

GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU

2019 DEC 12 PM 2: 30

IN RE:

REQUEST FOR APPROVAL OF  
AMENDED AND RESTATED POWER  
PURCHASE AND OPERATING  
AGREEMENT WITH ECOELECTRICA  
AND NATURAL GAS SALE AND  
PURCHASE AGREEMENT WITH  
NATURGY

CASE NO.:  
NEPR-AP-2019-0001

SUBJECT:  
PREPA's Request for Confidential Treatment  
of the Petition and Its Attachments

MOTION TO SUBMIT REDACTED VERSIONS OF  
THE PETITION AND ITS ATTACHMENTS

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority through the undersigned legal representation and respectfully sets forth and pray:

1. On November 27, 2019, the Energy Bureau of the Public Service Regulatory Board (the "Energy Bureau") entered a *Resolution and Order* in which the Puerto Rico Electric Power Authority (PREPA) was ordered to file redacted versions of PREPA's *Request for Approval of Amended and Restated Power Purchase Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy; Request for Confidential Treatment of this Letter and Accompanying Attachments* (the "Petition"). See *Resolution and Order*, § IV.

2. In Section V. of the Petition, PREPA argues that the Petition and its attachments contain information that qualifies as proprietary and as trade secrets and that, accordingly, said information is protected under Puerto Rico law, specifically Act 80-2011 and Act 6.15 of Act 57-2014. See Petition, § V. Redacted versions of the documents that PREPA claims contain confidential information are attached to this motion.

**WHEREFORE**, the Puerto Rico Electric Power Authority requests the Energy Bureau to note PREPA's compliance with Section IV of the *Resolution and Order* dated November 27, 2019

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 12<sup>th</sup> day of December 2019.



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### **CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date I have filed the above motion with the Clerk of the Energy Bureau.

In San Juan, Puerto Rico, this 12<sup>th</sup> day of December, 2019.



Katuska Bolaños



Government of Puerto Rico  
Puerto Rico Electric Power Authority

PREPA - SECRETARIA  
NEGOCIADO DE ENERGIA  
DE PUERTO RICO

2019 NOV -5 AM 10: 35

November 4, 2019

**CONFIDENTIAL**

Mr. Edison Avilés-Deliz, Chairman  
Puerto Rico Energy Bureau  
World Plaza Building, 268 Muñoz Rivera Ave.  
Plaza Level, Suite 202  
San Juan, PR 00918

Dear Mr. Chairman:

**Re: Request for Approval of Amended and Restated Power Purchase and Operating Agreement with EcoEléctrica and Natural Gas Sale and Purchase Agreement with Naturgy; Request for Confidential Treatment of this Letter and Accompanying Attachments**

The Puerto Rico Electric Power Authority ("PREPA") respectfully submits to the Puerto Rico Energy Bureau ("PREB") the attached Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and the Puerto Rico Electric Power Authority (the "ECO PPOA") (Attachment 1) and the Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovevisionamientos S.A. and the Puerto Rico Electric Power Authority (the "Naturgy GSPA" (Attachment 2) and, together with the ECO PPOA, the "Agreements"). PREPA asks PREB to review and approve the Agreements pursuant to Section 7.1 of Regulation 8815.<sup>1</sup> Moreover, for reasons developed in Part V below, PREPA asks that PREB afford this letter, the ECO PPOA, the Naturgy GSPA and the Siemens analysis included as Attachment 4 as Confidential in that they contain information protected under Puerto Rico law.

Representatives of PREPA, EcoEléctrica, L.P. ("ECO") and Naturgy Aprovevisionamientos S.A. ("Naturgy") concluded their negotiation and documentation of the Agreements earlier this month. The PREPA Governing Board has authorized the submission of these Agreements to the PREB for its approval by Resolution 4745, dated October 29, 2019 (Attachment 3).

Chief Executive Officer  
G.P.O. Box 364267  
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<sup>1</sup> Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet (Oct. 11, 2016) ("Regulation 8815").





