remedies. If any AES Default has occurred, whether or not UH has terminated AES' rights under this Agreement, UH may continue to hold AES responsible for any damages arising from such AES Default and enforce any and all obligations of AES under this Agreement, including, without limitation, obligations regarding insurance, coordination, compliance with Applicable Laws, hazardous materials, liens, surrender, clean up, restoration, remediation, default, funding limitations, litigation, assignment, and representations.

e. Survival of obligations. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve AES of any of its obligations contained in this Agreement that are intended to survive the expiration or termination of this Agreement, including, without limitation, the following AES obligations that are intended to survive the expiration or termination of this Agreement: obligations regarding insurance, coordination, compliance with Applicable Laws, hazardous materials, liens, surrender, clean up, restoration, remediation, default, funding limitations, litigation, assignment, and representations.

f. Accrued obligations. AES's obligations that AES was required to perform and/or complete prior to any termination or expiration of this Agreement, including, without limitation, the obligation to fully and properly address and mitigate all Adverse Impacts and comply with the Site Specific Conditions, shall survive the expiration or earlier termination of this Agreement.

## 5. UH Limitations.

a. UH Not Authorized to Indemnify. AES acknowledges and agrees that UH, as an agency of the State of Hawai'i, is not authorized to indemnify AES in any way, including against any claims for bodily injury, wrongful death and/or property damage by any person or entity. Notwithstanding anything to the contrary contained in this Agreement, UH shall have no contractual duty to indemnify, defend, or hold harmless AES, the AES Agents, the AES Assignees, and/or any other person or entity under any circumstances arising out of or related to this Agreement or AES's entry onto or temporary use of the Use Area and/or the Property. In each instance in this Agreement where UH is or may be obligated to indemnify, defend, or hold harmless AES, the AES Agents, the AES Assignees, and/or any other person or entity, such obligations shall be deemed null and void and such contrary indemnity, defense, and hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

b. UH Not Responsible for Others. Notwithstanding anything to the contrary contained in this Agreement, AES acknowledges that UH can only be held responsible for the actions of UH and UH's officers and employees, and AES shall not hold UH responsible for any actions or omissions of any other person or entity, including any person or entity who (except for UH's officers and employees) could be deemed to be UH Agents. In each instance in this Agreement where UH is obligated to assume responsibility for the actions or omissions of any person or entity other than UH's officers or employees, such obligations shall be deemed null and void and such contrary UH responsibility obligations or provisions shall be deemed to be superseded by this provision, and of no force or effect. AES acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of UH.

c. Subject to Funding. To the extent that UH is: (1) obligated to perform under this Agreement, (2) obligated to make any payments under this Agreement, or (3) deemed liable under this Agreement, UH's liability and obligation and ability to perform under this Agreement, particularly to pay any amount of monies, is limited to that which is permitted by law and is subject to the precondition that funds are properly appropriated, allotted, and otherwise properly made available for the purpose of such performance or to cover such liability.

(1) Minimum Conditions. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds.

(2) UH to Seek Funding. UH shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor’s authorizations for use of such funds) and to satisfy any such conditions in a timely manner.

(3) Qualifies All UH’s Obligations. Notwithstanding anything to the contrary contained in this Agreement, this provision shall apply to and qualify each and every UH obligation to perform under this Agreement.

d. Subject to UH Limitations. Subparagraphs IV.5.a (*UH not Authorized to Indemnify*), IV.5.b (*UH not Responsible for Others*) and IV.5.c (*Subject to Funding*) are referred to collectively herein as the “**UH Limitations.**” Notwithstanding and superseding anything to the contrary contained in this Agreement (and any exhibits or appendices attached hereto), AES acknowledges and agrees that any and all of UH’s obligations, duties, responsibilities, and liabilities under this Agreement and UH’s liability for and/or ability to perform such obligations, duties, and responsibilities hereunder (including any that are intended to survive and/or survive the expiration or termination of this Agreement) are expressly subject to and limited by the UH Limitations.

6. No Partnership. It is expressly understood and agreed by and between UH and AES that UH shall in no way be nor for any purpose become or be construed to become a partner of AES in the conduct of AES’ business, or otherwise, or a joint venturer or a member of a joint enterprise with AES or to have a principal/agent or employer/employee relationship, and UH does not assume responsibility for AES’ conduct or performance under this Agreement. UH and AES acknowledge and agree that there are no third-party beneficiaries to this Agreement.

7. Entire Agreement. UH and AES agree that this Agreement, the proposed System Easement, and any memorandum or short form of the System Easement contain all of the agreements, promises and understandings between UH and AES as to the Easement Area. No oral agreements, promises or understandings shall be binding upon UH and AES in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by UH and AES.

[Remainder of page intentionally left blank]  
[Signature page to follow]



8.

IN WITNESS, WHEREOF, AES and the UH have, by their duly authorized officers, duly executed and entered into this Agreement as of the Effective Date.

AES:

AES WEST OAHU SOLAR, LLC,  
a Delaware limited liability company

By  \_\_\_\_\_

Print Name: Woody Rubin

Title: President

UH:

UNIVERSITY OF HAWAI'I, the state university and a  
body corporate of the State of Hawai'i

By \_\_\_\_\_  
David Lassner  
Its President

By \_\_\_\_\_  
Jan S. Gouveia  
Its Vice President for Administration

Recommend Approval:

By \_\_\_\_\_  
Manette K. P. Benham  
Chancellor  
University of Hawaii – West Oahu

Approved as to Form:

Office of University General Counsel

\_\_\_\_\_  
Bruce Y. Matsui  
Associate General Counsel

8.

IN WITNESS, WHEREOF, AES and the UH have, by their duly authorized officers, duly executed and entered into this Agreement as of the Effective Date.


AES:

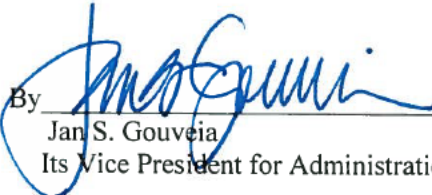
AES WEST OAHU SOLAR, LLC,  
a Delaware limited liability company

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

UH:

UNIVERSITY OF HAWAI'I, the state university and a  
body corporate of the State of Hawai'i

By   
David Lassner  
Its President

By   
Jan S. Gouveia  
Its Vice President for Administration

Recommend Approval:

By \_\_\_\_\_  
Manette K. P. Benham  
Chancellor  
University of Hawaii – West Oahu

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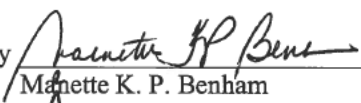
UNIVERSITY OF HAWAI'I, the state university and a  
body corporate of the State of Hawai'i

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
David Lassner  
Its President

By \_\_\_\_\_  
Jan S. Gouveia  
Its Vice President for Administration

Recommend Approval:

By  \_\_\_\_\_  
Manette K. P. Benham  
Chancellor  
University of Hawaii – West Oahu

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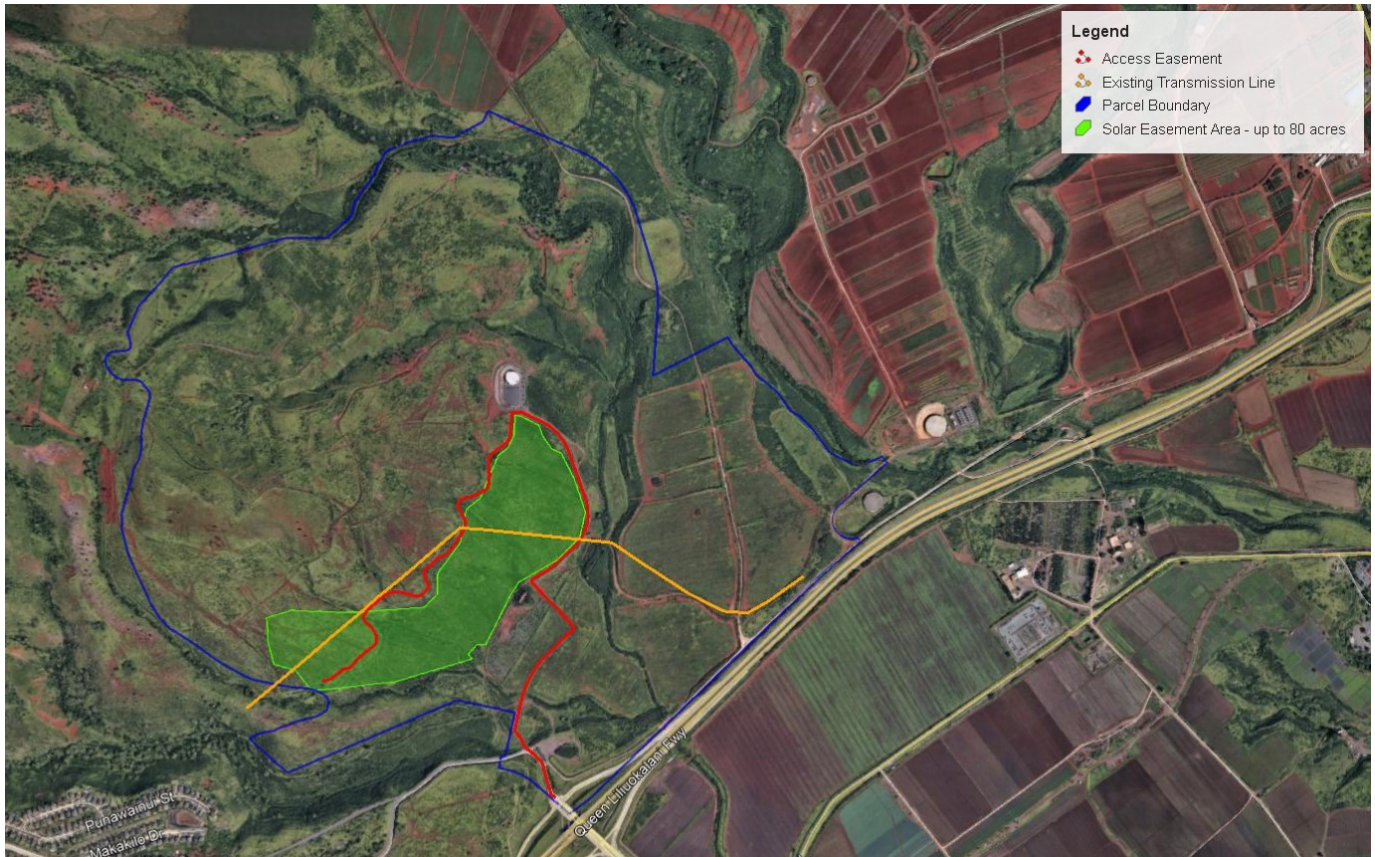
Office of University General Counsel

\_\_\_\_\_  
Bruce Y. Matsui  
Associate General Counsel

## EXHIBIT A

### Use Area

Use Area is defined as the green area identified in the figure below.





**EXHIBIT B**  
**Site Specific Conditions**

1. **Due Diligence.** AES shall be permitted to conduct the following Due Diligence activities on, within, adjacent to, and/or involving the Use Area and the Property (as marked on the map attached hereto as Exhibit A):
  - a. **Soil test boring locations.** For the Due Diligence that involves invasive investigation and testing, such as soil test boring work, AES must obtain UH's prior written approval before commencing any such invasive investigation and testing, such as the soil test boring work, including, without limitation, obtaining UH's prior written approval for extent, manner, and locations of all areas within which such invasive investigation and testing work is to be conducted, such as the soil test boring locations and the volume and extent of the drilling, excavation, and soil displacement work. UH's written approval shall not be unreasonably withheld.
  - b. **Soil backfill.** Upon completion of any soil test boring work, AES shall and will ensure that the AES Agents and AES Assignees fill in any holes, boreholes, depressions, cavities, pits, and voids created by such soil test boring work (collectively the "***Holes***") with soil material from the area in and around the Holes, provided that the use of such soil material does not create separate Holes that need to be filled. To the extent that there is insufficient soil material under these conditions to fill in the Holes, AES shall be permitted to place import soil material to fill in the Holes, in quality and quantities reasonably acceptable to UH.
  - c. **Sampling and testing of imported soil.** AES shall and will ensure that the AES Agents and AES Assignees shall conduct sampling and testing of all soil brought in or imported to fill Holes within the Use Area and/or the Property and perform or have performed an analysis of the results of such sampling and testing to determine the extent that any such soil may be contaminated with any Hazardous Materials (as defined herein). Such sampling, testing, and analysis shall be conducted and/or performed using methods that are acceptable to UH, particularly the UHWO Environmental Health and Safety Office.
  - d. **Sufficiently compact Holes.** AES shall and will ensure that the AES Agents and AES Assignees adequately and sufficiently compact the backfill or soil material placed in any of the Holes created by AES, the AES Agents, and/or the AES Assignees during the Due Diligence, particularly within the Use Area and any other affected portions of the Property. If requested by UH, AES will permit UH to review the results of the backfill density tests by or from AES, the AES Agents, and/or the AES Assignees.
  - e. **Traffic management plan.** AES shall submit to UH for UH's review and approval a traffic management plan that mitigates and manages traffic impacts arising from and/or attributable to the Due Diligence and the Authorized Activity on, within, or involving the Use Area and/or the Property.
  - f. **Replacing UH Facilities.** AES acknowledges that UH may have some improvements comprising portions of UH Facilities and trees within the Use Area, including fences, barriers, and utility systems. To the extent that any portion of said improvements and/or trees, particularly any fences, barriers, and/or utility systems are removed or destroyed in connection with the Due Diligence or Authorized Activity, AES shall replace and/or ensure that the AES Agents and AES Assignees replace any said improvements and/or trees so removed or destroyed, with improvements and trees to UH's reasonable satisfaction.
  - g. **Damage repair.** AES shall promptly maintain and repair and ensure that the AES Agents and AES Assignees shall promptly maintain and repair any damage to UH Facilities (including any improvements, fences, barriers, and utility systems), trees, the Use Area, and/or the Property, to the extent caused by AES, the AES Agents, and/or the AES Assignees in connection with the Due Diligence or the Authorized Activity.
  - h. **Other permitted Due Diligence.** Subject to this paragraph 1, the Due Diligence that AES is authorized to perform under this Agreement shall include conducting any and all feasibility and investigative studies, physical inspections, testing, measuring, and other due diligence efforts, conducting geological,

engineering, soil tests, archaeological and/or environmental studies or reports, investigating the grading, drainage and utility requirements necessitated by AES' proposed development, construction, and operation of the System, and reviewing and evaluating any conditions of approval imposed by HECO and/or the City or any other governmental entity or agency relating to AES' proposed development, construction, and/or operation of the System.

2. **Third Party Rights.** At all times, including but not limited to when accessing the Use Area and/or the Property and in performing any Due Diligence, AES shall honor and shall cause the AES Agents and the AES Assignees to honor the rights of, the holders of easements (including but not limited to easements for drainage, sewer lines, fuel lines, and water lines) on or under the Use Area and/or the Property and users of utility facilities affected by the Due Diligence on or within the Use Area and/or the Property. Without limiting the generality of the foregoing, AES shall be responsible and shall cause the AES Agents and the AES Assignees to be responsible for the following:
  - a. **Ensure no adverse drainage impacts.** AES shall ensure and shall cause the AES Agents and the AES Assignees to ensure that the Due Diligence on or within the Use Area and/or the Property does not cause adverse drainage impacts at, within, under, or affecting the Use Area and/or the Property, including but not limited to, implementing measures to: (1) ensure that no additional runoff over and above any UH drainage system capacity is directed onto, across, or through the Use Area and/or the Property into any such existing drainage system, including any and all portions thereof such as drainageways, swales, intakes, tunnels, and/or pipelines and (2) decrease the risk of ponding or flooding because of the Due Diligence on or within the Use Area and/or the Property.
  - b. **Ensure no adverse fuel line impacts.** AES shall ensure and shall cause the AES Agents and the AES Assignees to ensure that the Due Diligence on or within the Use Area and/or the Property does not cause adverse impacts with respect to existing fuel lines within, under, or affecting the Use Area and/or the Property.
  - c. **Ensure no adverse sewer system impacts.** AES shall ensure and shall cause the AES Agents and the AES Assignees to ensure that the Due Diligence does not cause adverse impacts with respect to existing sewer lines facilities, and/or systems within, under, or affecting the Use Area and/or the Property.
  - d. **Ensure no impact to aquifer or other underground water resources.** AES shall ensure and shall cause the AES Agents and the AES Assignees to ensure that the Due Diligence does not cause any adverse impacts to water or groundwater resources in, on, under the Use Area and/or the Property, including, ensuring that no work (including, any excavation, trenching, boring, drilling, grading, pile driving and other earth or soil movement or relocation work) adversely affects the groundwater aquifer or other water resources in, on, under the Use Area and/or the Property.
3. **Coordination Meetings.** AES shall facilitate and coordinate the scheduling of meetings with and cause the AES Agents and the AES Assignees to participate in the meetings among AES and UH, to be held on a reasonably periodic basis for the duration of the Due Diligence. AES shall notify UH in writing of the schedule for such meetings. As mutually agreed upon between AES and UH, AES shall ensure that UH is provided updates to the Due Diligence plan.
4. **Security.** Security for the Due Diligence shall be the responsibility of AES, the AES Agents, and/or the AES Assignees. AES shall cooperate and shall cause the AES Agents and the AES Assignees to cooperate with UH to enable UH to meet and satisfy all Applicable Laws, including satisfying all higher-education crime reporting requirements pursuant to the Clery Act.
5. **Irrigation and Water Lines.** AES shall verify and require that the AES Agents and the AES Assignees verify the location of all irrigation and water lines that may be situated on, within, under, and/or crossing the Use Area and/or the Property or the portions thereof affected by the Due Diligence and obtain UH's prior written approval for all plans to: (a) interrupt or temporarily stop water flow and (b) install temporary or permanent lines, pumps, facilities, equipment, and/or systems to continue to furnish water service to the Use Area and/or the Property at the same levels as existed prior to the commencement of the Due Diligence.

6. **Electrical and Communication Lines.** AES shall verify and require that the AES Agents and the AES Assignees verify the location of all electrical and communication lines that may be situated on, within, under, and/or crossing the Use Area and/or the Property, or portions thereof affected by the Due Diligence and obtain UH's prior written approval for all plans to: (a) interrupt or temporarily stop electrical or communication service and (b) install temporary or permanent lines, boosters, facilities, equipment, and/or systems to continue to furnish electrical and communication service to the Use Area and/or the Property at the same levels as existed prior to the commencement of the Due Diligence.
7. **Sewer and Drainage Lines.** AES shall verify and require that the AES Agents and the AES Assignees verify the location of all sewer and drainage lines that may be situated on, within, under, and/or crossing the Use Area and/or the Property or portions thereof affected by the Due Diligence and obtain UH's prior written approval for all plans to: (a) interrupt or temporarily stop or divert sewage or drainage flow and (b) install temporary or permanent lines, pumps, facilities, equipment, and/or systems to continue to handle the sewage and/or drainage flow to, through, and across the Use Area and the Property at the same capacity levels as was handled prior to the commencement of the Due Diligence.
8. **Existing Utility Lines.** With respect to paragraph 5 (Irrigation and Water Lines), paragraph 6 (Electrical and Communication Lines), and paragraph 7 (Sewer and Drainage Lines), UH will disclose to AES all information that UH may have with respect to any existing irrigation, water, electrical, communication, sewer, and drainage lines and facilities (collectively the "***Utility Lines***") on or within the Use Area. AES and UH acknowledge and agree, however, that UH does not have comprehensive information regarding the underground conditions and/or the Utility Lines within or under the Use Area from the time that UH acquired the Property from the State of Hawaii who at that time had recently accepted transfer of the Property from the Trustees of the Will and the Estate of James Campbell, Deceased ("***Campbell Estate***"). Campbell Estate may have permitted or installed Utility Lines under or within the Property. AES and UH acknowledge and agree that while UH will disclose to AES any information it may have with respect to the Utility Lines, UH does not have detailed maps showing the location of all such Utility Lines. To the extent UH does not inform AES of Utility Lines that UH had actual knowledge of and AES can prove that UH had such actual prior knowledge, AES will not be responsible for any damages AES may cause to such Utility Lines. AES and UH acknowledge and agree that UH shall not be responsible for any damages to any person or entity arising from AES' actions and/or omissions relating to any Utility Lines.

End of Exhibit B

**EXHIBIT C**  
**General Terms and Conditions**

1. Indemnify and defend UH. As a condition to UH's grant of permission to AES to use the Use Area to conduct the Due Diligence and the Authorized Activity herein, at all times AES shall indemnify, defend with counsel reasonably acceptable to UH, and hold harmless UH, the UH's officers, employees, agents, representatives, and any person acting on behalf of UH (hereafter collectively the "**UH Agents**"), and ensure that the AES Agents and the AES Assignees shall indemnify, defend with counsel reasonably acceptable to UH, and hold harmless UH and the UH Agents, from and against any claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liens, liabilities, losses, damages, costs, and expenses (including the fees and costs of counsel reasonably acceptable to UH), by whomsoever incurred, sustained, or asserted, including, without limitation, claims for property damage, personal injury, bodily injury, death, lost revenues and other economic loss, and/or environmental damage, directly or indirectly arising from or connected with any of the following:
  - a. Act or omission. Any act, omission, or exercise of rights or privileges under this Agreement by AES or any of AES' officers, employees, contractors, consultants, agents, representatives, and any person or entity acting on behalf of AES (collectively the "**AES Agents**").
  - b. Casualty. Any accident, fire or other casualty on or involving the Use Area and/or the Property attributable to the acts or omissions of AES, the AES Agents, and/or the AES Assignees.
  - c. Violation. Any violation or alleged violation by AES, the AES Agents, and/or the AES Assignees of any Applicable Laws (including, without limitation, Environmental Laws), arising from events, occurrences, or incidents at, on, within, or attributable to the use of the Use Area and/or the Property.
  - d. Loss. Any loss or theft whatsoever of any property placed or stored by AES, the AES Agents, and/or the AES Assignees on or near the Use Area and/or the Property.
  - e. Liens. Any Liens (as defined herein) that may be filed against any portion of the AES' Due Diligence or UH's interest in the Use Area and/or the Property, including, without limitation, AES' obligation to complete any action, proceedings, and/or processes necessary to fully waive, discharge, and release any Liens, all at AES' sole cost and expense.
  - f. Misrepresentation. Any material misrepresentation or inaccuracy in any representation or warranty by AES, the AES Agents, and/or the AES Assignees under this Agreement.
  - g. Challenge. Any challenge to the authority of AES, the AES Agents, and/or the AES Assignees to negotiate, enter into, execute, or perform obligations under this Agreement.
  - h. Failure to perform. Any failure by AES, the AES Agents, and/or the AES Assignees in whole or in part, to fully and properly perform any of the terms and conditions contained in this Agreement, including, without limitation, the breach or default by AES, the AES Agents, and/or the AES Assignees in the performance of any of said terms and conditions of this Agreement.
  - i. Removal. Any enforcement by UH of any provision of this paragraph 1 (Indemnify and defend UH) and any costs reasonably incurred in duly removing AES, the AES Agents, and/or the AES Assignees from the Use Area and/or the Property or restoring the same as provided herein.
  - j. UH enforcement. Any actions by UH or others to enforce the terms and conditions of this Agreement, including the performance of any of the obligations of AES, the AES Agents, and/or the AES Assignees hereunder.



2. Insurance. AES shall, at no cost to UH, procure and maintain, or cause to be procured and maintained, the following insurance described below, which shall insure against loss arising from the operations of AES and all AES Agents and AES Assignees performing work on behalf of AES under this Agreement, during the entire term of this Agreement, issued by an insurance company or companies authorized to do business in the State of Hawai'i and reasonably satisfactory to UH:

a. Required Insurance Coverage.

- (1) Commercial General Liability. Commercial general liability insurance covering claims with respect to injuries or damages to persons or property sustained as a result of the activities performed under this Agreement, including any of the AES Agents (such as AES' contractors), and the AES Assignees within, on, or about the Use Area and/or the Property, with minimum combined single limits of liability (written on an occurrence form) no less than the following:

General Liability

General Aggregate	\$3,000,000.00
Products/Completed Operations Aggregate	\$3,000,000.00
Personal/Advertising Injury	\$3,000,000.00
Each Occurrence	\$3,000,000.00

Such limits may be achieved through the use of umbrella/excess liability insurance sufficient to meet the requirements of this paragraph 2 (Insurance) above for the Use Area and/or the Property. Said policy or policies shall cover the Use Area and the Property, the conduct of the Due Diligence and the Authorized Activity therein, and all of the activities and operations of AES, the AES Agents, and the AES Assignees under this Agreement on, about and with respect to the Use Area and/or the Property.

- (2) Automobile Insurance. Automobile Liability Insurance to include coverage for any owned (if AES has owned Autos), non-owned, or hired automobiles with limits of not less than the following

Automobile Liability

Bodily Injury – Per Person	\$1,000,000.00
Bodily Injury – Per Accident	\$1,000,000.00
Property Damage – Each Accident	\$1,000,000.00

In the event there is a change in Hawai'i law regarding financial responsibility and insurance requirements of automobile owners or users which make this requirement obsolete, UH shall have the right to impose a new requirement consistent with the then Applicable Laws.

- (3) Workers' Compensation & Employer's Liability Insurance. Workers' compensation insurance as required by statute with respect to work performed in, on, involving, or in connection with the Use Area and/or the Property and employer's liability insurance with limits not less than:

Employers Liability

Bodily Injury – Each Accident	\$500,000.00
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Disease – Policy Limit	\$500,000.00
Disease – Each Employee	\$500,000.00

AES shall ensure that the AES Agents (including the AES contractors) and the AES Assignees obtain workers compensation and employer's liability insurance with the limits described herein to cover the work performed in connection with the Due Diligence and/or the Authorized Activity by their respective employees on or involving the Use Area and/or the Property.

- b. Common provisions. Each insurance policy that AES, the AES Agents, and/or the AES Assignees are obligated to obtain under this Agreement shall be subject to the following:
- (1) Notice of change. Should any of the insurance policies be materially changed from the coverages and/or limits required herein, or cancelled before the expiration date thereof, AES shall provide UH with immediate notice of such changes. AES shall provide UH notice of (a) any act or omission by AES, the AES Agents, and/or the AES Assignees that would allow the insurer to terminate or modify any of the insurance coverage within two (2) business days of such act or omission (including, but not limited to, failure to renew an insurance policy or pay a required premium therefor) and (b) notice of cancellation, limitation in scope, material change, or non-renewal by the insurer within two (2) business days of receipt.
  - (2) Insurance obtained by UH shall apply in excess of AES insurance. Any insurance maintained by UH will apply in excess of, and not contribute with, insurance provided by AES, the AES Agents, and/or the AES Assignees under this Agreement.
  - (3) UH as additional insured. AES shall name UH, the UH Agents, and those persons or entities identified in writing from time to time by UH to AES, the AES Agents (including the AES contractors) and/or the AES Assignees, as additional insured on the insurance policies for all insurance coverage obligated to be obtained under this Agreement, except for Workers' compensation and employer's liability insurance.
  - (4) Waiver of subrogation endorsement. All insurance required under this Agreement will contain a waiver of subrogation endorsement in favor of UH.
  - (5) UH not required to pay premiums. AES, the AES Agents, and the AES Assignees shall be solely responsible for the costs of procuring and maintaining the insurance coverage described in this Agreement and shall not charge UH or expect UH to pay any portion of the premiums or charges to obtain the insurance coverage required under this Agreement.
  - (6) Acceptable deductibles. The terms and amounts of any deductibles for the insurance policies required under this Agreement must be reasonable and acceptable to UH based upon the type of insurance involved and the nature of the Authorized Activity, use of the Use Area by AES, the AES Agents, and/or the AES Assignees, and/or the conduct of activities on or within the Use Area by AES, the AES Agents, and/or the AES Assignees.
  - (7) AES to ensure compliance. AES shall ensure that the AES Agents and the AES Assignees obtain the insurance coverages required paragraph 2a (Required Insurance Coverage) herein and that they comply with the provisions as described in paragraph 2b (Common provisions), paragraph 2c (Deposit insurance certificates), paragraph 2d (UH may cure failure to obtain/maintain insurance), paragraph 2e (Lapse in insurance constitutes a breach), paragraph 2f (Insurance shall not limit AES liability), and paragraph 2g (UH may adjust insurance requirements) herein.

- c. Deposit insurance certificates. AES shall (a) deposit with UH, on or before the Effective Date of this Agreement, certificates of insurance necessary to satisfy UH that the insurance provisions of this Agreement have been fully complied with and (b) keep such insurance in effect and the certificates therefor on deposit with UH during the entire Term of this Agreement.
  - d. UH may cure failure to obtain/maintain insurance. Upon failure by AES, the AES Agents (including the AES contractors), and/or the AES Assignees to provide and maintain the insurance required herein after a ten (10) day prior written notice to comply from UH, UH may, but shall not be required to, procure such insurance at the sole cost and expense of AES, the AES Agents, and/or the AES Assignees, and AES, the AES Agents, and/or the AES Assignees shall be obligated, upon demand from UH, to immediately reimburse UH for the cost thereof plus ten percent (10%) for UH's administrative overhead.
  - e. Lapse in insurance constitutes a breach. Any lapse in, or failure by AES to procure, maintain, and keep in full force and effect or cause the AES Agents (including the AES contractors) or the AES Assignees to procure, maintain, and keep in full force and effect such insurance coverage as is required under this Agreement, at any time during and throughout the Term of this Agreement, shall be a breach of this Agreement and UH may terminate the rights of AES, the AES Agents (including the AES contractors), and the AES Assignees to access and/or use the Use Area and/or the Property.
  - f. Insurance shall not limit AES liability. The procuring of such required policy or policies of insurance shall not be construed to limit AES' liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, AES shall be responsible for complying with AES' obligations under paragraph 1 (Indemnification by AES) herein.
  - g. UH may adjust insurance requirements. UH may, upon reasonable notice and reasonable grounds, increase or change the form, type, coverage, or coverage limits of the insurance required hereunder, in which event AES shall obtain such required insurance. UH requirements shall be reasonable and shall be designed to provide protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
  - h. UH may scale back insurance requirements. AES may request a scale back or waiver of some of the insurance requirements hereunder as it may apply to "non-major" AES Agents. AES would be required to submit such scale back requests to the University with written justification. The University will consider each AES request on a case by case basis and may, in UH's sole discretion, grant, deny, and/or modify, in whole or in part, any such scale back request., including, but not limited to, denying such request because UH considers the AES Agents involved to be a significant or major AES Agent.
3. Comply with Applicable Laws. In using the Use Area, AES shall, and shall ensure that the AES Agents and the AES Assignees shall, comply with all applicable laws, statutes, ordinances, rules, regulations, orders, and directives of any federal, state, or county governments (collectively "***Applicable Laws***"), including all laws relating to Hazardous Materials (as defined herein), and all applicable UH rules, policies, procedures, and guidelines provided by UH to AES relating to the use of the Use Area and the Property.
  4. AES responsibility for AES Agents and AES Assignees. AES shall be responsible for the conduct of all of those involved with AES' use of the Use Area and the conduct of the Authorized Activity, including, without limitation, the AES Agents and the AES Assignees and their officers, employees, contractors, consultants, suppliers, vendors, agents, representatives, and all those assisting with and/or participating in the Due Diligence, the Authorized Activity, and the AES, AES Agents, and the AES Assignees activities or use of the Use Area.
  5. Maintenance of Use Area. To the extent that the Authorized Activity involves the use of any UH Facilities or access through any portion of the Property, AES shall, at its sole cost and expense, keep and maintain and ensure that the AES Agents and the AES Assignees keep and maintain, the Use Area, the portions of the

Property used by AES, the AES Agents, and/or the AES Assignees or affected by the Authorized Activity and any UH Facilities used or affected in good condition and repair during the term of this Agreement, normal wear and tear excepted. AES may not construct or install and shall ensure that the AES Agents and the AES Assignees do not construct or install any short term improvements or structures within the Use Area and/or the Property, without first obtaining the UH's prior written approval for all plans, specifications, drawings, and schedules for such improvements and structures. AES understands that AES, the AES Agents, and the AES Assignees will not be permitted to construct any permanent or long term improvements or structures without UH's prior written approval and the granting of an appropriate property or other interest from UH. AES, the AES Agents, and/or the AES Assignees shall bear and pay for all costs associated with the construction and installation of any improvements or structures, including any Due Diligence, and UH shall not be required to pay for any such costs. AES shall not have the right to connect and will ensure that the AES Agents and the AES Assignees do not connect to any of UH's utility, sewer, or drainage lines or facilities without first obtaining the UH's prior written approval and only if AES, the AES Agents, and/or the AES Assignees bear the entire cost of such connections, including installing such meters and measuring devices to ensure that UH does not incur any cost or expense relating to AES', the AES Agents', and/or the AES Assignees' connection to or use of UH's utility, sewer, and/or drainage lines and facilities.

6. AES Responsibility for Cleanup. Upon the expiration or sooner termination of this Agreement or at the end of the Due Diligence and the Authorized Activity, whichever event occurs first, AES shall be responsible, at AES' sole cost and expense, for completing and ensuring that the AES Agents and the AES Assignees complete the following: (a) removing and disposing of all trash, debris, and rubbish generated from or by the Due Diligence and/or the Authorized Activity or AES', the AES Agents', and/or the AES Assignees' use of the Use Area, (b) removing all equipment, utility lines, sewer lines and components, temporary structures, devices, tools, and other personal property (collectively the "**Personal Property**") (or to the extent such removal may be directed by UH) and (c) cleaning up and restoring the Use Area to the condition it was in before AES', AES Agents', or AES Assignees' use of the Use Area, subject to ordinary wear and tear and in accordance with the guidelines furnished by UH.
  - a. AES failure to clean up. If AES fails to remove and/or clean up and restore the Use Area and/or the Property or fails to cause the AES Agents and/or the AES Assignees to complete any such required removal and/or clean up and restoration of the Use Area and/or the Property, to the same condition as required hereunder, as determined by UH, UH may complete such restoration, removal, and clean-up, at the cost and expense of AES, the AES Agents, and/or the AES Assignees, which amount AES, the AES Agents, and/or the AES Assignees shall immediately pay to UH upon demand by the UH plus ten percent (10%) for UH's administrative overhead.
  - b. AES failure to remove Personal Property. In the event AES fails to timely remove or fails to cause the AES Agents and AES Assignees to timely remove the Personal Property from the Use Area and/or the Property, UH may, but shall not be obligated to do either of the following, all without incurring any cost or liability to AES, the AES Agents, and/or the AES Assignees: (i) remove the Personal Property, and treat the Personal Property as abandoned and dispose of the same, or (ii) store the Personal Property at the sole cost and expense of AES, the AES Agents, and/or the AES Assignees, which amount AES, the AES Agents, and/or the AES Assignees shall immediately pay to the UH upon demand by UH, plus ten percent (10%) for UH's administrative overhead.
7. AES Responsibility for Damage. AES, the AES Agents, and/or the AES Assignees shall be responsible, at their sole cost and expense, for repairing any damage to the Use Area and/or the Property that is caused by or attributable to the Due Diligence, the Authorized Activity, and/or the use of the Use Area and/or the Property by AES, the AES Agents, and/or the AES Assignees, including any damage caused by the AES Agents and/or the AES Assignees.
  - a. AES to obtain approval for repairs. In effecting such repairs, AES acknowledges that AES, the AES Agents, and/or the AES Assignees will need to obtain UH's prior written approval for any such repairs (which may need to be coordinated with UH personnel responsible for the maintenance and upkeep of the Use Area and the Property).

- b. AES to deposit estimated repair cost. AES, the AES Agents, and/or the AES Assignees may be required to deposit the estimated cost of such repairs with UH before the commencement of any repair work and pay any additional costs incurred upon demand from UH, plus ten percent (10%) to cover UH's administrative overhead. Initial payment to repair any such damages shall be made within fourteen (14) days after the end of the Due Diligence, the Authorized Activity, and/or the term of this Agreement during which such damage occurred or was discovered.
  - c. UH not responsible for damage or theft. UH shall not be responsible for damage, vandalism or theft to the property of AES, the AES Agents, and/or the AES Assignees including, but not limited to, damage, vandalism or theft of property (such as automobiles and their contents) occurring on or within the Use Area and/or the Property.
8. Termination. [Reserved]
9. Hazardous Materials. AES shall not, and shall ensure and require that the AES Agents and the AES Assignees shall not, cause or permit: (a) the escape, disposal, or release of any Hazardous Materials (as defined herein) except as permitted by law, (b) the storage or use of such Hazardous Materials in any manner not sanctioned by law or the highest standards prevailing in the industry for the storage and use of such Hazardous Materials, or (c) such Hazardous Materials to be brought on or within the Use Area and/or the Property, except to use in the ordinary course of business, and then only after written notice is given to UH of the identity of such Hazardous Materials and upon UH's consent, which consent may be withheld at UH's sole and absolute discretion.
- a. Remediate, clean up and restore. In the event that any Hazardous Materials are used, stored, treated, or disposed on or within the Use Area and/or the Property, or handled, discharged, released, or determined to be present on or from the Use Area and/or the Property due to, caused by, or attributable to the acts or omissions of AES, the AES Agents, and/or the AES Assignees, AES, the AES Agents, and/or the AES Assignees shall, at their cost and expense and at no cost to UH, remediate the affected portions of the Use Area and/or the Property, of any such Hazardous Materials, and dispose/remove said Hazardous Materials. In addition, AES, the AES Agents, and/or the AES Assignees agree to restore the affected portions of the Use Area and/or the Property, at their cost and expense and at no cost to UH, to the same condition in which they existed at the commencement of this Agreement, to UH's satisfaction.
  - b. Failure to remediate and restore. In the event AES, the AES Agents, and/or the AES Assignees fail to remediate and restore the affected portions of the Use Area and/or the Property to the same condition as required hereunder, as determined by UH, after a ten (10) day prior written notice to comply from UH, AES, on behalf of itself and the AES Agents and/or the AES Assignees, agrees that UH may complete such remediation and restoration at the cost and expense of AES, the AES Agents, and/or the AES Assignees, which amount AES, the AES Agents, and/or the AES Assignees shall immediately pay to UH upon demand by UH, plus ten percent (10%) for UH's administrative overhead.
  - c. Indemnify and defend. AES, the AES Agents, and/or the AES Assignees shall indemnify, defend with counsel reasonably acceptable to UH, and hold harmless UH and the UH Agents from any liability that may arise in connection with, or by reason of, the release or presence of Hazardous Materials or any occurrence involving any Hazardous Materials that may be alleged to be connected to, or related in any way with the Due Diligence, the Authorized Activity and/or use of the Use Area by AES, the AES Agents, and/or the AES Assignees.
  - d. UH has no obligation to remediate or correct. AES and UH acknowledge and agree that during the conduct of the Due Diligence or the Authorized Activity, AES may discover existing Hazardous Materials conditions on, within, or under the Use Area and/or the Easement Area. If such discovery occurs, AES and UH acknowledge and agree that AES has agreed to accept the Use Area and the Easement Area in its "as is" condition with no representations or warranties from UH. In no way whatsoever shall UH be obligated to remediate or clean up Hazardous Materials in order to allow AES, the AES Agents, the AES Contractors, and/or the AES Assignees to construct, install, operate, maintain, repair, and/or remove the System. Any decision by the University to engage in remediation expenditures

shall be at the sole discretion of the University and AES shall have no right to force the University to remediate Hazardous Materials, even if such Hazardous Materials conditions or environmental issues existed before AES, the AES Agents, the AES Contractors, or the AES Assignees entered the Use Area, the Easement Area and/or the Property.

- e. Hazmat definition. “Hazardous Materials” means any substance, element, compound, mixture or solution: (a) the presence of which requires investigation or remediation under any federal, state or county statute, regulation, ordinance, order, action, and/or policy (collectively the “***Environmental Laws***”) or common law; or (b) which is now or at any time hereafter in effect becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under any Environmental Laws; petroleum, fuel oil, sludge, crude oil or residue, trichloropropane; or (c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; or (d) the presence of which causes or threatens to cause a nuisance upon or within the Use Area and/or the Property, or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons, to property or to the environment.
10. No Liens. AES shall not, and shall ensure that the AES Agents and AES Assignees shall not, commit or suffer any act or neglect whereby any portion of the Use Area and/or the Property, or any part or parts thereof, at any time during the term hereof, shall become subject to any attachment, lien, charge, or encumbrance whatsoever (hereafter collectively the “***Liens***”).
  - a. AES shall remove Liens. AES shall take and will cause the AES Agents, and/or the AES Assignees to take immediate action to discharge, eliminate, or remove the Liens, including, without limitation, bonding or posting other security until the discharge, elimination, or removal is finally determined and the Liens resolved and discharged.
  - b. UH may act if AES fails to timely remove. If UH reasonably determines that AES, the AES Agents, and/or the AES Assignees are not taking timely action or may be unsuccessful in its efforts to discharge, eliminate, or remove the Liens, UH may after a ten (10) day prior written notice to comply to AES, the AES Agents, and/or the AES Assignees: (1) at the sole cost and expense of AES, the AES Agents, and/or the AES Assignees take such action as UH deems necessary, including, without limitation, seeking judicial or administrative action or intervention to discharge, eliminate, and/or remove the Liens and/or (2) treat AES, the AES Agents, and/or the AES Assignees to be in breach or default of this Agreement and terminate the rights of AES, the AES Agents, and/or the AES Assignees under this Agreement. AES shall immediately pay and will ensure that the AES Agents and the AES Assignees immediately pay to UH such costs as may be incurred by UH in discharging, eliminating, and/or removing the Liens (including a ten percent (10%) markup for UH’s administrative overhead) upon demand by UH.
11. Dispute resolution. [Reserved]
12. Assignment. [Reserved]
13. Amendment. This Agreement shall not be amended except in writing signed by the parties.
14. Counterparts; facsimile signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. The submission of a signature page transmitted by email or facsimile (or similar electronic transmission facility) shall be considered as an “original” signature page for purposes of this Agreement.
15. AES representations. In addition to any other representations and warranties contained in this Agreement, AES hereto represents and warrants to UH as of the Effective Date of this Agreement that:
  - a. Duly organized. AES is duly organized, validly existing, and in good standing in the jurisdiction of its organization.



- b. Full right and authority. AES has the full right and authority and has taken all requisite corporate or other action to enter into, execute, deliver, and perform its obligations under this Agreement.
- c. Has obtained all requisite approvals. AES has obtained all approvals and consents that are necessary to fully authorize and empower AES to validly enter into this Agreement and has obtained or shall timely obtain all approvals and consents that are necessary to perform all of the obligations of AES under this Agreement.
- d. Agreement is a binding obligation. AES represents and warrants that this Agreement constitutes a legal, valid, and binding obligation enforceable against AES in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally.
- e. No litigation or investigation. There is no litigation, action, proceeding or investigation pending or, to the best of AES' knowledge, threatened before any court or other governmental authority by, against, or involving any of AES' business or assets that would affect AES' ability to carry out AES' obligations under this Agreement.
- f. No other breach. Neither the execution and delivery of this Agreement by AES nor AES' compliance with any of the terms and conditions of this Agreement will result or results in a condition or event that would constitute (or that upon notice or lapse of time or both would constitute) an event of default under any material contractual obligation of AES in any other agreement to which AES is a party.

16. Force Majeure.

- a. Obligations. During the duration of the Force Majeure Events (as herein defined), neither party shall be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its reasonable control, including (but without limitation thereto) strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, restrictions or requirements imposed by any present or future Applicable Laws; or by priorities, rationing, curtailment, or shortage of labor or materials, or by war, acts of terrorism, or any matter or thing resulting therefrom, or by embargoes, acts of God, severe weather or climatic conditions (such as storms, hurricanes, typhoons, earthquakes, tornadoes, volcanic eruptions, earth movements, tsunamis, and floods), acts of the public enemy, acts of superior governmental authority, riots, rebellion, sabotage, or by any other cause or causes beyond the reasonable control of the parties (collectively the "***Force Majeure Events***").
- b. Not excused from performance. AES, however, shall not be excused from performing its obligations under this Agreement, if and to the extent that AES was provided access to the Use Area during the term of this Agreement, in which case AES will be responsible: (1) for the payment of amounts due to UH and (2) to perform AES' obligations under this Agreement

- 17. Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid, void, or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
- 18. Governing Law; Jurisdiction. This Agreement shall be governed by, interpreted, construed, and enforced in accordance the laws of the State of Hawai'i, without regard for choice of law rules. UH and AES agree that the State of Hawaii First Circuit Court, which covers the area of the Property, shall have jurisdiction over this matter to enforce the terms of this Agreement and each of the Parties expressly subjects itself to the jurisdiction of such First Circuit Court.
- 19. Waiver. Any waiver of the terms, conditions, or provisions of this Agreement or a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the terms, conditions, or provisions of this Agreement or such party's rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity

of the whole or any part of this Agreement or prejudice such party's right to take any subsequent action. No exercise or enforcement by any party of that party's rights or remedies under this Agreement will preclude the enforcement by such party of any of its other rights or remedies that are available under this Agreement or by law.

20. Cross-Default. AES' failure to comply with this Agreement shall constitute a breach by AES under any other agreements with UH. AES' failure to comply with any other agreement or commitment made by AES to UH shall constitute a breach and default by AES under this Agreement. Without limiting the UH's remedies under any agreements with AES, UH shall have the right to terminate any or all of its obligations to AES and AES' rights under any agreements with UH, including this Agreement, if AES shall breach any AES' obligations and/or commitments made by AES to the UH.
21. No property interest transferred. AES, on behalf of itself and the AES Agents and the AES Assignees, understands and agrees that neither AES, the AES Agents, nor the AES Assignees are acquiring any property interest of any kind in the Use Area and/or the Property or the right to enter and use the Use Area beyond that which is specifically permitted hereunder with respect to the conduct of the Due Diligence and/or the Authorized Activity within the Use Area during the term of this Agreement. AES is not entitled to, and the UH is not obligated to grant to AES, any rights to use the Use Area beyond the term of this Agreement.

## **EXHIBIT D**

### **Grant of System Easement Agreement**

**GRANT OF SYSTEM EASEMENT AGREEMENT**

by and between

THE UNIVERSITY OF HAWAII,  
the state university and body corporate of the State of Hawaii,

and

AES WEST OAHU SOLAR, LLC,  
a Delaware limited liability company.