Mr. Edison Avilés-Deliz

November 4, 2019

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The ECO PPOA provides for the supply of capacity, energy and ancillary services from EcoEléctrica's existing 543 MW combined-cycle, natural gas-fired cogeneration facility located in Peñuelas (the "ECO Facility"). The Naturgy GSPA provides for the supply of natural gas to Units 5 and 6 of PREPA's 820 MW Costa Sur generating facility located adjacent to the ECO Facility (the "Costa Sur Units"), as well as to the ECO Facility. The Agreements incorporate more favorable pricing and other terms for PREPA and ratepayers in Puerto Rico than the agreements they will replace, and they will secure for Puerto Rico important sources of reliable electric capacity and energy that will support and advance Puerto Rico's energy policy goals as articulated in Act No. 17 of April 11, 2019, the *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

The ECO PPOA and the Naturgy GSPA, once approved by the PREB, the Public-Private Partnerships Authority ("P3") and the Financial Oversight and Management Board for Puerto Rico ("FOMB") and executed by the parties, would replace the existing *Power Purchase and Operating Agreement* between PREPA and ECO dated as of March 10, 1995, as amended, and the *Natural Gas Sale and Purchase Agreement* between PREPA and Naturgy dated as of March 28, 2012, as amended.

This letter discusses the commercial rationale supporting the ECO PPOA and the Naturgy GSPA, each Agreement's key features and the main risks that each Agreement addresses and mitigates. This letter also confirms that the negotiation of the Agreements was conducted in accordance with the requirements of applicable Puerto Rico law and regulations.

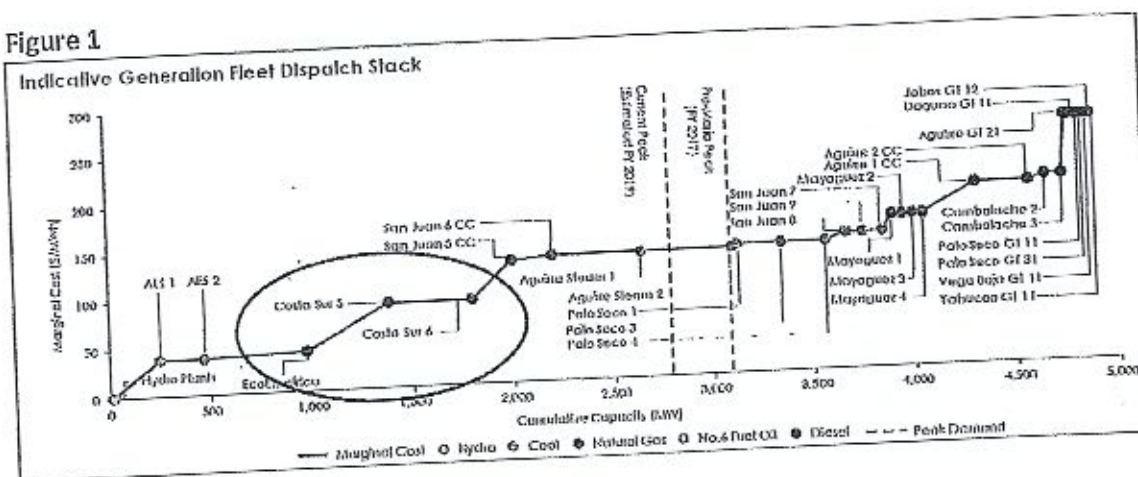
In compliance with PREB's directions, PREPA has evaluated how the pricing and other commercial terms reflected in the ECO PPOA and the Naturgy GSPA might affect the analyses incorporated in its Integrated Resource Plan ("IRP") and the recommendations reflected in PREPA's Action Plan. As described in Part IV below, PREPA's IRP consultant, Siemens, has incorporated in new Aurora model runs the revised capacity payment and certain other commercial provisions established in the ECO PPOA, as well as the revised natural gas pricing and resulting price of electric energy produced in the ECO Facility that will apply with execution of the Naturgy GSPA. These new model runs show that the ECO PPOA (as amended and restated from the PPOA assumed in earlier IRP model runs, and assuming the pricing of natural gas as provided in the Naturgy GSPA) to be substantially more economical under the IRP's Scenario 4 than the alternative of constructing a new combined cycle combustion turbine generating facility sited at Costa Sur. See Attachment 4. PREPA and Siemens personnel are willing to provide the relevant files and worksheets to PREB, and are available and eager to discuss with PREB members and consultants the assumptions employed in and the results of these new model runs. We invite you to inform us if you believe such discussions would be useful to the Bureau.