Dated \_\_\_\_\_

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**GRANT OF SYSTEM EASEMENT AGREEMENT  
UNIVERSITY OF HAWAII  
AES WEST OAHU SOLAR, LLC**

THIS GRANT OF SYSTEM EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_ (“**Effective Date**”), by and between the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai‘i, whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai‘i 96822 (“**UH**” or “**University**”), and AES WEST OAHU SOLAR, LLC, a Delaware limited liability company, whose business address is c/o AES Distributed Energy, Inc., 282 Century Place, Suite 2000, Louisville, Colorado 80027 (“**AES**”) (UH and AES may be referred to collectively as “**Parties**” or individually as “**Party**”).

**RECITALS**

WHEREAS, the University is the owner of those certain parcels of land located mauka of the University of Hawai‘i West Oahu (“**UHWO**”) campus, 91-1001 Farrington Highway, Kapolei, Hawai‘i 96707, consisting of approximately 991 acres, designated as Tax Map Key Nos. 9-2-002:001, 003, 005, and 007 (“**Property**”), which are more particularly described in Exhibit 1 attached hereto; and

WHEREAS, on or around March 12, 2018, the University and AES entered into that Binding Letter of Intent and Option Agreement (“**LOI**”) Regarding Hawaiian Electric Company, Inc. (“**HECO**”) Request for Proposals (“**RFP**”) for the Supply of Qualified Renewable Energy under HECO’s Renewable Dispatchable Generation Power Purchase Agreement (“**RDG PPA**”); and

WHEREAS, pursuant to the LOI, in the event AES was awarded the RDG PPA under the RFP, the University and AES agreed to negotiate a long term agreement for the use of a portion of the Property, consisting of approximately eighty (80) acres (“**Exclusive Easement Area**”), which are more particularly described in Exhibit 2 attached hereto; and

WHEREAS, AES was awarded the RDG PPA under the RFP to install, maintain, and operate an electricity generation project using solar photovoltaic plus battery energy storage at the Easement Area of up to 12.5 MW AC (“**System**”), which System is further described in Exhibit 3 and Exhibit 4 attached hereto; and

WHEREAS, AES has requested that the University grant to AES an easement for the development, construction, installation, operation, maintenance, repair, improvement, upgrade, renovation, replacement, removal, and security of the System (collectively the “**System Easement Purposes**”), including non-exclusive access and utility placement and easement rights, all in the form of an easement for a term of years (“**System Easement**”); and

WHEREAS, the System Easement to be granted to AES will include the following components: (a) an easement for AES’ exclusive use of a portion of the Property (“**Exclusive Easement**”) which covers the Exclusive Easement Area upon which AES may develop, construct, operate, maintain, repair, improve, upgrade, renovate, replace, remove, and secure the System (“**Exclusive Easement Area**”), (b) a non-exclusive easement consisting of approximately 9,600 linear feet over a portion of the Property (“**Access Easement**”) which covers an area over

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which AES may access the Exclusive Easement Area (“**Access Easement Area**”) and (c) an exclusive easement consisting of approximately two (2) acres in favor of AES over a portion of the Property (“**Utility Easement**”) which covers an area over which utilities supporting the System will be situated (“**Utility Easement Area**”) (the Exclusive Easement Area, the Access Easement Area, and the Utility Easement Area shall be collectively known as the “**Easement Area**” and are shown on the maps attached hereto as Exhibit 2 and incorporated herein by reference);

WHEREAS, pursuant to that certain Option Agreement to Grant System Easement dated [REDACTED], 2019, between the University and AES, the University is permitting AES to conduct inspections, investigations, testing, and other due diligence work, describing the preconditions that AES must fully satisfy and fulfill before the University is obligated to grant AES the System Easement (collectively the “**AES Preconditions**”); and

WHEREAS, one of the AES Preconditions is AES applying, petitioning for, and obtaining approval of the System Easement application and plans from the City and County of Honolulu and the System Easement petition and maps from the Assistant Registrar of the Land Court of the State of Hawai‘i, both of which will confirm and designate the Easement Area; and

WHEREAS, given the mutual desire and commitment to renewable energy sources and sustainability, the University has agreed to grant to AES the System Easement over the Easement Area (consisting of the Exclusive Easement, the Access Easement, and the Utility Easement) affecting the Property to enable AES to develop, construct, install, operate, maintain, repair, improve, upgrade, renovate, replace, remove and secure the System on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### AGREEMENT

1. Grant of Easement. The University does hereby grant unto AES the right, in the nature of an exclusive easement over, under, above, upon, through and within the Easement Area, for the term set forth below, upon the terms and conditions described below (which shall constitute the Exclusive Easement portion of the System Easement) to be exercised and enjoyed by AES solely for the System Easement Purposes described herein;

Under this System Easement, AES may permit its officers, employees, agents, representatives, contractors, consultants, subcontractors, vendors, suppliers, customers, guests, invitees designees, and any person or entity acting on behalf of AES (collectively the “**AES Agents**”) to enter into the Exclusive Easement Area to perform and complete AES’ obligations under this Agreement and System Easement, subject to AES’ obligations and covenants to be responsible and liable for the acts and omissions of the AES Agents in connection with the Easement Area, the System Easement, and this Agreement;

TOGETHER WITH nonexclusive easements for access purposes (which shall constitute the Access Easement portion of the System Easement) and an exclusive easement in favor of AES for utility purposes (which shall constitute the Utility Easement portion of the

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System Easement) over, under, above, upon, through and within the Access Easement Area and the Utility Easement Area, respectively, for the term set forth below, to be exercised and enjoyed by AES and the AES Agents solely for the purposes described herein below;

TO HAVE AND TO HOLD the same unto AES and its respective successors and permitted assigns, during the term of this Agreement, unless sooner terminated pursuant to the terms set forth herein.

SUBJECT, HOWEVER to: (a) the University's reservation of the right to grant easements, access, use, and other rights to third parties over and across the Easement Area, provided that such easements, access, and other rights do not unreasonably interfere with AES' use of the Easement Area for the Authorized Activity and are located outside of the fenced area surrounding the System; and (b) AES' satisfaction of all Entry Preconditions (as hereinafter defined).

2. Authorized Activity. AES shall use the Easement Area for the development, installation, construction, operation, maintenance, repair, improvement, upgrade, renovation, replacement, removal, and security of the System pursuant to HECO's RFP and the RDG PPA and any lawful purpose necessary and incidental thereto (collectively the "**Authorized Activity**"). AES shall not use the Easement Area for any other activities without the prior written approval of the University, which shall not be unreasonably withheld, conditioned, or delayed. AES shall ensure that the Authorized Activity does not unreasonably interfere with the activities of the University or other authorized users of the Property. AES shall not permit any waste, nuisance, or unlawful activities on or within the Easement Area, provided that AES and the University understand that AES and the AES Agents during construction could create situations where on-site waste is generated or associated nuisances could or might occur. AES and the University agree that AES shall and will require the AES Agents, at its or their cost, to promptly remove any such waste generated and stop or mitigate any nuisances, including mitigating any Adverse Impacts resulting from or attributable to the waste generation and/or nuisances.

3. Term. The term of this Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years from the Commercial Operation Date (as defined in the RDG PPA) of the System ("**Term**"), unless sooner terminated as hereinafter provided. AES shall have two (2) options to extend the Term of this Agreement by five (5) years each. AES shall exercise each option by providing the University with written notice at least ninety (90) days prior to end of the Term or any extended Term. Any extension of the Term shall be in writing based upon the same terms and conditions herein, as the same may be amended, except as to Rent, which shall be set by mutual written agreement of the Parties, and such other reasonable terms and conditions as the University may modify or require.

4. Acceptance of Easement Area. AES has examined and knows of the condition of the Easement Area and agrees to accept the Easement Area in its "as is with all faults" condition, in its existing form, content, and state of condition. AES agrees that the University shall not be liable for any latent, patent, or other defects in, on, or under the Easement Area. AES taking possession of the Easement Area shall be conclusive evidence that the Easement Area was in good and satisfactory condition when AES took possession. AES agrees that it is not relying upon any representations or warranties of any kind whatsoever, express or implied, from the University as to any matters concerning the Easement Area, including, without limitation:

a. Physical Condition. The quality, nature, adequacy, and physical condition and aspects of the Easement Area including topography, slopes, depressions, holes, drainage, vegetation, and landscaping.

b. Soils. The quality, nature, adequacy and physical condition of soils, geology, and potential for earth movement.

c. Groundwater. The presence or impact of any groundwater on, upon, or under the Easement Area.

d. Utilities. The existence, quality, nature, adequacy, and physical condition of utilities servicing the Easement Area.

e. Development Potential. The development potential of the Easement Area and the use, habitability, merchantability, or fitness, suitability, value, or adequacy of the Easement Area for any particular purpose.

f. Zoning. The zoning or other legal status of the Easement Area or any other public or private restrictions on the use of the Easement Area.

g. Compliance. The compliance of the Easement Area or any operations thereon with any applicable codes, laws, statutes, rules, regulations, ordinances, covenants, conditions, and restrictions of any governmental, or quasi-governmental entity or any other person or entity.

h. Hazardous Materials. Subject to the terms of the Hazardous Materials (as defined herein) provision herein, the presence of Hazardous Materials on, under, or about the Easement Area or the Property.

i. Title and Encumbrances. Any agreements or documents affecting the Easement Area, including covenants, conditions, restrictions, and other encumbrances or matters or documents of record or of which AES has or should have knowledge.

5. Compliance with Applicable Laws. AES shall comply and shall ensure that the AES Agents comply with all Applicable Laws (as defined herein) and shall be responsible for obtaining all necessary governmental and other approvals necessary to establish, develop, construct, install, operate, maintain, repair, improve, upgrade, renovate, replace, remove, and secure the System Improvements, including, without limitation, all land use, subdivision, easement, and construction approvals from the City and County of Honolulu (“**City**”) and subdivision and easement approvals from the Office of the Assistant Registrar of the Land Court of the State of Hawaii (“**Land Court**”). “**Applicable Laws**” means all: (a) federal, state, county, and local laws, statutes, ordinances, codes, rules, and regulations; (b) standards, directives, interpretations and conditions of approval mandated by any governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of Hawai‘i, and any political subdivisions thereof (including any legislative or judicial bodies) (hereafter collectively the “**Governmental Authority**”); (c) permits and approvals issued by any Governmental Authority; and (d) legislative, administrative, or judicial orders, decrees, requirements, rulings or judgments, which now or in the future may be applicable to the

Easement Area, the Property, the University, AES, and/or the AES Agents, and/or to any use relating to the Easement Area or the Property.

6. Compliance with AES Covenants. AES shall be in full compliance and will ensure that the AES Agents are in full compliance at all times with the provisions of this Agreement, including, without limitation, the following covenants (hereafter collectively the “*AES Covenants*”):

a. Keep University informed of System Plans. AES shall keep the University informed of the plans, schedules, and other documents relating to the design, construction, installation, and operation of the System (collectively the “*System Plans*”), and as more particularly described in paragraph 14 below, including the impacts of design, construction, operation, maintenance, repair, alteration, renovation, improvement, upgrade, expansion, and replacement of the System and/or buildings, facilities, and structures installed or completed as part of the System on or in portions of the Property or the Easement Area (collectively the “*System Improvements*”) and the impacts upon the Easement Area, the Property, and any University improvements, structures, facilities, equipment, appurtenances, utility lines or facilities, walls, fences, paths, roadways, or items within the Easement Area and/or the Property (collectively the “*UH Facilities*”) and University operations.

b. AES responsible to address University issues. AES shall be responsible, at no cost to the University, for addressing and resolving reasonable issues and concerns noted by the University with respect to the System Plans and the System Improvements and their potential impacts upon the Easement Area, the Property, the UH Facilities, and/or the University operations, to the University’s reasonable satisfaction, such as implementing such measures that may be necessary to (1) adequately address the University’s reasonable issues and concerns, or (2) allow the University to, without cost, risk, or adverse impacts to the University, grant AES entry onto and use of the Easement Area and the Property.

c. AES responsible for addressing/resolving Adverse Impacts. AES will be responsible, at no cost to the University, for avoiding, mitigating, and remediating all material adverse impacts to the University, the Easement Area, the Property, the UH Facilities, and the University’s operations resulting from entry onto and use of the Easement Area and the Property by AES and the AES Agents, the Authorized Activity, and/or the System Improvements, including material adverse impacts resulting from the planning, design, construction, operation, maintenance, repair, alteration, renovation, improvement, upgrade, expansion, and/or replacement thereof (collectively the “*Adverse Impacts*”).

(1) AES to implement mitigation measures. AES shall implement, at AES’s cost, such measures as may be necessary to mitigate and/or resolve the Adverse Impacts, including, without limitation, implementing measures to prevent AES, the AES Agents, the Authorized Activity, and/or the System Improvements from: (a) adversely affecting the University’s use of and/or construction, maintenance, and operations upon, at, or around the Easement Area and/or the Property, (b) interfering with the free and safe flow of vehicular, bicycle and pedestrian traffic in and around the Easement Area and the Property outside of the fenced in area within the Easement Area, (c) interfering with the University’s existing uses of, at, and/or around the Easement Areas and the Property, (d) interfering with drainage, sewer, water,

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electricity, communications, and utility systems and any other infrastructure serving or within the Easement Area or the Property, and (e) violating any Applicable Laws.

(2) AES to indemnify/defend University against Adverse Impacts.

AES shall, at no cost to the University, indemnify, defend (with counsel reasonably acceptable to the University), and hold harmless the University from and against any and all claims, actions, judgments, liabilities, losses, damages, costs, and expenses arising from or attributable to Adverse Impacts and AES's failure to fully address and/or resolve any Adverse Impacts; except to the extent that such claims, actions, judgments, liabilities, losses, damages, costs, and expenses are caused by the University and the University's employees, agents, representatives, contractors, consultants, vendors, invitees, and any person acting for or on the University's behalf (collectively the "***UH Agents***").

d. Compliance with Site Specific Conditions. AES shall, at no cost to the University, and to the University's reasonable satisfaction, satisfy, meet, and fulfill all site specific conditions listed and described in Exhibit 5 attached hereto and incorporated herein by reference (collectively the "***Site Specific Conditions***").

e. Compliance with Existing Conditions. AES shall comply with all existing deeds, easements, restrictions, permits, land use approvals, environmental impact statements, conditions, covenants, leases, licenses, and other encumbrances affecting the Easement Area. Without limiting the generality of the foregoing, AES shall comply with, and shall ensure that AES Agents comply with, all applicable land use conditions, regulations, and the State of Hawaii Department of Land and Natural Resources take license terms calling for the protection and replanting of the plant *abutilon menziesii*.

f. Compliance with UH Rules.

(1) Rules and Regulations. The University may from time to time adopt, amend, or implement such reasonable policies, procedures, rules, or regulations (collectively the "***UH Rules***") as the University deems necessary or desirable for the use or operation of the Easement Area and/or the Property, including, without limitation, UH Rules governing the AES Work (as defined herein) and/or matters which may be of benefit to or protection of the University or any other of the University's tenants or occupants of properties in and around the Easement Area and/or the Property; provided, however, that the UH Rules shall not be inconsistent with the terms, covenants, and conditions of this Agreement, shall not conflict with AES' ability to develop and construct the System and engage in the Authorized Activity as described in this Agreement, and to the extent that there is an inconsistency, then the terms, covenants, and conditions of this Agreement shall control. AES shall and will ensure that the AES Agents observe and comply with all of the UH Rules, as the same may be amended from time to time.

(2) Compliance with Pueo Protocol. AES shall, and shall ensure that AES Agents, in connection with or during the exercise of the rights granted to AES under this Agreement, comply with applicable protocol established by the University for the pueo (Hawaiian owl), including, without limitation, the Protocol for Pueo Ground Nest Discovery adopted by UHWO ("***Pueo Protocol***"). If a pueo nest is discovered at or within the Easement Area during the term of this Agreement in connection with or during the exercise of rights

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granted to AES under this Agreement, AES and the AES Agents shall notify the University in accordance with the applicable Pueo Protocol.

g. AES to obtain all governmental approvals. AES shall, at its sole cost and expense, obtain any governmental permits or approvals necessary to construct, install, operate, maintain, repair, improve, upgrade, renovate, replace, remove, and/or secure the System on or within the Easement Area, including, without limitation, any land use, subdivision, easement, or construction approvals from the City.

h. AES to provide sufficient assurance of performance. AES shall, and shall cause the AES Agents to perform and comply with, all obligations under this Agreement and from time to time upon the University's request provide to the University sufficient assurance that AES will, and shall cause the AES Agents to perform and carry out all such required obligations, to the University's reasonable satisfaction.

i. AES to ensure performance by AES Agents. AES shall be responsible, at no cost to the University, for ensuring that the AES and the AES Agents, in the performance of any Authorized Activity (including construction and installation of the System Improvements) and any other work in connection with the Authorized Activity, perform and comply with the AES Covenants in favor of the University contained in this Agreement. AES shall incorporate into any agreements between or involving AES and the AES Agents such provisions from this Agreement as may be necessary for AES to comply with its obligations under this Agreement.

j. University may cure AES's failure to perform. If AES fails to properly perform and comply with any portion of the AES Covenants hereunder, within a period of thirty (30) days after AES receives written notice from the University of such failure by AES, or such further time as may be agreed upon between the University and AES, the University may (but shall not be obligated to), at its option, and in addition to all other remedies which may be available to the University, perform and comply with such portion of the AES Covenants that AES has failed to perform or comply with and the cost thereof shall be paid by AES to the University upon demand from the University.

7. Entry Preconditions. Prior to entry onto the Easement Area, AES shall certify in writing that it has fulfilled each of the entry preconditions described below ("**Entry Preconditions**") and obtain the University's written concurrence that such Entry Preconditions have been satisfied:

a. Notice to Occupants. AES shall notify the University and other authorized users of the Property in writing of AES' proposed entry onto the Easement Area for System Easement Purposes and the scope of work to be performed for the System.

b. Submission of Traffic Mitigation Plans. AES shall provide the University with written traffic mitigation plans addressing expected traffic impacts from the construction, installation, and operation of the System.

c. No Impact on Existing Access and Use. AES shall ensure that it does not adversely impact reasonable access to and from the Property for the University and other authorized users of the Property.



d. Address Concerns. AES shall address and resolve any and all of the University's reasonable issues and concerns relating to the System Plans, the System Improvements and their potential impacts on the Easement Area, the Property, the UH Facilities, and/or the University operations.

e. Implement Mitigation Measures. AES shall implement, at no cost to the University, such measures as may be reasonably required by the University to mitigate any Adverse Impacts arising from or related to AES' design, construction, installation, and/or operation of the System and System Improvements (collectively the "**Mitigation Measures**").

f. Submit System Plans to the University. AES shall submit to the University any and all System Plans (inclusive of all as-built construction plans for the System Improvements).

g. Obtain Government Approvals. AES shall obtain, at no cost to the University, all governmental approvals and permits that may be necessary to construct, install, and operate the System.

h. Ensure AES Agents Comply. AES shall ensure that all AES Agents entering or working on or within the Easement Area comply with any and all of AES' obligations with respect to the use of the Easement Area.

i. Obtain Sufficient Funding. AES shall submit to the University written evidence sufficient to demonstrate, in the University's reasonable discretion, that AES has sufficient funding to complete the construction, installation, and operation of the System and the System Improvements.

8. Termination. In addition to the Agreement termination rights and processes for both parties that are contained in paragraph 11 (Termination) of the General Conditions (Exhibit 6), either Party may terminate this Agreement upon: (a) the other Party's breach or default hereunder that remains uncured after sixty (60) days written notice to the breaching or defaulting Party; (b) the failure of the Parties to agree upon the Rent to be payable and any other terms during any renegotiation period that remains unresolved after sixty (60) days written notice (should the Parties fail to agree upon the Rent under this paragraph 8(b), the Agreement shall terminate upon the expiration date of the then applicable Term); (c) the condemnation of the Easement Area, as hereinafter set forth; or (d) termination of the RDG PPA; provided that AES shall have one hundred and eighty (180) days from the date of University's written termination notice to enter into another agreement to sell and deliver electrical power generated from the System to any third party on terms substantially similar to the terms of the terminated RDG PPA. The Parties may also mutually agree in writing to terminate this Agreement at any time.

9. Rent. |

10. Security Deposit. |

11. Educational Program. AES shall reasonably cooperate with the University in establishing educational programs and opportunities for University students regarding the System, including without limitation, providing informational material, educational and training sessions, internship and employment opportunities, and supervised access to the Easement Area that does not compromise the safety, security, or operation of the System. Costs for any cooperation by AES under this paragraph 11 shall be capped at \_\_\_\_\_ (“*Education Program Limit*”), provided that the University and AES will mutually agree on what costs and expenses may be credited against the Education Program Limit.

12. Taxes and Assessments. AES shall pay when due all taxes, rates, assessments, duties, and other charges of any kind related to this Agreement and/or AES’s use of the Easement Area hereunder, whether the same is assessed to or payable by the University or AES, including, without limitation, the Hawaii State Excise Tax (AES shall pay to the University an amount in addition to the Rent amount equivalent to the Hawai‘i State Excise Tax so that the University will receive the full amount of Rent owed hereunder net of the Hawai‘i State General Excise Tax), use taxes, real property taxes, and any conveyance taxes.

13. Utilities. AES shall be responsible, at AES’s sole cost and expense, for all utilities and utility connections serving the Easement Area, including, without limitation, water, gas, heat, electricity, power, air conditioning, telephone, cable, internet, and other communications and telecommunication services and other services such as the handling of wastewater, sewage, and garbage (collectively the “*Utilities*”). AES shall obtain the University’s prior written consent, which shall not be unreasonably withheld, for the installation of all Utilities. AES shall ensure the Utilities do not cause interference with any of the University’s utilities and shall dismantle and remove, at AES’s sole cost, any Utilities that cause such interference. The University shall not be liable to AES for, and AES hereby expressly waives and releases the University from, any claims or damages resulting from the failure or delay/interruption in the construction, installation, operation, and/or provision of the Utilities. At AES’s request from time to time, the University agrees, to the extent permitted by Applicable {00508451.9}

Laws and subject to and limited by the University Limitations (as defined herein), to cooperate reasonably with AES and any providers of utility services in arranging for such services to be extended to the Easement Area for AES' benefit.

14. System Improvements. AES shall obtain the University's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, to construct or install any System Improvements upon and within the Easement Area, including, without limitation, any facilities, structures, buildings, conduits, pipelines, appurtenances, and Utilities comprising, relating to, and/or supporting the System.

a. System Plans. AES shall submit to the University the System Plans, which shall be prepared by an architect or engineer properly licensed in the State of Hawaii, setting forth the design, location, specifications, drawings, permitting requirements, cost estimates, financing, schedules, timelines, and other information relevant to the construction or installation of the System Improvements. The System Plans shall include a description of the infrastructure to be constructed and installed upon and within the Easement Area for the System, including access to, from, and within the Easement Area, which AES shall provide at its own cost. The University shall not unreasonably withhold, condition, or delay approval of the System Plans.

b. Requirements. The construction and installation of all System Improvements shall be: (i) at AES' sole cost and expense; (ii) performed by contractors properly licensed in the State of Hawaii who are obligated via written agreement with AES to construct and install the System Improvements; (iii) in compliance with all Applicable Laws, including any applicable county building codes; (iv) in compliance with all government approvals and permits, (v) performed only after AES installs and/or implements all required Mitigation Measures; and (vi) in compliance with the System Plans submitted to the University by AES.

c. Completion. AES shall certify in writing to the University completion of the System Improvements in compliance with the System Plans submitted to the University by AES and all requirements described in paragraph 14b (Requirements) above. AES shall provide the University with one (1) complete set of as-built drawings covering the System and all System Improvements containing the stamp of a licensed architect or engineer and one (1) complete set in Computer Aided Design (CAD) format.

d. Ownership. Title to the System Improvements shall remain in AES during the Term and upon termination of this Agreement. Upon termination of this Agreement, AES shall, at its sole cost and expense, remove all System Improvements, or any portion thereof, and restore the Easement Area to its original condition, reasonable wear and tear excepted, within six (6) months after termination of this Agreement. The University shall not be required to compensate AES for any of the System Improvements.

15. Maintenance and Repair. AES shall, at its sole cost and expense, maintain and keep in good repair and safe condition during the Term of this Agreement the Exclusive Easement Area and the Utility Easement Area, the System Improvements, and the Utilities, with AES also obligated to perform and complete structural repairs and repairs necessitated by natural wear, decay, or damage by the elements or other casualty with the Exclusive Easement Area and the Utility Easement Area (collectively the "**Maintenance Work**"). AES and the University acknowledge and agree that AES: (a) has inspected the condition of the Access Easement Area,

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(b) understands that AES will be the primary user of the Access Easement Area, (c) shall repair and restore, at AES' cost, the Access Easement Area to its condition existing as of the Effective Date, promptly after construction and installation of the System is completed, and (d) maintain and keep the Access Easement Area in condition suitable for its required access during the Term, at AES's cost, provided that if other users, including the University, cause damage to the Access Easement Area, such users and not AES will be responsible for repairing such damage and restoring the Access Easement Area. AES shall pay to the University its pro rata share of any maintenance costs for the Access Easement Area, as reasonably determined in good faith by the University and AES from time to time.

a. University may cure/correct if AES fails to do so. If AES fails to properly perform the Maintenance Work to the satisfaction of the University and fails to cure such failure within sixty (60) days after written notice, the University may, at its option, and in addition to all other remedies available to the University, complete said maintenance and repair and charge AES for the cost of the Maintenance Work, plus ten percent (10%) for the University's administrative overhead.

b. AES to repair damage and restore. If and to the extent that the Property, the Easement Area, and/or any of the UH Facilities, and/or any of the University's agriculturally related operations, including, without limitation, preparing and fertilizing the soil, applying weed and pest control measures, planting and establishment of trees and other flora, the cultivation and harvesting of crops, fruits, vegetables, ornamentals, flowers, and other flora, all on, within, adjacent, or in the vicinity of the Property (collectively the "**UH Research**") are damaged due in whole or in part by the System Improvements, the operation of the System, and/or AES' construction work activities, AES shall be responsible, at its cost, for: (a) replacing any UH Research damaged or destroyed by or attributable to the acts/omissions of AES and/or the AES Agents, (b) repairing any damage including, without limitation, damages to any of the UH Facilities, and (c) restoring the Easement Area and any affected portions of the Property to a condition that is the same or similar to that which existed prior to the damage.

16. Non-Liability of Individuals. No University officer or employee shall be charged personally with any liability under any term, condition, covenant, or provision of this Agreement.

17. Assignment and Transfer Restrictions. AES may not assign, sublet, sublicense, or transfer any rights or interests under this Agreement, or delegate any obligations or duties hereunder (collectively the "**AES Assignment**"), to any person or entity ("**AES Assignee**") without the University's prior written consent, which consent shall be at the reasonable discretion of the University, with the understanding that the University may require AES to comply with certain conditions as part of the University's approval of the AES Assignment to the AES Assignee, including, without limitation, requiring AES and/or the AES Assignee to pay to the University fifty percent (50%) of the consideration that AES is receiving or is to receive for the AES Assignment. The University may withhold its consent to a proposed AES Assignment if, in the University's reasonable discretion, the proposed AES Assignee does not have an equal or greater level of creditworthiness, credit rating, or financial capacity or capability and/or possesses substantially similar experience, expertise, and qualifications as the AES.

a. AES Assignment. AES shall not make any AES Assignment without the University's prior written consent, provided, that if AES is not in default or breach of this Agreement and/or the RDG PPA, the University shall not unreasonably withhold its consent to the AES Assignment if the University has been provided with sufficient proof (in the University's reasonable discretion) that the proposed AES Assignee: (a) has comparable experience and expertise in operating and maintaining and comparable qualifications to operate and maintain photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by the RDG PPA between HECO and AES and the System Easement between UH and AES and (b) has the financial capability, capacity, creditworthiness, and credit rating to maintain the System and provide the services contemplated by the RDG PPA in the manner required by the RDG PPA and to develop, construct, and operate the System in the manner required by the System Easement.

b. AES Assignee. AES may make the AES Assignment to a qualified AES Assignee, as UH reasonably determines, who may be: (a) a person or entity directly or indirectly controlling, controlled by or under common control with AES ("**AES Affiliate**"), (b) any present or future purchaser of the power generated by the System under the RDG PPA, (c) any person or entity succeeding to all or substantially all of AES' assets, or (d) a successor entity in a merger or acquisition transaction (collectively the "**Qualified Assignees**"). AES may make the AES Assignment to a third party or parties in connection with a collateral assignment of rights, mortgage or pledge or any person or entity providing equity, debt or other financing for the System (collectively the "**Lenders**"), without UH's prior written consent, as more particularly described in paragraph 17.g. below. Notwithstanding that AES may make the AES Assignment to one or more Qualified Assignees and/or to the Lenders, AES shall submit the proposed document assigning this Agreement in recordable form to the University, and such information as reasonably required by UH, in order for UH to confirm that any such assignee is one of the Qualified Assignees and/or the Lenders.

c. AES to give University prompt notice. AES shall give the University written notice of any proposed AES Assignment as promptly as reasonably practicable, together with submitting documentation relating to the proposed AES Assignment for the University's review at the same time, provided that AES shall use good faith efforts to so notify the University of any planned, anticipated or impending AES Assignment at least 30-45 days prior to the date the proposed AES Assignment becomes effective.

d. AES Assignee must assume/perform all AES obligations under this Agreement. Each AES Assignment must be in writing and signed by each AES Assignee, who must assume and commit to performing and perform all AES obligations under the AES Assignment and this Agreement.

e. AES remains responsible. No such assignment or transfer by AES pursuant to the foregoing will release or discharge the AES, as assignor, from any delegated duty, obligation, or responsibility under the Agreement nor alter any warranty or maintenance obligation owed by AES with respect thereto, unless specifically stated to the contrary in the University's written consent to the AES Assignment. As AES will not be released or discharged because of any AES assignment or transfer, AES Guarantor's covenant and commitment to perform all AES obligations under this Agreement to the extent that the same are not fully performed by the AES Assignee shall also continue to be in full force and effect, including the AES Guarantor's guarantee that all AES obligations under this Agreement will be fully

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performed and completed. Notwithstanding each AES Assignment and/or UH's written consent thereto, AES will remain responsible for performing all obligations under this Agreement and will not be released and/or discharged from such obligations and/or responsibility with respect to the portion of the Easement Area transferred, whether or not the AES Assignee effectively assumes and/or performs the obligations under this Agreement pertaining to the transferred Easement Area.

f. AES Assignment to Lenders. The University hereby expressly consents to AES making an AES Assignment to an AES Affiliate through which AES is obtaining capital financing for the System from one or more Lenders and collaterally assigning this Agreement to the Lenders, provided that Lenders: (a) perform or expressly commit in writing to perform AES' obligations under this Agreement, (b) attorn to and recognizes the University's rights under this Agreement and as to the Easement Area and the Property, and (c) agrees not to seek to place the University in default or otherwise terminate the University's rights under this Agreement. In connection with any such AES Assignment, the University agrees to execute a consent to assignment in customary form and reasonably acceptable to UH and the Lenders, which consent will not be unreasonably withheld. The University acknowledges that AES may obtain construction and long-term financing or other credit support from the Lenders in connection with the development, construction, installation, ownership, operation, maintenance, repair, improvement, upgrade, renovation, replacement, removal and/or security of the System. The University and AES agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Lenders; provided, that such changes do not alter the fundamental economic and non-economic terms of this Agreement as reasonably determined by the University.

g. University protections. The University shall be protected and shall incur no liability in acting or proceeding in good faith upon any such approved AES Assignment and any written notice and direction by or from the Lenders which the University shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to the University. The University shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such notice or direction by or from the Lenders, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements.

h. Collateral Assignment by AES.

(1) AES may mortgage AES interest in System Easement. In connection with AES' financing of the System, AES shall have the right, without the University's consent, to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interests in this Agreement (which is limited to the interest of an easement holder and does not include any portion of the fee simple interest), or any part or parts thereof, under one or more mortgage(s), and to assign this Agreement, or any part or parts thereof, and any subeasements as collateral security for such mortgage(s).

(2) Mortgagee may take AES Assignment. Any mortgagee, beneficiary, secured party or holder of a mortgage (each, a "***mortgagee***") may (without the prior consent of the University) take or receive an AES Assignment in lieu of foreclosure whether or not permitted by the note or mortgage, but any subsequent assignments by the mortgagee and/or its assignee(s) to non-institutional Lenders must be in accordance with the assignment provisions



of this Agreement. As used herein, “*foreclosure*” means judicial foreclosure, sale under a power of sale or any other remedy provided by law or equity or set forth in the mortgage.

(3) Mortgagee performance of AES obligations. The mortgagee shall not be liable to perform AES’ obligations under this Agreement until the mortgagee acquires AES’ interest in this Agreement. After acquiring AES’ interest in this Agreement and accepting the AES Assignment, the mortgagee shall be liable to perform AES’ obligations that arise after the date of such acquisition and acceptance only until the date on which such mortgagee further assigns or transfers the System Easement and/or makes a further AES Assignment as permitted by this Agreement.

(4) Extent of mortgagee responsibility/liability. Any mortgagee acquiring an interest in this Agreement by foreclosure or assignment hereunder shall not: (i) be liable for any damage or other relief attributable to any act or omission or indemnity obligation of any prior holder; (ii) be liable for any damage or other relief attributable to any breach of any representation or warranty contained in this Agreement by AES under this Agreement; and (iii) be bound by any amendment or modification of this Agreement made without the written consent of mortgagee if the mortgagee’s consent was required.

(5) University to provide mortgagee with notice of AES default. The University, upon providing AES with written notice of (a) default under this Agreement, (b) termination of this Agreement or (c) a matter on which the University may predicate or claim a default, shall at the same time provide a copy of such notice to any mortgagee that has delivered to the University a notice countersigned by AES that sets forth the mortgagee’s identity and address for notices. No such notice by the University to AES shall be deemed to have been duly given unless and until a copy thereof has been so provided to any such mortgagee. After such notice has been given to such a mortgagee, such mortgagee shall have the same period as is given AES to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice and as specified in any such notice.

(6) Mortgagee efforts to cure or correct default. The University shall accept such performance by or at the instigation of such mortgagee as if the same had been undertaken by AES. The University and AES authorize each mortgagee to take any such action at mortgagee’s option and hereby authorize entry upon the Easement Area by the mortgagee for such purposes.

(7) University will not terminate if mortgagee is timely curing default. If prior to the expiration of the applicable grace period, the mortgagee shall cure all monetary breaches and give the University written notice that mortgagee intends to (i) undertake the cure of any non-monetary breaches, violations or failures, or (ii) exercise its rights to acquire the interest of AES in this Agreement by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to completion, then the University shall not terminate or take any action to effect a termination of this Agreement or reenter or take possession of the Easement Area so long as the mortgagee is diligently effecting such cure or foreclosure. Notwithstanding the foregoing sentence, the University does not waive its rights under this Agreement or its right to declare any subsequent default hereunder or its right to exercise any rights and remedies under this Agreement, subject to the notice and cure rights of the mortgagee.

(8) University must give mortgagee notice prior to termination.

Notwithstanding anything in this Agreement to the contrary, if, pursuant to the provisions of this Agreement or as a matter of law, the University shall have the right to terminate this Agreement, then the University shall take no action to terminate this Agreement without first giving to the mortgagee written notice of such right and sixty (60) days thereafter (a) in the case of a default susceptible of being cured by the mortgagee, to cure such default after obtaining possession or acquiring control of AES, as applicable, or (b) in the case of a default not so susceptible of being cured, to institute, prosecute and complete foreclosure proceedings, acquire control of AES or otherwise acquire AES's interest under this Agreement; provided, however, the mortgagee shall not be obligated to continue such possession or to continue such foreclosure proceedings after such default shall have been cured.

(9) University to issue new System Easement.

Upon termination of this Agreement by the University following an uncured default, or upon any acquisition by the mortgagee of AES's interest in this Agreement prior to termination of the Agreement, the University shall enter into a new grant of easement with such mortgagee covering the Easement Area, provided that such mortgagee (a) gives notice of the request for the new grant of easement to the University within thirty (30) days after termination or foreclosure, (b) pays all costs incurred by the University resulting from such default or termination (including but not limited to the University's reasonable attorneys' fees and costs, and further including any costs incurred by the University in drafting a new grant of easement), and (c) cures all defaults under this Agreement, other than those defaults of AES which cannot be cured by mortgagee. The new grant of easement shall be for the remainder of the Term of the terminated or foreclosed Agreement, effective as of the date of termination or foreclosure, at the same Rent, and contain the same covenants, agreements, conditions, provisions, restrictions, and limitations contained in the terminated or foreclosed Agreement (except for those that have already been fulfilled or are no longer applicable).

(10) Parties to execute appropriate amendments to System Easement.

The University and AES shall execute any and all reasonable amendments to this Agreement: (a) for the purposes of reasonably implementing the mortgagee protection provisions of this Agreement, or (b) otherwise reasonably requested by any mortgagee. The University shall not have any obligation to execute any amendment to this Agreement which would or may adversely affect any material rights of the University as reasonably determined by the University (including but not limited to any termination, indemnity, removal and assignment rights or duties retained by, enjoyed by or placed upon the University or AES).

(11) No mortgage of the University's fee simple interest in the

Easement Area of the Property. Neither AES, the AES Agents, nor the AES Assignees shall have any authority to: (i) mortgage or subordinate the University's fee simple interest in the Easement Area and/or the Property or (ii) otherwise encumber the University's fee simple interest without the University's prior written consent.

(12) University to provide estoppel certificate.

The University shall, within ten (10) business days of the request of the mortgagee or prospective mortgagee, provide an estoppel certificate as to any matters reasonably requested by mortgagee, in form and substance acceptable to the University, provided however, AES shall reimburse the University for all reasonable attorneys' fees incurred in connection with the preparation or review of such estoppel certificate.

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i. AES transfers rights under RDG PPA. If AES is considering transferring any interest under the RDG PPA to a third party with the intent that AES will no longer remain primarily obligated to perform obligations under the RDG PPA, AES must: (a) by written agreement in a form approved by the University, assign all of its rights and delegate all of its duties under both the RDG PPA and this Agreement to an AES Assignee (who could be a special purpose entity created and wholly-owned by a qualified third party (“**SPE**”) ) who has experience, expertise, and qualifications substantially similar to that of AES, as determined by the University in its reasonable discretion; (b) ensure that the AES Assignee, including any SPE, has been validly formed or established, is in good standing, and has obtained all required governmental approvals necessary to perform any and all of its obligations under the AES Assignment agreement, the RDG PPA, and this Agreement and present evidence thereof to the University; (c) obtain a guarantor that executes a guarantee committing to perform or have performed the obligations of the AES Affiliate (including the SPE) if and to the extent that the AES Affiliate (such as the SPE) fails to timely perform and complete its obligations under the AES Assignment agreement, the RDG PPA, and/or this Agreement (“**AES Guarantor**”); and (d) enter into an agreement with the AES Assignee (which could be the SPE) , as contractor, to perform all duties and obligations under this Agreement with respect to the planning, design, construction, installation, operation, repair, maintenance, improvement, upgrade, renovation, replacement, removal, and security of the System Improvements. AES will not be released from any liabilities, obligations, duties commitments, or responsibilities arising under this Agreement and shall remain responsible for performing all such obligations, duties, commitments, and responsibilities and covering such liabilities if and to the extent that the AES Assignee (including the SPE) fails to timely perform and complete any required obligations under this Agreement.

j. Subletting or sublicensing. AES shall not sublet, grant a subeasement, or allow a third party to otherwise use or occupy any portion of the Easement Area and/or the Property without the University’s prior written consent, which consent will not be unreasonably withheld or delayed, with the understanding that the University may require AES to comply with certain conditions as part of the University’s approval of any sublease, subeasement, sublicense, and/or use and occupancy of the Easement Area by a sublessee, sublicensee, subgrantee, user, and/or occupier, including, without limitation, obtaining a University determination that the sublessee, sublicensee, subgrantee, user, and/or occupier has sufficient experience, expertise, qualifications, and financial capability and capacity to properly and efficiently operate a portion of the System and the System Improvements and that the uses proposed by the sublessee, sublicensee, subgrantee, user and/or occupier for the Easement Area are sufficiently related to the System Easement Purposes. The University is not required to approve any sublease, subeasement, sublicense, use and occupancy agreement or other agreement if the University determines that the uses proposed are not sufficiently related to or consistent with the System Easement Purposes. The University will have the right to review the consideration being paid to or realized by AES under any sublease, sublicense, subeasement, use and occupancy agreement or other agreement, including any premiums or similar payments and the rent and/or other amounts charged by AES for the use of the Easement Area and the System Improvements. The University may require AES to remit or pay to the University a portion of such consideration paid to or realized by AES (which could be as much as 50% -75% of any such consideration) that AES is or may be generating from the sublease, subeasement, sublicense, use and occupancy agreement, or other agreement.

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k. University transfer. To the extent the University assigns or transfers its interest under this Agreement, (i) the University will require the assignee to assume and be responsible for all of the University's obligations under this Agreement, (ii) such assignee shall be entitled to all of the University's rights and benefits under the Agreement, and (iii) the University shall be released from any duties and responsibilities arising under this Agreement from and after the effective date of the assignment or transfer, it being expressly agreed, however, that such release shall not relieve the University from liability under this Agreement for any acts, omissions, incidents or events occurring prior to the effective date of the assignment or transfer.

18. Condemnation. In the event the Easement Area or any part thereof shall be taken or condemned by any authority having the power of eminent domain ("**Condemnation Authority**") during the Term of this Agreement, then and in such event, this Agreement shall terminate as of the date AES is required to vacate the Easement Area or the portion required by the Condemnation Authority.

a. Compensation payable by Condemning Authority. All compensation and damages payable for or on account of the Easement Area and/or the Property or for any interest therein shall be payable to and be the sole property of the University, except for the System Improvements, the Utilities, and the System that have been constructed by AES. AES shall be compensated for all System Improvements, the Utilities, and the System constructed by AES; provided, however, that if AES is in breach or default of this Agreement, AES shall not have the right to receive any compensation for any proportionate interest in the System Improvements, the Utilities, and/or the System constructed by AES.

b. Partial condemnation. If only a portion of the Easement Area is condemned by the Condemning Authority and AES elects to continue using the remainder of the Easement Area to conduct the Authorized Activity, this Agreement may continue with respect to the remaining portion of the Easement Area, and the Rent paid hereunder shall be proportionately reduced. If AES elects not to continue using the remainder of the Easement Area to conduct the Authorized Activity, the Parties agree that this Agreement will terminate in accordance with the terms contained in this paragraph 18 (Condemnation).

19. Notices. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give the other Party shall be in writing and delivered in person, by commercial courier, or by first-class certified mail, return receipt requested, with postage prepaid, to the following:

University:

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\_\_\_\_\_  
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transmission from the sender's fax machine, the sender of the email or similar electronic transmission has received confirmation of its transmission, or three days following such mailing thereof, as the case may be. The University and AES may revise or amend its addresses or designated points of contact by notifying the other Party in writing regarding such revisions or amendments.

20. Surviving Obligations. Termination of this Agreement shall not affect the right of the University to enforce any or all indemnities, representations, warranties, and obligations, as applicable, made by AES and/or the AES Assignees and the guarantee obligations and commitments of the AES Guarantor hereunder. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve: (a) AES and/or the AES Assignees of any of the obligations contained in this Agreement that are intended to survive the expiration or termination of this Agreement, including, without limitation, obligations regarding improvements, indemnity/defense, insurance, coordination, compliance with Applicable Laws, hazardous materials, liens, surrender, default, funding limitations, litigation, assignment, sublicensing, disposition of project improvements, and representations, as applicable or (b) AES Guarantor of any obligations and commitments contained in this Agreement and the AES Guarantor's guarantee agreement ("**AES Guarantee**"), substantially in the form attached hereto as Exhibit 7 (AES Guarantee).

21. Exhibits. All exhibits referred to herein are attached to this Agreement and hereby are deemed incorporated by reference.

22. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. The submission of a signature page transmitted by facsimile (or similar electronic transmission facility) shall be considered as an "original" signature page for purposes of this Agreement.

23. General Terms. The General Terms and Conditions are attached hereto as Exhibit 6 and made a part of this Agreement.

24. Memorandum of Grant of Easement Agreement. This Agreement shall not be placed of record. The Parties shall execute a Memorandum of System Easement Agreement substantially in the form attached hereto as Exhibit 8, which AES shall record in the Bureau of Conveyances of the State of Hawaii and/or Land Court, as applicable.

**[Signatures are on the next page.]**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

AES:

AES WEST OAHU SOLAR, LLC

By: \_\_\_\_\_

Name:

Its:

APPROVED AS TO FORM:

UNIVERSITY:

UNIVERSITY OF HAWAI'I:

Office of the University General Counsel

\_\_\_\_\_

Associate General Counsel

By: \_\_\_\_\_

David Lassner

President

Recommend Approval:

By \_\_\_\_\_

Jan S Gouveia

Vice President for Administration

\_\_\_\_\_

Maenette Benham

Chancellor

University of Hawai'i – West Oahu



**Exhibit 1**  
**Property**

**Exhibit 2**  
**Easement Area**

**Exhibit 3**

**Photovoltaic or Solar Energy Storage System**

**[To be Inserted by AES]**

**Exhibit 4**  
**Site Layout**

## **Exhibit 5**

### **Site Specific Conditions**

Capitalized terms used in this Exhibit 5 and not otherwise defined herein shall have the meanings assigned to such terms in the Grant of System Easement Agreement to which this Exhibit 5 is attached.