We conclude with a request that the PREB approve the ECO PPOA and the Naturgy GSPA as being in the best interest of the electricity consumers of Puerto Rico.

### I. Commercial Rationale for Entering Into the ECO PPOA and the Naturgy GSPA

PREPA is responsible for supplying secure and reliable electric power to ratepayers in Puerto Rico at the lowest cost possible in both the short and long term, consistent with the guidelines established by PREPA's Fiscal Plan (which, among other things, requires PREPA to achieve \$80 million in aggregate savings through renegotiation of the existing EcoEléctrica PPOA and the *Power Purchase and Operating Agreement between AES Puerto Rico, LP and PREPA* (the "AES PPOA")), and consistent with the IRP which is currently before the PREB in draft form. The ECO Facility and the Costa Sur Units are critical to PREPA's provision of supplies of electric power on a reliable basis; together, they provide providing almost 40% of the electricity PREPA distributes on the Island at some of the lowest cost per kWh of any generation source available, as shown in Figure 1 below.

Figure 1



Through the ECO Facility ECO, a company jointly owned by Naturgy, ENGIE S.A. and Mitsui & Co. (i) offers one of PREPA's most reliable sources of generation, and (ii) owns the only currently active liquified natural gas ("LNG") import terminal and LNG storage facility in Puerto Rico. The Costa Sur Units rely on this terminal for the receipt, storage and conversion of LNG and the supply of natural gas. Naturgy, the 50% shareholder in ECO, controls (through a Tolling Services Agreement with ECO) the entire existing capacity of the Peñuelas LNG receiving terminal to receive, store and vaporize LNG and therefore controls the delivery of the resulting natural gas



for generation. EcoEléctrica currently provides baseload energy to Puerto Rico through the ECO Facility at the lowest cost per kWh of any generation source available to PREPA other than the AES Puerto Rico, LP ("AES") coal-fired generating facility. Together with the Costa Sur Units, the ECO Facility currently produces over 40% of Puerto Rico's electric energy. Naturgy, as a main shareholder in EcoEléctrica, controls (through a Tolling Services Agreement) the entire existing capacity of that terminal to receive, store and vaporize LNG for the delivery of natural gas used to fuel the ECO Facility and the Costa Sur Units. Thus, PREPA views EcoEléctrica's facilities as critically important for the supply of both generation and fuel for generation in Puerto Rico.

Against this background, PREPA began direct negotiations with ECO and Naturgy – the sole source of natural gas delivered to the ECO Facility and Costa Sur Units – in late 2018. PREPA's goal was to achieve, as nearly as possible, the savings objectives of the Fiscal Plan and to position itself to secure access to critically important fossil generating resources in a manner consistent with the IRP now before the PREB. PREPA engaged the assistance of Sargent & Lundy ("S&L"), King & Spalding LLP and Díaz & Vázquez ("D&V") to support PREPA's negotiation efforts, and socialized the planned approach to contracting with ECO and Naturgy among FOMB, PREB and P3 to facilitate the approval process.<sup>2</sup>

The terms PREPA has negotiated in the ECO PPOA and the Naturgy GSPA will enhance the flexibility, reliability, and resilience of Puerto Rico's electric grid. As important, the Agreements will yield immediate savings for Puerto Rico electric ratepayers of \$122.4 million per year, according to estimates prepared by S&L. These savings exceed those the FOMB has targeted for the renegotiation of both of PREPA's major PPOAs, even before PREPA has commenced efforts to renegotiate the AES PPOA.