AES shall comply with, and shall ensure that all AES Agents and AES Assignees comply with, the following:

1. Access to and Use of the Easement Area and the Property. As of the date of this Agreement, the University and its tenants and invitees currently enter and exit the Property via the portion of Kualakai Parkway mauka of the H-1 Interstate Freeway and an unpaved roadway ("**UH Access**"). At some point after this Agreement is signed, AES will be required to share access over the UH Access to and from the Easement Area with the University and its tenants and invitees who desire to access portions of the Property. AES shall ensure that the use of the UH Access by the University and its tenants and invitees is not at any time materially impaired, restricted or otherwise adversely affected by AES', AES Agents', and/or AES Assignees' use of the UH Access. AES acknowledges and agrees the operations of the University and its tenants and invitees within the Property must continue without disruption or interference throughout the Term of this Agreement. AES understands that the University has made no promises concerning the timing or construction of any roadways and/or other infrastructure that are designed to serve areas within the Property.
  - a. Improvements to UH Access. Notwithstanding the foregoing, the Parties acknowledge that if AES seeks to improve the UH Access or install other roadways and/or infrastructure during the Term of this Agreement, access over portions of the UH Access areas may be reasonably restricted from time to time for safety and the efficient completion of such improvements, new roadways, and/or infrastructure. The Parties shall cooperate with each other to provide for reasonable access, including alternative routes if necessary and feasible, during times of construction in or affecting UH Access and other areas used for access.
  - b. AES to repair damage to UH Access. AES shall and shall ensure that the AES Agents and the AES Assignees promptly maintain and repair all damage to the UH Access to the extent caused by AES, the AES Agents, and/or the AES Assignees. Upon completion of the System construction work on or within the Easement Area and/or the Property, AES shall and shall ensure that the AES Agents and the AES Assignees restore the UH Access to the same or similar condition as existed at the commencement of the System construction work, normal wear and tear excepted.

- c. University surveys and testing activities. The University may enter into agreement(s) with one or more third parties who will need access to the Easement Area and the Property for the purpose of conducting surveys and tests, taking samples, planning, conducting studies, installing sewer lines and other infrastructure and improvements, and otherwise engaging in planning and development related activities, and AES shall provide reasonable access during the term of this Agreement. The University will notify AES in writing at least forty eight (48) hours in advance of the requested entry. If AES' operations do not allow immediate University entry, AES and the University shall confer within seven (7) days from the University's initial requested entry date to mutually agree to an entry date. In permitting entry, AES will have an AES Agent or representative accompany the University during the University's entry and may require the University and the University Agents to attend a safety orientation (at AES' discretion) and comply with AES safety protocols. Any damage to the System Improvements caused by the University under this paragraph 1.c. shall be borne by the University. The University will require any third parties retained by the University to assist with the University's entry and inspection of the Easement Area to be responsible for any damage to the System Improvements caused by such third parties under this paragraph 1.c. The University shall require third parties to indemnify AES from all claims for damages occurring within the Easement Area relating to the University's third parties' entrance upon the Easement Area pursuant to this paragraph 1.e.
2. Utilities and Infrastructure. The University and others own or use utility lines and other infrastructure facilities located in and around the Property. Such lines and facilities may include water, sewer, power, communications, drainage and other types of lines, conduits, meters, manholes, equipment, and facilities. Without limiting the generality of the foregoing, AES understands that the U.S. Army may also own communications cables crossing or within the Property.
- a. AES to protect all utility lines and facilities. At all times, including but not limited to when accessing the Easement Area and in performing the Authorized Activity and the AES Covenants, AES shall ensure that such lines and facilities, and access thereto, are preserved and protected from the activities of AES, the AES Agents, and the AES Assignees. AES shall be responsible for any damage to or interruption in service arising out of damage caused by AES, the AES Agents, and/or the AES Assignees to the lines and facilities.
- b. No AES use without University consent. AES shall ensure that all University lines and facilities shall not be used by AES, the AES Agents, and/or the AES Assignees, without the University's prior written consent. If AES or any of the AES Agents and/or the AES Assignees use any University utility lines or facilities, AES shall be responsible for the payment of all services so used by AES, the AES Agents, and/or the AES Assignees on a sub-metered, or if not sub-metered, on a prorated basis, and AES shall share equitably in the costs relating to any lines and facilities (including but not limited to operating, security, maintenance, permitting, insurance, replacement and repair costs), except that

AES shall be 100% responsible to the University for repairing lines and other facilities damaged by the acts or omissions of AES, the AES Agents, and/or the AES Assignees.

- c. Connect System Improvements to utilities. AES shall have the right, at its sole cost and expense, to install and maintain utilities and to improve the present utilities to the Easement Area (including, but not limited to the installation of overhead or underground utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary equipment to connect the System Improvements to utility sources located outside of the Property).
  - d. University to grant right to install utilities. The University agrees to grant to AES the right to install such utilities on, over, under and through the Easement Area and/or the Property as necessary for AES to operate the System Improvements, all at AES's sole cost and expense, provided, however: (i) the location of such utilities shall be as reasonably designated by the University and (ii) AES shall cause its use of such utility sources and services to be separately metered and billed directly to AES by the applicable utility provider.
3. AES to furnish Non-Monetary Benefits. In addition to Rent, AES shall provide to the University the following non-monetary benefits in accordance with estimated time frame noted below:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

4. Third Party Rights. At all times, including but not limited to when accessing the Easement Area and/or the Property and/or performing the System construction work and the AES Covenants, AES shall honor and reasonably deal with the rights of all third parties, including but not limited to, the present and future holders of easements (including but not limited to easements for drainage, sewer lines, fuel lines, and water lines) on or under the Property and users of utility facilities affected by the System construction work and/or the System Improvements, including but not limited to, any Governmental Authority. Without limiting the generality of the foregoing, AES shall be responsible for the following and for all costs associated with performing and complying with the following:
- a. Obtain easement holder consents. AES shall obtain all appropriate consents from the holders of easements and other rights encumbering the Property;



- b. Ensure no adverse drainage impacts. AES shall ensure that the Authorized Activity, the System construction work and the System Improvements do not cause adverse drainage impacts at, within, under, or affecting the Property or any other property, including but not limited to, the increased risk of ponding or flooding or exceeding the use of any existing drainage facilities, easements or swales because of the Authorized Activity, the System construction work, and/or the System Improvements;
  - c. Ensure no adverse sewer line impacts. AES shall ensure that the Authorized Activity, the System construction work, and/or the System Improvements do not cause adverse impacts with respect to existing sewer lines and other sewer facilities within, under, or serving the Property, including the Easement Area. Without limiting the generality of the foregoing, AES shall ensure that no borings, drilling work, earth moving, grading, or ground altering work penetrates, damages, causes breakage or spillage, or otherwise adversely affects the sewer lines and facilities within, under, or serving the Property;
  - d. Ensure no impact to aquifer or other underground water resources. AES shall ensure that the Authorized Activity, the System construction work and/or the System Improvements do not cause any adverse impacts to water or groundwater resources in, on, under, or around the Property, including, without limitation, ensuring that no borings or drilling work penetrates, damages, or otherwise adversely affects the groundwater aquifer or other water resources in, on, under, or around the Property. AES assumes the risk of additional costs and delays that may arise from dealing with such conditions and shall not interfere with or damage any such water resources;
  - e. Ensure no adverse fuel line impacts. AES shall ensure that the Authorized Activity, the System construction work, and/or the System Improvements on or within the Easement Area and/or the Property do not cause adverse impacts with respect to existing fuel lines within, under, or affecting the Easement Area and/or the Property.
  - f. Address adverse impacts. Prior to entering the Easement Area and commencing any System construction work, AES shall address and resolve any Adverse Impacts. In any event, if Adverse Impacts arise from the Authorized Activity, the System construction work, and/or the System Improvements, AES shall immediately undertake all actions either directly or through AES Agents and/or the AES Assignees to (i) address and remediate any impacts and prevent future adverse impacts and (ii) indemnify, defend, hold harmless and relieve the University from such impacts. Such actions shall include but are not limited to AES' reimbursement to the University for costs incurred by the University to deal with such impacts and costs for planning, designing and constructing remedial and mitigation measures and improvements.
5. Construction Management Plan. Prior to entry onto the Easement Area, AES shall provide to the University a construction management plan for all phases of the Authorized Activity affecting the Property, including the construction of the System Improvements ("**Construction Management Plan**"). Such plan shall include the master schedule and phasing of all elements of planning, design, and construction-related activity, and shall include specific milestones and completion dates. AES shall provide

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University of Hawai'i – AES West Oahu Solar, LLC

the University with any material amendments to the Construction Management Plan. AES shall comply and ensure that the AES Agents and the AES Assignees comply with the System Plans and the Construction Management Plan. AES shall and will ensure that the AES Agents shall: (a) coordinate all major deliveries of materials, equipment, personnel, and/or supplies to the Easement Area and construction work that is anticipated to have major short term adverse impacts with the University, (b) not cause any unreasonable interference with the operations of the University or other occupants or users of the Property, and (c) give or issue to the University and other occupants or users of the Property at least fourteen (14) days prior written notice of any road closures and/or the implementation of any temporary access or use restrictions and/or detours.

6. Coordination Meetings. AES shall facilitate and coordinate the scheduling of coordination meetings to be held on a weekly bi-weekly basis. AES shall notify the University in writing of the schedule for such meetings. The University shall have the option to send its designee(s) to such meetings.
7. Minimizing and Avoiding Project Impacts. AES shall comply with and implement and shall ensure that the AES Agents and the AES Assignees comply with and implement mitigation measures to address and resolve any Adverse Impacts, including the following measures that are designed to help minimize or avoid any Adverse Impacts:
  - a. NPDES compliance. AES shall, at its cost, obtain all required permits and approvals such those required under the National Pollutant Discharge Elimination System (“*NPDES*”) and complete and execute any required permissions to discharge stormwater into any of the University MS4 areas (such as the University’s MS4 Permission to Discharge).
  - b. Sufficiently compact backfill areas. AES shall ensure that the AES Agents and the AES Assignees adequately and sufficiently compact the backfill placed in any areas excavated by AES, the AES Agents, and/or the AES Assignees during the System construction work, particularly in the areas of the Easement Area that the University and the UH Agents may use during the System construction work and continue to use after the System construction work is completed. If requested by the University, AES will permit the University to review the results of the backfill density tests by or from AES, the AES Agents, and/or the AES Assignees.
  - c. Handling of excavated and imported soil.
    - (1) Soil excavated from the Property. AES shall obtain and ensure that the AES Agents and the AES Assignees obtain the University’s prior written approval before excavating soil within the Property and moving it to another location within the Property. The University may require AES, at AES’s cost, to sample, test, and characterize such excavated soil prior to the University making its determination as to whether to allow such soil relocation.

- (2) Soil exported from the Property. AES shall obtain and ensure that the AES Agents and the AES Assignees obtain the University's prior written approval before excavating soil within the Property and moving it to a location that is outside the Property. The University may require AES, at AES's cost, to sample, test, and characterize such excavated soil, including laboratory analysis in accordance with State Department of Health ("**DOH**") guidelines prior to the University making its determination as to whether to allow such soil to be relocated and/or transported to an off-site location. Proper characterization of the excavated soil is expected to guide the University's decision on final disposition of the excavated soil and AES shall comply and ensure that the AES Agents and the AES Assignees comply with the University's final disposition determination.
- (3) Soil imported to the Property. AES shall obtain and ensure that AES Agents and the AES Assignees obtain the University's prior written approval before importing soil from off-site locations into the Property. The University may require AES, at AES's cost, to sample, test, and characterize such imported excavated soil, including laboratory analysis in accordance with DOH guidelines prior to the University making its determination as to whether to allow such soil to be transported into and used within the Property. Proper characterization of the excavated soil is expected to guide the University's decision on final disposition of the imported soil and AES shall comply and ensure that the AES Agents and the AES Assignees comply with the University's final disposition determination.
- d. AES to identify water table topography and minimize adverse impacts. AES will be responsible for identifying the underground water table topography and the potential impact of the System construction work on groundwater and spring water flows and implementing measures to mitigate the risks that may arise from any excavation work or activities within the Easement Area and the Property, including the dewatering process. The University and AES acknowledge and agree that the University has informed AES about the existence of wells and water sources in the area of the Easement Area and the Property.
8. AES Responsible for Utility Work. All work related to utilities, including but not limited to water, sewer, electrical, gas, cable, and networking, required during any phase of the construction of the System Improvements on, within, or affecting the Property shall be the responsibility of AES, the AES Agents, and/or the AES Assignees. For the System construction work and for the System Improvements, AES shall obtain water, sewer service, electricity and other utilities directly from the City, HECO and other providers, and shall not obtain such utility services via connections to University utility facilities.

9. Insolation. The University acknowledges and agrees that access to sunlight (“*insolation*”) is essential to the value to AES of the interest granted under this Agreement and is a material inducement to AES in entering into this Agreement. Accordingly, the University has agreed to not permit any interference with insolation on and at the Easement Area by not constructing or permitting to be constructed any structure, or planting or permitting to be planted any vegetation on the Property or properties adjacent or nearby to the Property owned or controlled by the University that could adversely affect insolation levels on and at the Easement Area. If any obstruction of sunlight is due to conditions upon or within the Easement Area, AES shall be responsible, at AES’ cost, for removing such obstruction to the extent that AES deems necessary. If any foliage growing or existing on or within the Property outside of the Easement Area adversely affects insolation levels on and at the Easement Area, or any activity on or within the Property outside of the Easement Area emits or permits the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on and at the Easement Area, the University may permit AES to enter and access the Property outside of the Easement Area to address these adverse effects upon AES’ insolation levels, at AES’ sole cost, to the extent that the University deems reasonably necessary and upon such terms and conditions that the University may require. AES shall and will cause the AES Agents and AES Assignees to: (a) obtain the University’s prior written approval for each entry onto the Property to perform any such cutting or removal of foliage or address other conditions, (b) submit to the University a full description of the work to be performed, the conditions to be addressed and/or mitigated, and plans and maps showing the location of the foliage that AES will be removing from the Property and/or of the areas upon which conditions should be addressed, all together with proposed work schedules, (c) not unreasonably interfere with the operations of the University and/or other tenant or occupier of any portion of the Property to which AES seeks entry to trim or cut foliage, and (d) repair any damage to the Property caused by AES, the AES Agents and/or the AES Assignees and restore the Property to its original condition just prior to the AES entry.
10. Security. Security for the System construction work during construction shall be the responsibility of AES, the AES Agents, and/or the AES Assignees. AES shall cooperate and shall ensure that the AES Agents and the AES Assignees cooperate with the University to enable the University to meet and satisfy all Applicable Laws, including satisfying all higher-education crime reporting requirements pursuant to the Clery Act.
11. Irrigation and Water Lines. AES shall verify and ensure that the AES Agents and the AES Assignees verify the location of all irrigation and water lines that may be situated on, within, under, and/or crossing the Easement Area and/or the Property or the portions thereof affected by the System construction work and obtain the University’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, for all plans to: (a) interrupt or temporarily stop water flow and (b) install temporary or permanent lines, pumps, facilities, equipment, and/or systems to continue to furnish water service to the Easement Area and/or the Property at the same levels as existed prior to the commencement of the System construction work.

12. Electrical and Communication Lines. AES shall verify and ensure that the AES Agents and the AES Assignees verify the location of all electrical and communication lines that may be situated on, within, under, and/or crossing the Easement Area and/or the Property or portions thereof affected by the System construction work and obtain the University's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, for all plans to: (a) interrupt or temporarily stop electrical or communication service and (b) install temporary or permanent lines, boosters, facilities, equipment, and/or systems to continue to furnish electrical and communication service to the Easement Area and/or the Property at the same levels as existed prior to the commencement of the System construction work.
13. Sewer and Drainage Lines. AES shall verify and ensure that the AES Agents and the AES Assignees verify the location of all sewer and drainage lines that may be situated on, within, under, and/or crossing the Easement Area and/or the Property or portions thereof affected by the System construction work and obtain the University's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, for all plans to: (a) interrupt or temporarily stop or divert sewage or drainage flow and (b) install temporary or permanent lines, pumps, facilities, equipment, and/or systems to continue to handle the sewage and/or drainage flow to, through, and across the Easement Area and/or the Property at the same capacity levels as was handled prior to the commencement of the System construction work.

## Exhibit 6

### General Conditions

1. AES shall notify the University in advance of planned entry date. The University shall have the right to review all System Plans.

a. AES to notify of planned entry date. AES shall provide the University with reasonable prior notice of the initial dates upon which AES, the AES Agents, and/or the AES Assignees, shall desire to enter the Easement Area and the Property for purposes of commencing System planning and design and commencing System construction.

b. University incurs no liability for System Plans. The University shall not incur any responsibility nor any liability under contract, tort or otherwise for the University's review of, comment on, consent to and/or approvals of the System Plans, the AES Contractors' schedules, the Construction Management Plan, and/or any other plans relating to the Authorized Activity and/or the System Improvements. The University's approval of any System Plans or any other plans submitted by AES shall not be deemed a representation, warranty or opinion of the University that such plans are adequate in any manner whatsoever, or free from defects, or in compliance with engineering standards, codes or legal requirements.

c. AES to submit as-built System Plans. Upon completion of the System construction work, AES will submit to the University as-built plans covering the System Improvements that are completed on, within, and/or under the Easement Area and the Property. Failure by AES to timely submit such as-built plans to the University will be considered a breach of or default under this Agreement.

2. AES obligations during System Construction. During the time that AES is constructing, installing, operating, improving, maintaining, repairing, and/or replacing the System Improvements, AES will perform and comply with the following obligations. If no deadline is set forth below or elsewhere in this Agreement, AES shall ensure prompt completion of said obligations:

a. AES responsible for all costs associated with the Authorized Activity. AES shall be responsible for providing and furnishing all the necessary funding for performing and completing the Authorized Activity (including the construction, operation and maintenance of the System Improvements). The University shall not have any obligation to provide or furnish funding for the planning, design, construction, operation, maintenance, repair, alteration, renovation, improvement, upgrade, expansion, replacement, and/or removal of the System or System Improvements or the commencement or completion of the Authorized Activity. AES shall not start any Authorized Activity without first providing written certification to the University that AES has obtained all funds necessary for the completion of the portion of the Authorized Activity (including construction, operation, and maintenance of System Improvements) on or within the Easement Area and/or the Property.

b. Keep University informed. AES shall keep the University informed and

apprised of all material Authorized Activity activities, including, without limitation, the System construction work and the operational and maintenance work activities, particularly any work activities that will or may impact or affect the Easement Area or the Property, including any improvements or operations thereon, all through the coordination process developed by AES or as otherwise required by the University.

c. Address complaints. AES shall respond to and address complaints received by the University and AES from any person or entity regarding the Authorized Activity, including System construction, within, affecting, or impacting the Easement Area and/or the Property. AES shall keep the University informed regarding their handling and the resolution of such complaints. AES shall, at no cost to the UNIVERSITY, be responsible for public outreach, awareness, and education related to the Authorized Activity, including System construction, operational, and maintenance work, and to respond to public inquiries and complaints relating to the Authorized Activity and the System construction, operational, and maintenance work.

d. Implement mitigation measures. To mitigate and address the Adverse Impacts on or to the Easement Area and the Property resulting from or attributable to the Authorized Activity (including System construction, operational, and maintenance work), AES will have, at no cost to the University, implemented such measures as may be reasonably requested by the University to mitigate and address such Adverse Impacts (or have obtained the University's consent to its plan to implement such mitigation measures), including, without limitation: (i) scheduling adjustments to prevent or minimize Authorized Activity impacts upon the Easement Area and/or the Property; (ii) dust control measures (such as erecting screens and frequent watering); (iii) sound mitigation measures (such as baffling, noise barriers, dampening of construction vehicles and equipment); (iv) access control measures (such as fencing, barriers, gated entry and exit points, and guard stations); (v) security control measures (such as security patrols, security lighting, and camera/video and motion sensor systems); and (vi) traffic control measures (such as traffic control officers, flagmen, police officers during peak traffic times, directory, warning, and caution signage/lights, and temporary traffic signals).

e. Control traffic movement. The Authorized Activity, particularly System construction work, is expected to cause increased traffic congestion for vehicular, bicycle, and pedestrian modes of travel in and around the Easement Area and the Property, and AES shall develop and maintain traffic plans, such as traffic control plans, to minimize such traffic congestion and allow free and safe flow of vehicular, bicycle and pedestrian traffic, and ready access by emergency responders, in and around the Easement Area and the Property during the Authorized Activity, particularly the System construction work. AES shall ensure that the AES Agents and the AES Assignees manage, coordinate, and direct the safe, efficient, effective, and continued movement of traffic around the work zone(s) of the Authorized Activity, particularly the System construction work.

f. Inspection of Authorized Activity. AES will permit the University, including the UH Agents, to inspect and monitor the Authorized Activity, particularly the System construction work, covered by the System Plans at any time during the Authorized Activity upon a minimum of six (6) hours prior notice.



g. No runoff into Property. AES shall not allow additional runoff from any areas into or onto any of part of the Easement Area or the Property. AES represents and warrants that the Authorized Activity, the System Improvements and the System construction, operational, and maintenance work will not increase the flow of surface water onto, under, across, or into the Easement Area and/or the Property.

h. Historic preservation. In the event any historic properties or burial sites, as defined in Section 6E-2, Hawaii Revised Statutes, are found or discovered on any portion of the Easement Area or the Property, AES shall and will cause the AES Agents, the AES Contractors, and the AES Assignees to: (1) immediately stop all work relating to any portions of the Easement Area or the Property upon which such a find or discovery is or has been made, (2) implement measures and take action to protect the find or discovery, and (3) contact the Historic Preservation Division of the State of Hawai'i Department of Land and Natural Resources (hereafter the "***Historic Preservation Division***") in compliance with Chapter 6E, Hawaii Revised Statutes (hereafter "***HRS***"). Neither AES, the AES Agents, the AES Contractors, nor the AES Assignees shall recommence the Authorized Activity, particularly the System construction work relating to the Easement Area and/or the Property upon which such find or discovery is made unless and until the Historic Preservation Division allows further Authorized Activity, particularly the System construction work to proceed in compliance with HRS Chapter 6E. AES shall and will cause the AES Agents, the AES Contractors, and the AES Assignees to, comply with HRS Chapter 6E, HRS and the National Historic Preservation Act (16 U.S.C. 440, et seq), and all other Federal and State laws pertaining to the protection of archaeological, historical, and cultural resources, including HRS Chapter 6E. AES and the University acknowledge and agree that during the conduct of the AES Work, AES may discover historic properties and/or human remains (as defined in Section 6E-2, Hawai'i Revised Statutes) on, within, or under the Easement Area. If such discovery occurs, AES and the University acknowledge and agree that AES has agreed to accept the Easement Area in its "as is" condition with no representations or warranties from the University. In no event or way whatsoever shall the University be obligated to remediate or share in the cost to protect and/or relocate any such historic properties and/or human remains, including implementing any mitigation or other protective measures required by the Historic Preservation Division, or obtain any associated governmental approvals in order to allow AES, the AES Agents, the AES Contractors, and/or the AES Assignees to enter or use or occupy the Easement Area or any portion of the Property or complete, operate, maintain, or remove the AES Work, the System Improvements, and/or the System.

3. System Improvements. AES will keep the University informed of any material changes to the System Plans and/or material modifications or additions to the System Improvements, including the impacts of the modified and/or new System Improvements upon the Easement Area, the Property, the UH Facilities, the UH Research, and/or University operations.

a. Maintenance. AES shall perform the Maintenance Work in accordance with the following:

(1) Reasonably prudent owner maintenance standard. AES shall perform the Maintenance Work to the same degree and level and take the same good care of the Exclusive Easement Area, the Utility Easement Area, and the System Improvements that would

be taken by a reasonably prudent owner who desired to keep and maintain the same so that at the expiration or sooner termination of this Agreement, the same will be in a condition substantially similar to that which existed at the commencement of this Agreement, reasonable wear and tear excepted.

(2) Perform in accordance with accepted industry standards. The Maintenance Work shall be performed by AES in accordance with accepted industry standards and then applicable University policies, practice, standards and guidelines and shall include, without limitation: (a) watering, weeding, fertilizing, mowing, reseeding, cultivating, spraying, mulching, trimming and care of shrubs, trees, vegetation, edging, invasive plant removal, and other services necessary for care of areas within the Property where landscaping or vegetation exists; (b) repair and maintenance (including repaving and reconstruction) of roads, streets, access ways, sidewalks, driveways, and parking areas; (c) replacement of dead or damaged plants or vegetation; (d) street cleaning; (e) cleaning and clearing of sidewalks, gutters, swales, ditches, and other drainage facilities and areas; and (f) removal and disposal of trash and debris. AES shall be responsible for obtaining permission from third parties as necessary to complete the Maintenance Work.

b. Damage or destruction of System Improvements. If the System Improvements are severely damaged or destroyed by fire or other causes or casualties, thereby rendering the System Improvements unsuitable, unusable, or untenable for the purposes and uses contemplated by this Agreement as determined by AES, AES shall have as long as AES shall reasonably need to notify the University in writing how AES intends to proceed, including whether and to what extent to rebuild or restore the System Improvements (the “**Casualty Notice**”), provided that AES continues to pay the full amount of Rent to the University for any period of time during which AES is deciding whether and how to proceed with repairs, rebuilding, and/or restoration.

(1) AES fails to timely notify University. If AES fails to provide the Casualty Notice, the University will thereafter have the right to determine whether the Agreement will be terminated or continued. If AES decides to rebuild or restore at least a portion of the System Improvements so damaged, the University will, within a reasonable period of time after receiving AES’s notice of their intent to rebuild/restore, approve or not approve the extent to which AES intends to rebuild/restore the System Improvements, such approval not to be unreasonably withheld. If the University does not so approve, the University may terminate this Agreement.

(2) Parties may terminate this Agreement. If AES elects not to rebuild or restore the System Improvements, AES and/or the University may be terminate this Agreement.

(3) AES to remove System Improvements. If this Agreement is terminated, AES, the AES Agents, the AES Contractors, and/or the AES Assignees shall have six (6) months thereafter to demolish all damaged System Improvements and remove such System Improvements, all debris, rubbish, and trash, and all of the Personal Property (defined below) of AES, the AES Agents, the AES Contractors, and/or the AES Assignees from the Easement Area and the Property and restore the same to a condition reasonably similar to that

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which existed as of the Commencement Date herein, including restoring the ground to an even grade, reasonable wear and tear excepted.

(4) University may remove if AES does not. If AES, the AES Agents, the AES Contractors, and/or the AES Assignees fail to remove all System Improvements and all debris, rubbish, and trash, and all of their Personal Property and restore the Easement Area and other affected portions of the Property within the requisite time period, the University may, at AES's sole cost, complete such removal and restoration, including restoring the ground to even grade, in which case AES shall immediately reimburse to the University, upon written demand from the University for all reasonable costs incurred by the University in completing such removal and restoration efforts, plus ten percent (10%) for the University's administrative overhead. The University would be willing, upon demand from AES, to furnish written evidence supporting the costs incurred by the University in such removal and restoration efforts.

(5) AES restoration of System Improvements. If, after destruction of or damage to any of the System Improvements, AES decides to restore the destroyed and/or damaged System Improvements, AES shall provide the University with written notice of their intent to rebuild/restore the System Improvements and the extent to which AES intends to so rebuild/restore the System Improvements within a reasonable time after the date of casualty. AES acknowledges and agrees that before proceeding with any rebuilding or restoration efforts, AES must: (a) obtain the University's prior written approval for all System Plans relating to the rebuilding and restoration of the System Improvements, and (b) meet all obligations of AES under this Agreement, including this paragraph 3 (System Improvements) with respect to the construction and installation of the System Improvements.

(6) Partial damage. If the System Improvements are damaged by fire or other causes or casualties, but are not rendered unsuitable, unusable, or untenable for the purposes and uses contemplated by this Agreement as determined by AES, AES shall, and will cause the AES Agents, the AES Contractors, and/or the AES Assignees to, promptly repair and restore the System Improvements so damaged. AES shall obtain the University's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, for all repair and restoration System Plans before starting such repair and restoration work, provided that the estimated cost of repairing and restoring the System Improvements is \$100,000 or more. AES shall also satisfy all other applicable requirements for the construction, installation, operation, maintenance, repair, alteration, renovation, improvement, upgrade, expansion, replacement, and removal of the System Improvements as described in this Agreement, including this paragraph 3 (System Improvements).

c. Inspection. The University and the UH Agents may enter upon all portions of the Easement Area, the System Improvements, the Property, or any portion thereof for the purpose of: (1) inspecting the same and examining the condition and state of repair thereof, (2) observing AES' performance of its obligations under this Agreement (including the Maintenance Responsibility), (3) to make any repairs the University deems reasonably necessary, such as situations where AES fails to effect required repairs, (4) to serve or post or keep posted notices that are required by Applicable Laws on or within the Easement Area, the System Improvements, and/or the Property, and (5) performing or completing any act or thing that the University may be obligated or have the right to do under this Agreement or otherwise.

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AES shall provide reasonable access to the University and the University Agents. The University will notify AES in writing at least forty eight (48) hours in advance of the requested entry. If AES' operations do not allow immediate University entry, AES may reschedule the University's entry for another date but such rescheduled date shall not be more than seven (7) days from the University's initial requested entry date, unless otherwise agreed to by the University. In permitting entry, AES will have an AES Agent or representative accompany the University during the University's entry and may require the University and the University Agents to attend a safety orientation (at AES' discretion) and comply with AES safety protocols. The University reserves the right, in cases of emergencies, as determined by the University, in the University's reasonable discretion, to enter the Easement Area, the System Improvements, and the Property and effect such repairs and implement such measures as the University deems necessary to address the emergency, mitigate the adverse conditions, or reduce the possibility of a larger casualty without the need to obtain a court order or other authorization, and AES hereby authorizes the University in such emergency situations, to enter the Easement Area, the System Improvements, and the Property and address such emergency, effect such repairs, and implement such measures as the University deems necessary.

d. No obligation to construct or repair. Nothing in this paragraph 3 (System Improvements) shall impose or shall be construed to impose upon the University any obligations to so construct or maintain, or to make repairs, replacements, additions, or alterations to the Easement Area, the System Improvements, and/or the Property, nor shall the University's entry upon the Easement Area, the System Improvements, and/or the Property create any liability on the part of the University for any failure to do so.

4. Indemnification by AES. AES, on behalf of itself and the AES Agents, shall indemnify, defend, hold harmless the University and the UH Agents from any claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liens, liabilities, losses, damages, costs, and expenses (including Attorneys' Fees and Costs (as defined herein)), by whomsoever incurred, sustained or asserted, including, without limitation, claims for property damage, personal injury, bodily injury, death, lost revenues and other economic loss, and/or environmental damage, directly or indirectly arising from or related in any way to the following:

a. Exercise of rights. Exercise of any of the rights and privileges under this Agreement by AES, the AES Agents, the AES Contractors, and/or the AES Assignees and/or entering into and/or using or occupying any portion of the Easement Area and the Property.

b. Act or omission. Any act or omission by AES, the AES Agents, the AES Contractors, and/or the AES Assignees.

c. Casualty. Any accident, fire or other casualty on or within the Easement Area and/or the Property arising from events, occurrences, or incidents at, on, within, or attributable to the acts or omissions of AES, the AES Agents, the AES Contractors, and/or the AES Assignees on or in relation to the Easement Area and/or the Property.

d. Violation. Any violation or alleged violation by AES, the AES Agents, the AES Contractors, and/or the AES Assignees of any Applicable Laws (including, without

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limitation, any Environmental Laws), arising from events, occurrences, or incidents at, on, within, or attributable to the Easement Area and/or the Property and/or attributable to the acts or omissions of AES, the AES Agents, the AES Contractors, and/or the AES Assignees.

e. Hazardous Materials. Any liability, claim, cost, and/or expense connected with: (a) the release, discharge, disposal, or escape of Hazardous Materials on or from the Easement Area, the Property, the System Improvements, and/or the System caused by AES, the AES Agents, the AES Contractors, and/or the AES Assignees or otherwise attributable to AES', the AES Agents', the AES Contractors' and/or the AES Assignees' use and occupancy of the Easement Area and the Property, (b) the presence, treatment, handling, generation, transport, accumulation, collection, or storage of Hazardous Materials within or under the Easement Area, the Property, the System Improvements, and/or the System caused by AES, the AES Agents, the AES Contractors, and/or the AES Assignees and (c) the failure of AES, the AES Agents, the AES Contractors, and/or the AES Assignees to perform any of their Hazardous Materials obligations contained in paragraph 8 (Hazardous Materials), including, without limitation, the obligations of AES, the AES Agents, the AES Contractors, and/or the AES Assignees to remediate, clean up, and remove Hazardous Materials released by AES, the AES Agents, the AES Contractors, and/or the AES Assignees from the Easement Area and the Property and/or to restore the Easement Area, the Property, the System Improvements, and/or the System.

f. Liens. Any act or neglect by AES, the AES Agents, the AES Contractors, and/or the AES Assignees whereby the Easement Area, the Property, the System Improvements, and/or the System, or any part or parts thereof, at any time during the Term hereof shall become subject to any Liens, including, without limitation, all costs and expenses arising from actions to challenge, discharge, satisfy, and/or release the Liens, such as all Attorneys' Fees and Costs (as defined herein).

g. Loss. Any loss or theft whatsoever of any property placed or stored by AES, the AES Agents, the AES Contractors, and/or the AES Assignees on or about the Easement Area and/or the Property.

h. Misrepresentation. Any material misrepresentation or inaccuracy in any representation or warranty by AES, the AES Agents, the AES Contractors, and/or the AES Assignees under this Agreement.

i. Challenge. Any challenge to the authority of AES to negotiate, enter into, and execute this Agreement or to the authority of AES, the AES Agents, the AES Contractors, and/or the AES Assignees or perform obligations under this Agreement.

j. Failure to perform. Any failure by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, in whole or in part, to fully and properly perform any of the terms and conditions contained in this Agreement, including, without limitation, the breach or default by AES, the AES Agents, the AES Contractors, and/or the AES Assignees in the performance of any of said terms and conditions of this Agreement.

k. Removal. Any enforcement by the University of any provision of this paragraph 23 and any costs of duly removing AES, the AES Agents, the AES Contractors, and/or

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the AES Assignees from the Easement Area and/or the Property and restoring the same as provided herein.

1. University's enforcement. Any actions by the University or others to enforce the terms and conditions of this Agreement, including the performance of any of the obligations of AES, the AES Agents, the AES Contractors, and/or the AES Assignees hereunder.

***"Attorneys' Fees and Costs"*** means and includes all reasonable attorneys' fees, expert witness fees and costs, discovery and pretrial costs, costs incurred in the investigation, prosecution, defense, and/or handling of any action, costs for research relating to settlement or resolution, costs of implementing preventive measures necessary to protect and preserve the position of the University and/or the UH Agents with regard to any such claim or action, and all other reasonable fees and costs incurred or imposed upon the University or the UH Agents in connection with such claim or action.

5. Insurance. AES shall, and shall ensure that all AES Agents, AES Contractors, and AES Assignees procure and maintain, at their own cost and expense, the following insurance, issued by an insurance company authorized to do business in the State of Hawaii and reasonably satisfactory to the University:

a. Required Insurance Coverage.

(1) Commercial General Liability. Commercial general liability insurance covering claims with respect to injuries or damages to persons or property sustained as a result of the activities performed by AES, the AES Agents, the AES Contractors, and/or the AES Assignees within, on, or about the Easement Area and/or the Property, with minimum combined single limits of liability (written on an occurrence form) no less than the following:

General Liability

General Aggregate	\$5,000,000.00
Products/Completed Operations Aggregate	\$5,000,000.00
Personal/Advertising Injury	\$5,000,000.00
Each Occurrence	\$5,000,000.00

Such limits may be achieved through the use of umbrella/excess liability insurance sufficient to meet the requirements of this paragraph for the System Improvements, the System, the Easement Area, ways and means surrounding the Easement Area, and the Property. Said policy or policies shall cover the System Improvements, the System, the Easement Area, and the Property, and all of the activities and operations of AES, the AES Agents, the AES Contractors, and the AES Assignees on, about and with respect to the Easement Area and the Property.

(2) All Risk Property Insurance. Insurance against loss or damage by perils, typically covered under an "all risk" property form, covering the System Improvements,

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the Utilities, and the System within, on, or adjacent to the Easement Area and/or the Property, in an amount equal to the replacement cost of the System Improvements, Utilities, and the System.

(3) Builder's Risk Insurance. Builder's all risk insurance in an amount reasonably satisfactory to the University during the course of the AES Work (as defined herein) covering, at a minimum, the replacement cost of any System Improvements, the Utilities, and the System constructed or installed by AES, the AES Agents, the AES Contractors, and/or the AES Assignees on or in portions of the Easement Area and/or the Property. Only AES and the AES Assignees and not the AES Agents or the AES Contractors shall procure and maintain the Builder's Risk Insurance.

(4) Pollution Liability. Pollution liability insurance for environmental liabilities, which would include claims for bodily injury, property damage, environmental damage, and remediation costs resulting from pollution conditions caused by AES, the AES Agents, the AES Contractors, or the AES Assignees in connection with or during the exercise of the rights granted to AES under this Agreement, with a combined single limit coverage of not less than the following:

Pollution Liability

Each Common Cause	\$3,000,000.00
Aggregate	\$3,000,000.00

(5) Automobile Liability. Automobile liability insurance to include coverage for any owned, non-owned, or hired automobiles with limits of: not less than the following:

Automobile Liability

Bodily Injury – Per Person	\$1,000,000.00
Bodily Injury – Per Accident	\$1,000,000.00
Property Damage - Each Accident	\$1,000,000.00

In the event there is a change in the Applicable Laws regarding the financial responsibility and insurance requirements of automobile owners or users which modifies, amends, or repeals these requirements or otherwise makes any of these requirements obsolete, AES shall comply with such new requirement in accordance with then Applicable Laws.

(6) Workers Compensation & Employer's Liability Insurance. Workers compensation insurance as required by statute with respect to the AES Work performed by the employees of AES, on or involving the Easement Area and employer's liability insurance with limits not less than:



## Employers Liability

Bodily Injury – Each Accident	\$500,000.00
Disease – Policy Limit	\$500,000.00
Disease – Each Employee	\$500,000.00

AES shall ensure that the AES Agents, the AES Contractors, and the AES Assignees obtain workers compensation and employer's liability insurance with the limits described herein to cover the AES Work performed by their respective employees on or involving the Easement Area.

b. Common provisions. AES shall ensure that each insurance policy that AES is obligated to obtain under this Agreement shall be subject to the following:

(1) Notice of change. All insurance policies required to be obtained by AES under this Agreement shall contain a clause to the effect that should any of the insurance policies be materially changed from the coverages and/or limits required herein, or cancelled before the expiration date thereof, the insurer shall provide AES with notice in accordance with the policy provisions or sooner, if required by law and AES shall notify the University in writing of any such notices received by AES from its insurers. AES shall provide and shall ensure that the AES Agents, the AES Contractors, and the AES Assignees provide the University notice of (a) any act or omission by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, respectively, that would allow the insurer to terminate or modify any of the insurance coverage within two (2) business days of such act or omission (including, but not limited to, failure to renew an insurance policy or pay a required premium therefor) and (b) notice of cancellation, limitation in scope, material change, or non-renewal by the insurer within two (2) business days of receipt.

(2) Insurance obtained by the University shall apply in excess of AES's insurance. Any insurance maintained by AES shall be primary and not require any insurance maintained by the University to contribute to or with, either pro rata or otherwise, or be applied in any way prior to, any insurance maintained by AES under this Agreement.

(3) University as additional insured. AES shall, and shall ensure that the AES Agents, the AES Contractors, and the AES Assignees name the University, the UH Agents, and those persons or entities identified in writing from time to time by the University to AES, as additional insured on the insurance policies for all insurance coverage obligated to be obtained under this Agreement, except for the Workers' compensation and employer's liability insurance obtained by AES, the AES Agents, the AES Contractors, and/or the AES Assignees.

(4) Waiver of subrogation endorsement. All insurance required under this Agreement will contain a waiver of subrogation endorsement in favor of the University.

(5) University not required to pay premiums. AES shall be solely responsible for the costs of procuring and maintaining the insurance coverage described in this Agreement and shall not charge the University or expect the University to pay any portion of the premiums or charges to obtain the insurance coverage required under this Agreement.

(6) Acceptable deductibles. The terms and amounts of any deductibles for the insurance policies required under this Agreement must be reasonable and acceptable to the University based upon the type of insurance involved and the nature of AES's, AES Agents', AES Contractors' and/or the AES Assignees' use of the Easement Area, the Property, the System Improvements, the Utilities, and the System and AES's responsibility to maintain the System Improvements, the Utilities, the System, and the Easement Area.

(7) AES to ensure compliance. AES shall ensure that the AES Agents, the AES Contractors, and the AES Assignees obtain the insurance coverages required paragraph 5a (Required Insurance Coverage) herein and that they comply with the provisions as described in paragraph 5b (Common provisions), paragraph 5c (Deposit insurance certificates), paragraph 5d (UH may cure failure to obtain/maintain insurance), paragraph 5e (Lapse in insurance constitutes a breach), paragraph 5f (Insurance shall not limit AES's liability), and paragraph 5g (UH may adjust insurance requirements) herein.

c. Deposit insurance certificates. AES shall (a) deposit with the University, on or before the date AES, the AES Agents, the AES Contractors, and/or the AES Assignees enter the Property (or the effective date of any amendment to this Agreement with respect to any additions to the Easement Area or the Property herein), certificates of insurance sufficient to satisfy the University that the insurance provisions of this Agreement have been fully complied with and (b) keep such insurance in effect and the certificates therefore on deposit with the University during the entire term of this Agreement. AES shall ensure that the AES Agents, the AES Contractors, and the AES Assignees also timely deposit with the University prior to their entry and upon each renewal or purchase of equivalent insurance coverage, the certificates of insurance confirming that they have obtained the insurance coverage required under this Agreement.

d. University may cure failure to obtain/maintain insurance. Upon failure of AES, the AES Agents, the AES Contractors, and/or the AES Assignees to provide and maintain the insurance required herein, after a ten (10) day prior written notice to comply from the University, the University may, but shall not be required to, procure such insurance at AES's sole cost and expense, and AES shall be obligated to immediately reimburse the University for the cost thereof plus ten percent (10%) for the University's administrative overhead.

e. Lapse in insurance constitute a breach. Any lapse in, or failure by AES to procure, maintain, and keep in full force and effect or cause the AES Agents, the AES Contractors, and/or the AES Assignees to procure, maintain, and keep in full force and effect such insurance coverage as is required under this Agreement, at any time during and throughout the Term of this Agreement, shall be a breach of this Agreement and the University may terminate the rights of AES, the AES Agents, the AES Contractors, and/or the AES Assignees to use, occupy, or access the Easement Area and/or the Property.

f. Insurance shall not limit AES's liability. The procuring of such required policy or policies of insurance shall not be construed to limit AES's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, AES shall be responsible for complying with AES's obligations under paragraph 4 (Indemnification by AES) herein.



b. Definitions.

(1) ***“Environmental Laws”*** means all applicable laws, statutes, regulations, rules, ordinances, codes, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, and orders of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states, and political subdivisions thereof (hereafter ***“Governmental Authority”***), interpretations of the foregoing by any court, legislative body, agency or official, all applicable judicial, administrative, and regulatory orders, decrees, requirements, rulings, and judgments, and rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety, including, without limitation:

(a) Reporting, licensing, and remediation requirements. All requirements pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the use, treatment, storage, disposal, transport, or handling of Hazardous Materials, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature;

(b) Natural resource protection requirements. All requirements pertaining to the protection of natural resources or of the health and safety of employees or the public; and

(c) Specific statutes and rules. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Federal Insecticide, Fungicide and Rodenticide Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and any similar federal, State of Hawai‘i (including without limitation Hawai‘i Revised Statutes Chapters 128D and 342B through 342P, inclusive), and county laws and ordinances, and regulations now or hereafter adopted, approved, and promulgated pursuant thereto, all as any of the foregoing may be amended from time to time, applying to the License Area, the Property, or any portion thereof.

(2) ***“Hazardous Materials”*** means any substance, element, compound, mixture or solution:

(a) Presence requires remediation. The presence of which requires investigation or remediation under any applicable Environmental Law; or

(b) Defined as a pollutant or contaminant. Which is now or at any time hereafter in effect becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under any federal, state, or county statute, regulation, rule, or ordinance

or amendments thereto, including without limitation, the Environmental Laws, now or hereafter adopted, approved, and promulgated pursuant thereto; and asbestos, polychlorinated biphenyls, petroleum, and petroleum byproducts, fuel oil, sludge, crude oil or residue, or trichloropropane; or

(c) Defined as toxic, explosive, or regulated. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any Governmental Authority; or

(d) Poses or threatens to pose a hazard. The presence of which on the Easement Area or the Property poses or threatens to pose a hazard to the health or safety of persons, to property, or to the environment, on or about the Easement Area or the Property.

c. Responsibility for Hazardous Materials impacts. Prior to the Effective Date of this Agreement, AES shall have completed a site visit and inspection of the portion of the Easement Area upon which AES plans to construct, install, and operate the System Improvements and the System, including the portions of the Property that AES will be entering and using in conjunction therewith at no cost to the University (“**Site Baseline Assessment**”). AES shall, however, be responsible for any Hazardous Materials conditions and environmental issues arising from its use and occupancy of the Easement Area and the Property, due to, caused by, or attributable to the acts and/or omissions of AES, the AES Agents, the AES Contractors and/or the AES Assignees. The University makes no representations or warranties as to: (1) the condition of the Easement Area and/or the Property, (2) the presence of Hazardous Materials thereon or therein, or (3) any environmental condition relating thereto.

(1) AES to notify of Hazardous Material conditions. AES shall notify and provide the University the results of such site visit, inspection, and inventory of conditions, including any reports such as the Site Baseline Assessment. If AES contends that the site visit, inspection, and inventory of conditions has identified Hazardous Materials conditions or environmental issues, AES will notify the University and attempt to negotiate a mutually acceptable resolution, but in no way whatsoever shall University be obligated to remediate Hazardous Materials in order to allow AES, the AES Agents, the AES Contractors, and/or the AES Assignees to construct, install, operate, maintain, repair, and/or remove the System Improvements (collectively the “**AES Work**”). If AES subsequently discovers any Hazardous Materials within the Easement Area or the Property, AES shall notify the University of such discovery. AES will be deemed responsible for remediating, cleaning up, and removing such subsequently discovered Hazardous Materials from the affected Easement Area and the Property and restoring the Easement Area and the Property, unless AES can prove to the University, pursuant to paragraph 8j (Burden of Proof) herein, that neither AES, the AES Agents, the AES Contractors, nor the AES Assignees are or were not responsible for the presence, discharge, and/or release of the Hazardous Materials. Any decision by the University to engage in remediation expenditures shall be at the sole discretion of the University and AES shall have no right to force the University to remediate Hazardous Materials, even if such Hazardous Materials conditions or environmental issues existed before AES, the AES Agents, the AES Contractors, or the AES Assignees entered the Easement Area or the Property. If AES proves that neither AES, the AES Agents, the AES Contractors, nor the AES Assignees are or

were not responsible for the presence, discharge, and/or release of the Hazardous Materials, AES will have the option to terminate this Agreement upon thirty (30) days prior written notice to the University should the University choose to not remediate such Hazardous Materials.