The restructured arrangements with ECO and Naturgy contemplate that PREPA will secure the natural gas required to supply the ECO Facility and Costa Sur Units under the Naturgy GSPA. That agreement has been substantially amended to provide PREPA improved pricing terms and greater nomination flexibility than those available under the currently effective agreement through which it obtains gas for the Costa Sur Units. The ECO PPOA likewise has been

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<sup>2</sup> P3 released PREPA to continue with the negotiation of the ECO PPOA and the Naturgy GSPA without commencing a competitive procurement process, on the condition that PREPA include appropriate contract assignment/transfer rights to accommodate the transformation of Puerto Rico's electricity sector and the possible replacement of PREPA as contract counterparty (which PREPA did). Attorneys from D&V have confirmed that if Naturgy holds the exclusive rights to the regasification facility, then the negotiation of the ECO PPOA and the Naturgy GSPA could fit within an exception to the competitive bidding process under the "one supply source" exception found in PREPA's Organic Act.

substantially amended, so that it now takes the form of a "tolling agreement" through which PREPA will supply the natural gas to be converted to electric energy in the ECO Facility.

PREPA has negotiated in the ECO PPOA a reduction in the Capacity Payment relative to the current EcoEléctrica PPOA's Capacity Payment that will save approximately \$[REDACTED] million annually. This amount is partially offset by an increase in the fuel cost which PREPA will bear under the Naturgy GSPA; nevertheless, the net PPOA price reduction, according to S&L, is approximately \$[REDACTED] million annually. Viewed collectively, the Agreements will immediately lower the cost of power from the ECO Facility, already one of Puerto Rico's lowest cost generators, by approximately 1.5 cents per kWh.

Additional savings are possible. Under the existing EcoEléctrica PPOA, if PREPA dispatches EcoEléctrica at capacity factors higher than 76%, PREPA must pay a higher fuel cost (a fuel "spot price") for generation above the 76% threshold. For this reason, at times when the ECO Facility's capacity factor would increase above 76%, PREPA sometimes chooses to dispatch other facilities instead of EcoEléctrica on the basis of economics. The ECO PPOA removes this fuel pricing step feature, which will allow PREPA to dispatch the ECO Facility above a 76% capacity factor without having to pay the increased fuel "spot price." S&L estimates this will save PREPA approximately \$[REDACTED] million annually in fuel costs derived from reducing dispatch of other, more expensive, facilities in favor of dispatching the ECO Facility at a higher capacity factor.

One other feature of the ECO PPOA warrants emphasis. ECO has agreed in the ECO PPOA to increase the capacity sold to PREPA from 507 MW to [REDACTED] MW. Naturgy has also agreed to update the structure of the existing GSPA to allow for this increase in generation with significantly increased flexibility to PREPA in take-or-pay obligations. Overall, this flexibility will give PREPA the ability to reduce the dispatch of its more expensive, inefficient generators that burn both diesel and bunker fuel oil, resulting both in fuel cost savings and reduced air emissions.