(2) AES responsible from entry date. From and after the date of AES' first entry onto the Easement Area under this Agreement, AES shall be responsible for: (a) any Hazardous Materials conditions and environmental issues and violations that are due to, caused by, or attributable to the acts and/or omissions of AES, the AES Agents, the AES Contractors, or the AES Assignees under this Agreement, including any attributable to the AES Work and (b) any fines and penalties, mitigation, restoration, and clean-up requirements, and/or the results of any other enforcement actions arising from said Hazardous Materials conditions and/or environmental issues and violations, regardless of when the enforcement action commenced or was concluded. If the University is required to remediate and cleanup any Hazardous Materials within the Easement Area or the Property as a result of the AES Work, AES shall pay for or cause to be paid all costs and expenses incurred or to be incurred by the University in remediating and cleaning up any such Hazardous Materials.

d. Removal and Remediation. If any Hazardous Materials are used, stored, treated, disposed, handled, or determined to be present on or within the Easement Area or the Property, or discharged, released, or determined to be present on or within the Easement Area or the Property due to, caused by, or attributable to the acts or omissions of AES, the AES Agents, the AES Contractors, or the AES Assignees, AES shall, at AES's sole cost and expense and at no cost to the University, clean-up, remediate, remove, and dispose of all said Hazardous Materials on or within the Easement Area and the Property. Upon termination of this Agreement, AES shall be responsible, at AES's sole cost and at no cost to the University, for restoring the Easement Area and/or Property affected by the presence, clean-up, remediation, removal, and disposal of the Hazardous Materials, to the same or better condition existing at the Effective Date of this Agreement, to the University's reasonable satisfaction. If AES fails to clean-up, remediate, remove, and/or dispose of said Hazardous Materials and/or fails to restore the affected portions of the Easement Area and the Property as required hereunder, the University may, after giving AES thirty (30) days' written notice, complete such clean-up, remediation, removal, disposal, and/or restoration at AES's sole cost and expense, which amount AES shall upon demand immediately pay to the University plus ten percent (10%) for the University administrative overhead.

e. Notice to the University. AES shall keep the University fully informed at all times regarding all matters related to any Environmental Laws affecting AES and its use of the Easement Area and the Property.

(1) AES to furnish and update Hazardous Materials listing. This duty shall include, but not be limited to, providing the University with a current and complete list and accounting (with periodic updates) of all Hazardous Materials which are present in, on, or about the Easement Area or the Property by or as a result of AES, the AES Agents, the AES Contractors and/or the AES Assignees, together with evidence that AES, the AES Agents, the AES Contractors, and the AES Agents had or have in effect all required and appropriate permits, licenses, registrations, approvals, and other consents that may be required by any Governmental Authority or under any Environmental Laws.

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(2) AES to notify of investigation or enforcement action. AES shall also provide immediate written notice of any investigation, enforcement action, compliance order, or order of any type, or any other legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to AES, the AES Agents, the AES Contractors, and/or the AES Assignees by any Governmental Authority that relates in any way to any Environmental Laws or any Hazardous Materials on or within the Easement Area or the Property.

(3) AES to submit written communications. This written notice to the University shall include copies of all written communications from any Governmental Authority, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by AES, the AES Agents, the AES Contractors, and/or the AES Assignees.

(4) AES to furnish proof of Environmental Laws compliance. Upon termination of this Agreement, AES shall provide the University with written evidence reasonably satisfactory to the University that AES, the AES Agents, the AES Contractors, and the AES Assignees have fully complied with all Environmental Laws, including any orders issued by any Governmental Authority responsible for enforcement of the Environmental Laws that relate to the Easement Area or the Property, and the results of all assessments and investigations that may be reasonably ordered by the University pursuant to subparagraph 8g (Environmental Reports) herein, or by any Governmental Authority responsible for enforcement of the Environmental Laws.

f. Disposal/Removal. Except the possession and handling of Hazardous Materials for which AES is exempt and those Hazardous Materials for which AES has obtained all currently required permits to sort or use certain Hazardous Materials on the Easement Area or the Property, including written permission from the University, AES shall cause any Hazardous Materials resulting from use by AES, the AES Agents, the AES Contractors, and/or the AES Assignees to be removed and transported from the Easement Area and the Property for disposal solely by duly licensed Hazardous Materials transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. AES shall provide the University with copies of documentary proof, including manifests, receipts, or bills of lading, which reflect said Hazardous Materials have been properly removed and disposed of in accordance with all Environmental Laws.

g. Environmental reports. AES has obtained a Phase I environmental report for the Easement Area dated March 6, 2019, prepared by Tetra Tech, Inc.. AES shall provide a copy of such report to the University upon the University's request.

h. University's right to act. In the event AES fails for any reason to comply with any of their duties under any Environmental Laws within the time set for doing so, or within a reasonable time as determined by the University after a thirty (30) day prior written notice to comply from the University, the University shall have the right, but not the obligation, in its sole discretion, to perform those duties, or cause them to be performed. AES hereby grants to the University, the UH Agents, and anyone designated by the University access to the Easement

Area and the portions of the Property upon which AES is performing the AES Work at all reasonable hours, in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the University in performing said acts or duties shall be the sole responsibility of AES and AES hereby agrees to immediately pay to the University all of such costs and expenses incurred by the University (plus a ten percent (10%) markup to cover the University's administrative overhead) in performing said acts or duties. This obligation shall extend to any costs and expenses incident to enforcement of the University's right to act, including Attorneys' Fees and Costs and the costs and fees for collection of said Attorneys' Fees and Costs.

i. Release and indemnity. AES hereby agrees to release the University, the UH Agents, and their successors, and assigns from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or Governmental Authority against AES, the AES Agents, the AES Contractors, and/or the AES Assignees by reason of any Hazardous Materials that may be present by or as a result of the use of the Easement Area or the Property by AES, the AES Agents, the AES Contractors, and/or the AES Assignees by whatever means on, in, or under the Easement Area or the Property, including any fines or penalties assessed against the University for non-compliance with any Environmental Laws, unless such actions which result in liability for damages, penalties, fines, judgments, or assessments imposed are caused by the University or the University's officers or employees.

(1) AES indemnity. AES shall indemnify, defend with counsel reasonably acceptable to the University, and hold harmless the University and the UH Agents from any liability that may arise in connection with, or by reason of, the presence of Hazardous Materials or any occurrence involving any Hazardous Materials that may be alleged to be connected to, or related in any way with: (1) the entry onto and use and occupancy of the Easement Area and/or the Property by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, (2) any of the AES Work performed by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, (3) any System Improvements or System on or within the Easement Area and the Property constructed or installed by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, (4) the University making the Easement Area and/or portions of the Property available to AES, the AES Agents, the AES Contractors, and/or the AES Assignees, (5) the University granting rights to AES, the AES Agents, the AES Contractors, and/or the AES Assignees to enter and use and occupy the Easement Area or portions of the Property, and (6) any fines or penalties assessed against the University for non-compliance with any Environmental Laws arising from entry onto and use and occupancy of the Easement Area and/or the Property by AES, the AES Agents, the AES Contractors, and/or the AES Assignees, unless such actions which result in liability for damages, penalties, fines, judgments, or assessments imposed are caused by the University or the University's officers or employees.

(2) University not obligated to remediate. Notwithstanding any provision of this Agreement or any other agreement to the contrary, in no event or way whatsoever shall the University be obligated to remediate or share in the cost to remediate or deal with Hazardous Materials in order to allow AES, the AES Agents, the AES Contractors, and/or the AES Assignees to enter or use or occupy the Easement Area or any portion of the



Property or complete, operate, maintain, or remove the AES Work, the System Improvements, and/or the System.

(3) University to decide on extent of participation. Any decision by the University to participate in remediation expenditures shall be at the sole discretion of the University. AES, the AES Agents, the AES Contractors, and/or the AES Assignees shall not have the right to and may not force the University to remediate Hazardous Materials, even if such Hazardous Materials conditions or environmental issues existed before AES, the AES Agents, the AES Contractors, and/or the AES Assignees entered the Easement Area or the Property.

j. Burden of proof. AES, for itself and on behalf of the AES Agents, the AES Contractors, and the AES Assignees, accept the burden of establishing that they are not responsible for the presence of Hazardous Materials on, in, or under the Easement Area and/or the Property, including any Hazardous Materials that could be discharged or released from the Easement Area and/or the Property. If AES, the AES Agents, the AES Contractors, and/or the AES Assignees cannot establish that they are not responsible for the presence of such Hazardous Materials on, in, or under the Easement Area and/or the Property, AES, on behalf of itself and the AES Agents, the AES Contractors, and the AES Assignees shall be deemed responsible for the presence of the Hazardous Materials. AES and the University agree that upon AES' completion of the Site Baseline Assessment and the University's acceptance of the results thereof, AES' responsibilities to remediate, remove, and clean up Hazardous Materials within the Easement Area and the Property will be limited to remediating, removing, and cleaning up those portions of the Hazardous Materials that exceed the levels established in the Site Baseline Assessment.

9. Liens. AES shall not, and shall ensure that the AES Agents, the AES Contractors, and the AES Assignees shall not, commit or suffer any act or neglect whereby any portion of the Easement Area, the Property, the System Improvements, or any part or parts thereof, at any time during the Term hereof, shall become subject to any Liens.

a. AES shall remove Liens. AES shall take immediate action to discharge, eliminate, or remove the Liens, including, without limitation, bonding or posting other security until the discharge, elimination, or removal is finally determined and the Liens resolved and discharged.

b. University may act if AES fail to timely discharge. If the University reasonably determines that AES is not taking timely action or may be unsuccessful in its efforts to discharge, eliminate, or remove the Liens, the University may, after issuing a ten (10) day prior written notice to AES: (1) at AES' sole cost and expense, take such action as the University deems necessary, including, without limitation, seeking judicial or administrative action or intervention to discharge, eliminate, and/or remove the Liens and/or (2) treat AES to be in breach or default of this Agreement and terminate the rights of AES, the AES Agents, the AES Contractors, and/or the AES Assignees under this Agreement. AES shall immediately pay to the University such costs as may be incurred by the University (including a ten percent (10%) markup for the University's administrative overhead) upon demand by the University.

10. Surrender. At the expiration or sooner termination of this Agreement, AES shall and will ensure that the AES Agents, the AES Contractors, and the AES Assignees peaceably deliver unto the University any and all use or possession of the Easement Area and any portion of the Property in good condition and repair and in a condition substantially similar to that which existed as of the Commencement Date herein.

a. Remove and restore. AES shall, at its sole cost, and to the University's reasonable satisfaction, within six (6) months of the expiration or sooner termination of the Term: (a) remove any debris or trash from the Easement Area; (b) properly clean-up and restore any portions of the Easement Area or the Property that were used and/or disturbed by AES, the AES Agents, the AES Contractors, and/or the AES Assignees to a condition substantially similar to that which existed as of the Commencement Date herein, reasonable wear and tear excepted, except that such restoration obligation shall not require removal of the any System Improvements unless the University requires the removal of such System Improvements; (c) repair any damage to the Easement Area, the Property, and/or the System Improvements and/or the UH Facilities thereon, caused by AES, the AES Agents, the AES Contractors, and/or the AES Assignees; and (d) remove all tools, equipment, appliances, appurtenances, equipment, power lines, wires, transmission lines and facilities, vehicles, and personal property of any kind or description (collectively the "Personal Property") from the Easement Area. AES shall complete delivery of possession of the Easement Area and affected portions of the Property to the University within six (6) months after the expiration or sooner termination of this Agreement.

b. AES to remove System Improvements. The University may require AES to remove and ensure that the AES Agents, the AES Contractors, and the AES Assignees remove from the Easement Area and the Property the System Improvements, all at their sole cost and expense, and restore the portions of the Easement Area no longer occupied by the System Improvements and any portions of the Property affected by the use, occupancy and/or operations of AES, the AES Agents, the AES Contractors, and/or the AES Assignees to a condition substantially similar to that which existed as of the Commencement Date herein, reasonable wear and tear excepted.

AES shall, at its sole cost, complete such removal of the System Improvements in accordance with: (a) Applicable Laws, (b) the requirements in this Agreement applicable to AES' construction, installation, maintenance, repair, alteration, renovation, repair, and/or removal of the System Improvements (including requiring the AES Contractors and the AES Assignees to post or provide performance bond(s) sufficient to cover all of the demolition and removal activities, securing insurance, obtaining governmental approvals, and repairing any damage caused by such demolition and removal), (c) the requirements in the Agreement applicable to AES' restoration of the Easement Area (including removing any Hazardous Materials from the Easement Area or the Property), and (d) AES demolition and removal plans that were submitted by AES to the University prior to the start of any demolition or removal work.

c. [Reserved].

d. University may remove and restore upon AES failure to perform. If AES fails to meet its removal, restoration, and delivery of possession obligations hereunder within said six (6) month deadline, the University may complete such removal and restoration, all at AES' sole cost and expense, which costs AES shall pay immediately to the University plus a ten percent (10%) markup for the University's administrative overhead, upon written demand by the University.

e. AES to remove Personal Property. AES shall, and will ensure that the AES Agents, the AES Contractors, and the AES Assignees, at their sole cost and expense, remove any and all Personal Property placed on or within the Easement Area or the Property by AES, the AES Agents, the AES Contractors, and/or the AES Assignees and restore the Easement Area and the Property and any other affected UH Facilities to a condition satisfactory to the University within six (6) months after the expiration or sooner termination of this Agreement. If after six (6) months from the expiration, termination, and/or cancellation of this Agreement, AES has not removed any or all of the Personal Property from the Easement Area or the Property, the University may remove any and all of the Personal Property from the Easement Area and/or the Property and either: (a) treat the Personal Property as abandoned and dispose of the same without liability of any kind to AES, the AES Agents, the AES Contractors, the AES Assignees or anyone else, or (b) place the Personal Property in storage at the sole cost and expense of AES. AES shall immediately pay to the University such removal and storage costs as may be incurred by the University (including a ten percent (10%) markup for the University's administrative overhead) upon demand by the University.

## 11. Termination.

a. AES Default. The occurrence at any time of the following events shall constitute a "***AES Default***".

(1) Failure to perform obligations. AES' failure to timely perform or cause to be performed any obligation required to be performed by AES under this Agreement or any other agreement or commitment with the University, including, without limitation, the failure of any certification, representation and warranty set forth herein or otherwise delivered by or on behalf of AES to be true and correct at any time; provided, however, that if such failure by its nature can be cured, then AES shall have a period of sixty (60) days after receipt of written notice from the University of such failure of AES to perform its obligations and cure the AES Default.

(2) Failure to obtain sufficient funding. AES' failure to obtain or caused to be obtained sufficient funding to complete the Authorized Activity (including, without limitation, completing the System construction work, the AES Work, and the Maintenance Work), particularly any portion within or affecting the Easement Area or the Property and AES fails to submit to the University documentation showing or proving, to the University's reasonable satisfaction, that AES has obtained or has caused to be obtained a commitment (within sixty (60) days of the Effective Date) to furnish sufficient funding to complete the Authorized Activity (including, without limitation, completing the System construction work, the AES Work, and the Maintenance Work) with respect to the Easement Area or the Property.

(3) AES Bankruptcy Actions. (a) AES admits in writing its inability to pay their debts generally as they become due; (b) AES files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district, or territory thereof; (c) AES makes an assignment for the benefit of creditors; (d) AES consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) AES has a petition in bankruptcy filed against it, and such petition is not dismissed within 120 days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of AES's assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of the assets of AES and such custody or control is not terminated or stayed within sixty (60) days from the date of assumption of such custody or control (collectively "***AES Bankruptcy Actions***").

(4) Abandonment. When AES shall abandon, desert, or vacate the Easement Area and/or the Property, or any relevant portions thereof, or discontinues its operations on or within the Easement Area and/or the Property.

(5) Suspension. The happening of any act that results in the suspension or revocation by any Governmental Authority of the rights, powers, licenses, permits, or authorities, including any Governmental Approvals, necessary for the conduct and operation of AES' business for a period of more than sixty (60) consecutive days.

(6) Liens. Any Liens are filed against or affecting the Easement Area, the Property, and/or the System Improvements, because of any act or omission of AES and such Liens are not removed or enjoined or a bond or other security for satisfaction of such Liens is not posted within sixty (60) days.

(7) Insurance default. AES fails to obtain or keep in force or cause to be obtained or kept in force any insurance coverage identified in paragraph 5 (Insurance) herein at all times that such insurance policy or policies is/are required to be obtained and/or kept in force or caused to be obtained and kept in force hereunder.

(8) AES Guarantee default. If AES or the AES Guarantor fail to timely establish the required AES Guarantee in a form and upon such terms as may be acceptable to the University and/or the AES Guarantor fails to timely pay any required amounts or timely perform any AES obligations under this Agreement.

b. Notice of default. If AES defaults on or otherwise fails to perform any of their material obligations under this Agreement, the University shall issue a written notice of default to AES in accordance with paragraph 19 (Notice) of the Agreement.

c. Time to cure defaults. Any and all defaults or failures to perform contained in such notice of default must be resolved and remedied to the University's reasonable

satisfaction expeditiously (with special efforts made by AES whenever there is any hazard to health or safety arising out of a AES Default), but not later than sixty (60) days of the date of the University's written notice to AES. In cases when, through no fault of AES, it is not possible to cure a AES Default within sixty (60) days of the University's notice of default, then AES' obligations under this paragraph 11 (Termination) shall be deemed satisfied if AES commences, within sixty (60) days of the notice of default, efforts necessary to cure the default as soon as reasonably possible and diligently continues such efforts until the default is cured or resolved to the University's reasonable satisfaction. If AES fails to cure the AES Default or either fails to perform within the required time period or fails to immediately pay to the University said costs and expenses incurred by the University (plus 10% for the University's administrative overhead) in performing said cure or remedy, the University may by written notice immediately terminate AES's rights under this Agreement which shall be effective upon AES's receipt or imputed receipt of such notice.

d. University remedies upon AES Default. On the happening of any AES Default, the University shall have all legal or equitable rights and remedies, including, without limitation, terminating this Agreement, not terminating AES' right to use and occupy the Easement Area and operate the System and reletting or regranteeing an easement for the use and occupancy of the Easement Area, and recovering against AES all losses, damages, costs, and expenses incurred or imposed upon the University in connection with the AES Default, including, without limitation, the cost of recovering possession of the Easement Area and the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to rent reserved in this Agreement for the remainder of the stated Term less the then reasonable rental value of the Easement Area for the remainder of the stated Term, , all of which amounts shall be immediately due and payable from AES to the University. In the event the University is required to use the services of an attorney or collection agent to collect amounts due under this Agreement or to seek a remedy as a result of the AES Default, AES agrees to reimburse the University in an amount equal to the amount of Attorneys' Fees and Costs incurred by the University in pursuit of a remedy, plus an additional ten percent (10%) to cover the University's administrative overhead, whether or not the AES Default results in an action being filed. AES shall pay such amounts to the University immediately upon AES' receipt of written demand from the University.

(1) Termination of AES rights. If an AES Default has occurred and is continuing, then, unless AES shall cure the AES Default before the end of the applicable cure period (if any), the University may terminate AES' rights under this Agreement and pursue all other applicable remedies for claims arising out of the AES Default.

(2) Suspension of AES' rights to use. If an AES Default has occurred and is continuing, then, unless AES shall cure the AES Default before the end of the applicable cure period (if any), the University may suspend AES's rights under this Agreement and any other agreement relating to the Authorized Activity and pursue all other applicable remedies for claims arising out of the AES Default.

(3) Other rights and remedies. If any AES Default has occurred, whether or not the University has terminated the AES' rights under this Agreement, the University may continue to hold AES responsible for any damages arising from such AES

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GRANT OF EASEMENT AGREEMENT

University of Hawai'i – AES West Oahu Solar, LLC

Default and enforce any and all obligations of AES under this Agreement, including, without limitation, obligations regarding improvements, insurance, indemnity/defense, coordination, compliance with Applicable Laws, hazardous materials, liens, surrender, default, funding limitations, litigation, assignment, sublicensing, disposition of project improvements, and representations.

(4) Right to terminate or relet/regrant. Should the University elect to reenter for an AES Default, or should the University take possession pursuant to legal proceedings or pursuant to any notice provided for by law, such as a notice to vacate, it may either terminate this Agreement or it may from time to time without terminating this Agreement, make such alterations and repairs as may be necessary in order to relet or regrant the Easement area or any part thereof for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such rental or rentals and upon such other terms and conditions as the University in its sole discretion may deem advisable; upon each such reletting and/or regranting all rentals received by the University from such reletting or regranting shall be applied, first, to the payment of any indebtedness, including interest, other than Rent due hereunder from AES to the University; second, to the payment of any costs and expenses of such reletting and regranting and of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the University and applied in payment of future Rent or other obligations as the same may become due and payable hereunder. If such Rents received from such reletting and regranting during any month be less than that to be paid during that month by AES hereunder, AES shall pay any such deficiency to the University. Such deficiency shall be calculated and paid monthly. Termination shall be made effective by the giving of written notice to AES of the University's intention to end the Term of this Agreement, specifying a day not earlier than thirty (30) days thereafter, and upon the giving of such notice, the Term of this Agreement and all right, title and interest of AES hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the Term. No reentry or taking possession of the Easement Area by the University shall be construed as an election on its part to terminate this Agreement unless a written notice of such intention be given to AES or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting and regranting without termination, the University may at any time thereafter elect to terminate this Agreement for such previous AES Default.

(5) Separate suits. The University shall have the privilege of splitting its cause of action for Rent so as to permit institution of a separate suit or suits or proceedings for the Rent hereunder reserved to the University and a separate suit or suits or proceedings for any other payments or obligations required hereunder, and neither the institution of such suit or proceeding, nor the entering of judgment therein, shall bar the University from bringing a subsequent suit or proceeding for the Rent or for any other payments required hereunder.

(6) Call on AES Guarantee. Once the University satisfies the notice requirements contained in paragraph 7 (AES Guarantee) and if AES fails to correct or cure the AES Default or AES' failure to perform within the thirty (30) day period following AES' receipt of the AES Default notice, the University may seek payment from the AES Guarantor with or without first demanding payment from AES.

e. Reserved.

f. Default not necessary for termination. Notwithstanding the University's right to terminate this Agreement for an AES Default or failure to perform or failure to pay and reimburse the University for any costs and expenses incurred by the University to cure an AES Default or failure to perform, the University may terminate this Agreement in accordance with this paragraph 11 (Termination) herein.

g. University remedies cumulative. If AES defaults or otherwise fails to perform as required under this Agreement, the University shall be entitled to all remedies available under this Agreement and by law (which remedies shall be cumulative and not exclusive), including, without limitation, immediate termination of this Agreement upon AES' receipt or imputed receipt of the University's written notice to AES pursuant to subparagraph 11c (Time to cure defaults).

h. Survival of obligations. Any termination or cancellation of this Agreement, in whole or in part, shall not relieve AES of any of its obligations contained in this Agreement that are intended to survive the expiration or termination of this Agreement, including, without limitation, the following AES obligations that are intended to survive the expiration or termination of this Agreement: obligations regarding improvements, insurance, indemnity/defense, coordination, compliance with Applicable Laws, hazardous materials, liens, surrender, default, funding limitations, litigation, assignment, sublicensing, disposition of project improvements, and representations.

i. Accrued obligations. AES's obligations that AES was required to perform and/or complete prior to any termination or expiration of this Agreement, including, without limitation, the obligation to fully and properly address and mitigate all Adverse Impacts, comply with the AES Covenants and the Site Specific Conditions, and perform the Maintenance Work, shall survive the expiration or earlier termination of this Agreement.

j. Waiver of all claims for consequential damages. The University and AES each agree to waive, release, and discharge any and all claims for consequential, special, indirect, incidental, and exemplary damages (but not compensatory damages).

k. Non-Waiver by University. The waiver by the University of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the University shall not be deemed to be a waiver of any preceding breach by AES of any term, covenant or condition of this Agreement, other than the failure of AES to pay the particular Rent so accepted, regardless of the University's knowledge of such preceding breach at the time of acceptance of such Rent.

l. No accord and satisfaction. No payment by AES or receipt by the University of a lesser amount than the monthly Rent herein stipulated shall be deemed to be

other than on account of the earliest Rent then due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and the University may accept such check or payment without prejudice to AES' right to recover the balance of such Rent or pursue any other remedy in this Agreement.

m. Interest on past due amounts. Any amounts owing by AES to the University under the terms of this Agreement shall carry interest from the date the same become due until paid at the lower of ten percent (10%) annually or the maximum rate then allowed by law. Said interest shall be considered as a part of the Rent payable hereunder.

n. Late Charge. If AES shall fail to pay the required Rent and/or other charges within ten (10) days of the date on which such is due hereunder, then without the requirement of notice from the University, AES shall pay to the University a penalty of ten percent (10%) of any amount not paid.

o. University Default and AES remedies. The occurrence at any time of the following events shall constitute a "***University Default***".

(1) Failure to perform obligations. The University's failure to timely perform or cause to be performed any obligation required to be performed by the University under this Agreement; provided, however, that if such failure by its nature can be cured, then the University shall have a period of sixty (60) days after receipt of written notice from AES of such failure of the University to perform its obligations and cure the University Default. If it is not possible to cure a University Default within sixty (60) days of AES' notice of default, then the University's obligations under this paragraph 11 (Termination) shall be deemed satisfied if the University commences, within sixty (60) days of the notice of default, efforts necessary to cure the University Default as soon as reasonably possible and diligently continues such efforts until the University Default is cured or resolved to AES' reasonable satisfaction.

(2) AES remedies upon University Default. If a University Default has occurred and is continuing, then, unless the University shall cure the University Default before the end of the applicable cure period (if any), AES may terminate this Agreement by providing the University with thirty (30) days written notice and may exercise any of AES' rights provided at law or in equity.

12. No Unreasonable Interference. The University agrees not to unreasonably interfere with AES' operations and activities in, on, or connected with the Easement Area and/or the Property to the extent permitted by this Agreement. AES agrees that in AES' use of the Easement Area or the Property, AES agrees not to unreasonably interfere with the facilities, operations, and activities of the University or other users of the Easement Area and/or the Property.

13. University Limitations.

a. University not authorized to indemnify. AES acknowledges and agrees that the University, as an agency of the State of Hawai'i, is not authorized to indemnify AES, the



AES Agents, the AES Contractors, and the AES Assignees in any way, including against any claims for bodily injury, wrongful death and/or property damage by any person or entity. Notwithstanding anything to the contrary contained in this Agreement, the University shall have no contractual duty to indemnify, defend, or hold harmless AES, the AES Agents, the AES Contractors, the AES Assignees, and/or any other person or entity under any circumstances arising out of or related to this Agreement or any entry onto or use and occupancy of the Easement Area and/or the Property. In each instance in this Agreement where the University is or may be obligated to indemnify, defend, or hold harmless AES, the AES Agents, the AES Contractors, the AES Assignees, and/or any other person or entity, such obligations shall be deemed null and void and such contrary indemnity, defense, and hold harmless obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

b. University not responsible for others. Notwithstanding anything to the contrary contained in this Agreement, AES acknowledges that the University can only be held responsible for the actions of the University's officers and employees, and AES shall not hold the University responsible for any actions or omissions of any other person or entity, including any person or entity who (except for the University's officers and employees) could be deemed to be UH Agents. In each instance in this Agreement where the University is obligated to assume responsibility for the actions or omissions of any person or entity other than the University's officers or employees, such obligations shall be deemed null and void and such contrary University responsibility obligations or provisions shall be deemed to be superseded by this provision, and of no force or effect. AES acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the University.

c. Subject to funding. To the extent that the University is: (1) obligated to perform under this Agreement, (2) obligated to make any payments under this Agreement, or (3) deemed liable under this Agreement, the University's liability and obligation and ability to perform under this Agreement, particularly to pay any amount of monies, is limited to that which is permitted by law and is subject to the precondition that funds are properly appropriated, allotted, and otherwise properly made available for the purpose of such performance or to cover such liability.

(1) Minimum Conditions. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds.

(2) University to Seek Funding. The University shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy any such conditions in a timely manner.

(3) Qualifies All University's Obligations. Notwithstanding anything

to the contrary contained in this Agreement, this provision shall apply to and qualify each and every University obligation to perform under this Agreement.

d. Subject to University Limitations. Subparagraphs 13a (*University not Authorized to Indemnify*), 13b (*University not Responsible for Others*) and 13c (*Subject to Funding*) are referred to collectively herein as the “**University Limitations**.” Notwithstanding and superseding anything to the contrary contained in this Agreement (and any exhibits or appendices attached hereto), AES acknowledges and agrees that any and all obligations, duties, responsibilities, and liabilities of the University under this Agreement and the University’s liability for and/or ability to perform such obligations, duties, and responsibilities hereunder (including any that are intended to survive and/or survive the expiration or termination of this Agreement) are expressly subject to and limited by the University Limitations.

14. Reserved.

15. Interpretation of Agreement.

a. Headings. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

b. Not against drafter. This Agreement has been negotiated at arm’s length and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement. The language hereof, and in all parts of this Agreement shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against any Party hereto.

c. Fair meaning. Provisions in this Agreement relating to number of days shall be calendar days. Use of the word “including” shall mean “including, without limitation.” References to statutes, sections, ordinances, or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation.

d. Gender and number. Whenever the singular number is used in this Agreement and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word “person” shall include corporation, partnership, firm, limited liability company, trust, and association. The use of any pronoun herein shall include any and all pronouns.

16. [Reserved].

17. Binding Effect. The term "University" wherever used herein shall include the UNIVERSITY OF HAWAII and its successors and assigns, the term "AES" wherever used herein shall include AES WEST OAHU SOLAR, LLC, a Delaware limited liability company, and its successors and permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the Parties hereto and their legal representatives, successors, and assigns.

18. No Partnership. It is expressly understood and agreed by and between the University and AES that the University shall in no way be nor for any purpose become or be construed to become a partner of AES in the conduct of AES' business, or otherwise, or a joint venturer or a member of a joint enterprise with AES or to have a principal/agent or employer/employee relationship, and the University does not assume responsibility for AES' conduct or performance under this Agreement. The University and AES acknowledge and agree that there are no third-party beneficiaries to this Agreement.

19. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. Amendment. This Agreement shall not be amended except in writing signed by the Parties.

21. Governing Law. This Agreement shall be governed by, enforced, construed, and interpreted in accordance with the laws of the State of Hawaii and the Circuit Court of the First Circuit in Honolulu, Hawaii will have the exclusive jurisdiction over any actions initiated to interpret or enforce the terms of this Agreement.

22. Waiver. Any waiver of the terms, conditions, or provisions of this Agreement or a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a Party to enforce the terms, conditions, or provisions of this Agreement or such Party's rights or remedies at any time, will not be construed as a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take any subsequent action. No exercise or enforcement by any Party of that Party's rights or remedies under this Agreement will preclude the enforcement by such Party of any of its other rights or remedies that are available under this Agreement or by law.

23. Entire Agreement. Except for the execution of the documents expressly contemplated under this Agreement, this Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all other prior or concurrent oral or written letters, agreements, and understandings.

24. No Third Party Rights. The Parties to this Agreement agree that this Agreement shall not be deemed to run to the benefit of any third party, including, without limitation, any assignee or transferee (such as the University's Assignee), unless and until, in accordance with this Agreement, the University makes an assignment or transfer of interest in writing to such third party, including any said assignee or transferee (such as the University's Assignee).

25. Disputes. If any disputes arise between the University and AES concerning any aspect of this Agreement, AES and the University will use their best efforts to address and

resolve such disputes and the Parties agree to negotiate face-to-face within thirty (30) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of this Agreement. The meeting will be held on the island of Oahu, Hawaii at the place of business of the Party receiving the letter unless the Parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the Parties shall engage a mediator and attempt to mediate the dispute. The Parties agree to try in good faith to settle the dispute by mediation under the mediation rules of a mutually acceptable alternative dispute resolution firm, before resorting to litigation. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the Parties may agree to, or if a Party does not cooperate with mediation, any Party may commence a legal action in the state circuit court in the City and County of Honolulu. The Parties will equally share the cost of the mediator services and the mediation sessions but each Party will bear the cost and expense of making its presentation to the mediator.

26. AES Representations. In addition to any other representations and warranties contained in this Agreement, AES represents and warrants to the University as of the Effective Date of this Agreement that:

a. Duly organized. AES is duly organized, validly existing, and in good standing in the jurisdiction of its organization, and is validly registered to conduct business in the State of Hawai‘i;

b. Full right and authority. AES has the full right and authority and has taken all requisite corporate or other action to enter into, execute, deliver, and perform its obligations under this Agreement;

c. Has obtained all requisite approvals. AES has obtained all Government Approvals and all approvals and consents from their respective entities, members, managers, and their directors, shareholders, partners, owners, and/or lenders that are necessary to fully authorize and empower AES to validly enter into this Agreement;

d. Agreement is a binding obligation. This Agreement constitutes a legal, valid, and binding obligation enforceable against AES in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

e. No litigation or investigation. There is no litigation, action, proceeding or investigation pending or, to the best of AES' knowledge, threatened before any court or other Governmental Authority by, against, affecting, or involving AES or any of AES' business or assets that would affect AES's ability to carry out its obligations under this Agreement; and

f. No other breach. Neither the execution and delivery of this Agreement by AES nor AES' compliance with any of the terms and conditions of this Agreement results in a condition or event that would constitute (or that upon notice or lapse of time or both would constitute) an event of default, including an AES Default, under any material contractual obligation of AES in any other agreement to which AES is a party.

g. Same entity signing Agreement and RDG PPA. The legal entity signing this Agreement shall be the same entity that is bound to and obligated to perform obligations under the RDG PPA.

27. Covenant Against Discrimination. The use and enjoyment of the Easement Area and the Property shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or HIV (human immunodeficiency virus) infection.

28. Force Majeure.

a. University's obligations. The University shall not be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) the Force Majeure Events (as defined and described below), whether affecting AES, the AES Agents, the AES Contractors, and/or the AES Assignees. The University shall not be obligated to supply any service or services, if and to the extent, and during any period, that the supplying of any such service or services, or the use of any component necessary therefor, shall be prohibited by any Applicable Laws or order or direction of a Government Authority, provided, however, that even if such prohibition does not expressly apply to the University, the University may choose to comply with such prohibition, in whole or in part, and in so choosing, the University shall not be obligated to supply any such service or services.

b. AES's obligations. AES shall not be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) the Force Majeure Events (as defined and described below). AES shall be obligated to immediately notify the University in writing regarding AES' inability to perform any of AES' obligations under this Agreement due to any Force Majeure Events but in no event later than two (2) weeks following the occurrence of one of the Force Majeure Events. AES's failure to so timely notify the University will preclude AES from claiming the benefits of the Force Majeure Events under this Agreement. Notwithstanding the Force Majeure Events, AES shall be obligated to recommence performance of any of its obligations delayed by the Force Majeure Events as soon as reasonably practicable. AES' failure to timely recommence such performance may be deemed by the University to be a breach or default by AES under this Agreement.

c. Obligations remain payable. No abatement, diminution, or reduction of the fees, charges, or other obligations payable by AES shall be claimed by or allowed to AES for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any of the following force majeure events ("***Force Majeure Events***"):

(1) Laws. Present or future laws, statutes, rules, requirements, orders, directives, rulings, ordinances, or regulations of any Government Authority that are enacted, adopted, or implemented subsequent to the date of this Agreement or other acts of superior Government Authority.

(2) War and terrorism. War, war-like conditions, hostilities, acts of terrorism, acts of the public enemy, sabotage, rebellion, riots, looting, military mobilization, and blockades.

(3) Transportation delays. Embargoes or other transportation delays or any act or thing resulting therefrom.

(4) Rationing. Priorities, rationing, or curtailments.

(5) Labor related issues. Strikes, boycotts, picketing, slowdowns, work stoppages, or other labor disputes or troubles.

(6) Shortages. Shortage of labor or materials, or inability to secure fuel, materials, supplies, or power due to shortages thereof.

(7) Acts of God. Acts of God, severe weather conditions, rainstorms, floods, earth movements, tsunamis, volcanic activity, high winds, hurricanes, typhoons, tornadoes, or fires.

(8) Health related emergencies. Epidemics, quarantines, or other national or regional health related emergencies.

(9) Other causes. Any other causes or casualties beyond the control of the University and/or the City, as applicable.

d. Non-economic relief. Upon the occurrence of any of the Force Majeure Events, as determined by the University, in the University's sole discretion, the University may, but is not obligated to, grant non-economic relief to AES, the amount, extent, and duration of which shall be determined by the University, in the University's sole discretion.

Capitalized terms used in this Exhibit 6 and not otherwise defined herein shall have the meanings assigned to such terms in the Grant of System Easement Agreement to which this Exhibit 6 is attached.

[End of Exhibit 6].

**Exhibit 7**

**[Insert form of Guaranty]**

**Exhibit 8**

**[Insert form of Memorandum of Grant of Easement]**



**AMENDMENT NO. 1 TO  
OPTION AGREEMENT TO GRANT SYSTEM EASEMENT  
BETWEEN  
UNIVERSITY OF HAWAI'I  
AND  
AES WEST OAHU SOLAR LLC**

This Amendment No. 1 (the "**1<sup>st</sup> Amendment**"), is made and entered on May 12, 2020 ("**Execution Date**"), but shall be effective as of May 12, 2020 (the "**Effective Date**"), by and between the **UNIVERSITY OF HAWAI'I**, the state university and a body corporate of the State of Hawai'i, whose business address is Bachman Hall, 2444 Dole Street, Honolulu, HI 96822 ("**UH**"), and **AES West Oahu Solar, LLC**, a Delaware limited liability company, whose business address is c/o AES Distributed Energy, Inc., 282 Century Place, Suite 2000, Louisville, Colorado 80027 ("**AES**") (UH and AES, each a "**Party**", and collectively, the "**Parties**").

**WITNESSETH THAT:**

WHEREAS, UH and AES entered into that certain Option Agreement to Grant System Easement dated August 30, 2019 (the "**Agreement**"); and

WHEREAS, all terms with initial capital letters that are defined terms in the Agreement shall have the same definitions and meanings when used in this 1<sup>st</sup> Amendment; and

WHEREAS, under the Agreement, UH granted AES the right to conduct due diligence and investigative studies with respect to a portion of the Property owned by UH comprising the Premises; and

WHEREAS, under the Agreement, AES must satisfy certain preconditions before UH is obligated to grant AES the System Easement, the form of which is attached as an exhibit (Exhibit D) to the Agreement; and

WHEREAS, the Premises is described in the Agreement as being eighty (80) acres and the Easement Area is described in the System Easement (Exhibit D) as consisting of eighty (80) acres; and

WHEREAS, as part of its due diligence efforts to construct the System within the Premises and the Easement Area, AES has prepared an environmental assessment ("**EA**"), which notes that the project area being covered under the EA is about 97 acres; and

WHEREAS, AES plans to decide at some point prior to exercising AES' option to have UH grant the System Easement to AES regarding the size of the Easement Area, with the parties agreeing that said Easement Area will be up to ninety-seven (97) acres; and

WHEREAS, AES agrees that until AES makes its final election as to the size of the Easement Area, AES shall pay, as and when applicable, the rental amounts due for use of the Premises starting in the third year of the Term under the Agreement shall be proportionately adjusted depending on the number of acres constituting the Premises at the beginning of such third year; and

WHEREAS, the parties agree to amend the Agreement to implement these understandings, upon the terms and conditions described herein,

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the parties hereto mutually agree as follows:

1. Increase area of Premises/Exclusive Area and Easement Area. All references to and the definitions of the "Premises" and the "Exclusive Area," respectively, under the Agreement shall be increased from eighty (80) acres to up to ninety-seven (97) acres. All references to and the definition of "Exclusive Easement Area" under the System Easement attached as Exhibit D to the Agreement shall be increased from eighty (80) acres to up to ninety-seven (97) acres. All references to the "Easement Area" under the System Easement shall include the "Exclusive Easement Area" which is being increased from eighty (80) acres to up to ninety-seven (97) acres.
  - a. 3<sup>rd</sup> recital in the Agreement. The reference to "eighty (80) acres" in the third recital of the Agreement is hereby amended to read "up to ninety-seven (97) acres."
  - b. Section II.1.a (Exclusive Easement). The phrase "approximately sixty (60) to eighty (80) acres" in section II.1.a (Exclusive Easement) of the Agreement is replaced with "up to ninety-seven (97) acres."
  - c. Section III. 2.a (Easement Area). The phrase "approximately sixty (60) to eighty (80) acres" in section III. 2.a (Easement Area) of the Agreement is replaced with "up to ninety-seven (97) acres."
  - d. Exhibit A (Use Area). The map attached as Exhibit A (Use Area) will be amended to reflect that the Use Area will consist of up to 97 acres.
  - e. 3<sup>rd</sup> recital in the System Easement. The phrase "approximately eighty (80) acres" in the third recital in the System Easement, which is Exhibit D (System Easement) attached to the Agreement, is hereby amended to read "up to ninety-seven (97) acres."
2. Rent. The rental amounts payable by AES to UH during the Term of the Agreement and the Term of the System Easement are clarified as follows:

- a. Use Time under the Agreement. The last sentence in paragraph I.4 (Use Time) is hereby deleted and amended to read as follows:

“If the Term is extended for one (1) additional year for a total Term of three (3) years, AES shall pay to UH [REDACTED] per month for the use of the Premises (consisting of ninety-seven (97) acres) during the extended period. As the System design is refined based on the results of technical studies, community input, and the EA process, it is possible that the area of the Premises and the Exclusive Area under this Agreement, and the area of the Exclusive Easement under the System Easement (attached as Exhibit D to this Agreement) could be decreased and adjusted to less than ninety-seven (97) acres, in which case the amount AES shall pay to UH will be adjusted proportionally.”

- b. Rent under the System Easement. The third and fourth sentences in paragraph 9 (Rent) are hereby deleted and amended to read as follows:

“From the Effective Date until the Commercial Operation Date, the Rent payable by AES to the University shall be [REDACTED] for the Exclusive Area (the “**Construction Period Rent**”). If the Exclusive Area as of the Effective Date hereof is ninety-seven (97) acres, the total Construction Period Rent shall be [REDACTED] per year. For the first year from and after the Commercial Operation Date, the Rent payable by AES to the University shall be [REDACTED] for the Exclusive Area delivered to the AES on the Effective Date hereof (the “**Easement Period Rent**”). If the Exclusive Area delivered to AES as of the Effective Date hereof consists of ninety-seven (97) acres, the total Easement Period Rent shall be [REDACTED] per year.”

4. No other changes. Except as amended by the 1<sup>st</sup> Amendment herein, the remaining terms of this Agreement shall remain unchanged, unaffected and in full force and effect.

[Remainder of page intentionally left blank]

[Signature page to follow]

IN WITNESS WHEREOF, UH and AES have caused this 1<sup>st</sup> Amendment to be executed on the Execution Date, but effective as of the Effective Date.

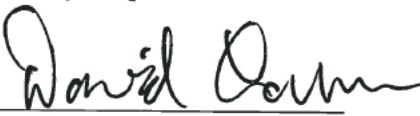
AES:

AES West Oahu Solar, LLC,  
a Delaware limited liability company

By: AES DE DEVCO NC, LLC  
Its Member

By: \_\_\_\_\_  
Woody Rubin  
Its President

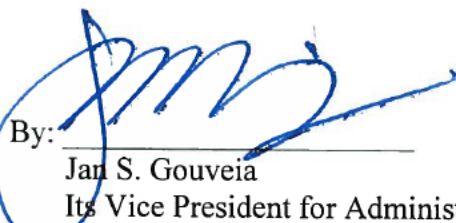
UNIVERSITY OF HAWAI'I, the state university  
and a body corporate of the State of Hawai'i

By:   
David Lassner  
Its President

Approved as to Form:

Office of University  
General Counsel

  
Bruce Y. Matsui  
Associate General Counsel

By:   
Jan S. Gouveia  
Its Vice President for Administration

IN WITNESS WHEREOF, UH and AES have caused this 1<sup>st</sup> Amendment to be executed on the Execution Date, but effective as of the Effective Date.

AES:

AES West Oahu Solar, LLC,  
a Delaware limited liability company

By: AES DE DEVCO NC, LLC  
Its Member

By: Woody Rubin  
Woody Rubin  
Its President

UNIVERSITY OF HAWAI'I, the state university  
and a body corporate of the State of Hawai'i

By: \_\_\_\_\_  
David Lassner  
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Approved as to Form:

Office of University  
General Counsel

By: \_\_\_\_\_  
Jan S. Gouveia  
Its Vice President for Administration

\_\_\_\_\_  
Bruce Y. Matsui  
Associate General Counsel



West Oahu Solar  
Plus Storage Project

AES Distributed Energy

Project Area

HONOLULU COUNTY, HI

# EXHIBIT A

- Project Area
- Property Boundary
- Existing Access Road
- Interstate Highway
- Roadway

Reference Map



Attachment C  
Final Environmental Assessment and  
Finding of No Significant Impact

Final Environmental Assessment and Finding of No Significant are available online at:  
[http://oeqc2.doh.hawaii.gov/Doc\\_Library/2020-07-08-OA-FEA-West-Oahu-Solar-Plus-Storage.pdf](http://oeqc2.doh.hawaii.gov/Doc_Library/2020-07-08-OA-FEA-West-Oahu-Solar-Plus-Storage.pdf))



Attachment D  
Representative Photographs of Project  
Area