## II. Overview of the Major Provisions of the ECO PPOA and Naturgy GSPA

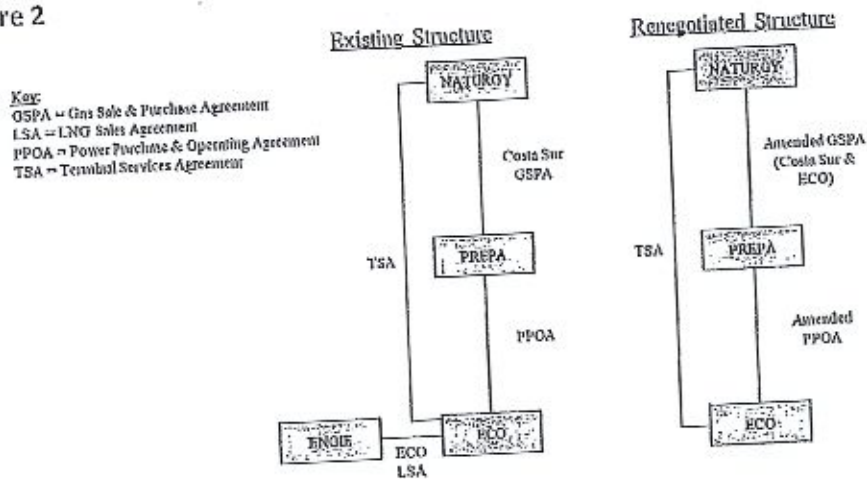
With the execution of the ECO PPOA and the Naturgy GSPA, PREPA will:

- restructure the power purchase arrangement under which ECO currently supplies electric capacity and energy to PREPA and the fuel supply arrangements under which Naturgy currently supplies natural gas to the Costa Sur Units, such that PREPA contracts with Naturgy for, and nominates, natural gas for delivery to the Costa Sur Units and the ECO Facility, as shown in Figure 2 below;



- convert the ECO PPOA into a tolling arrangement for the conversion of natural gas into electricity, which facilitates an eventual move toward an aggregated, island-wide LNG / gas procurement strategy that should help to achieve the most competitive pricing terms for LNG delivered to Puerto Rico; and
- enable the ECO Facility to transition from base load production, operating during all hours of the day, to a dual mode of operation through which, following the scale-up of Intermittent renewables in Puerto Rico's generation mix as contemplated by Act 17-2019 and the IRP, the ECO Facility will provide (i) during day-time hours, cycling and ancillary services as required to stabilize / balance the grid, and (ii) during night time hours, base load production.

Figure 2



These structural changes, and other negotiated terms, will deliver a number of benefits to PREPA and Puerto Rico.

**A. Key Features of the ECO PPOA**

To implement the structural changes and achieve the savings described above, PREPA negotiated several important changes to the ECO PPOA relative to the existing EcoEléctrica agreement. The following table briefly summarizes the most significant of these changes:

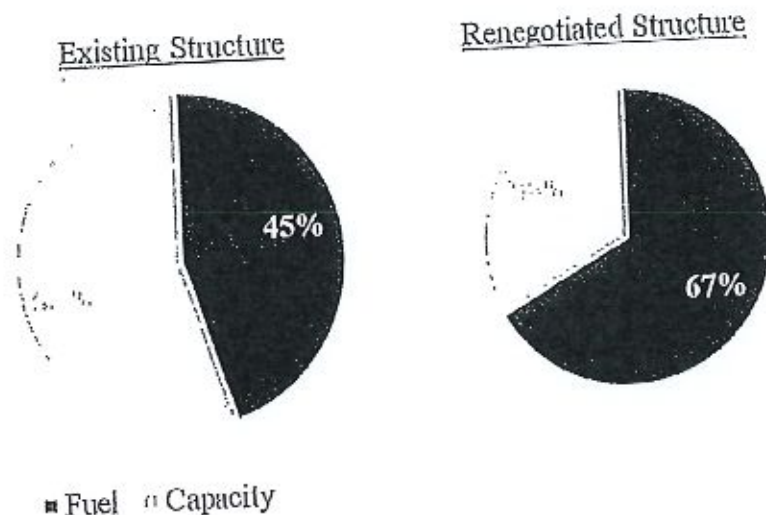
	Existing EcoEléctrica PPOA	Renegotiated ECO PPOA
Expiration of Supply Term	March 2022	September 2032
Dependable Capacity	507 MW	■ MW
Responsibility for Fuel Procurement	ECO	PREPA
Commercial Model	Capacity Payment + Energy Payment (inclusive of fuel pass-through)	Capacity Payment
Capacity Payment	Approximately \$230M per year at 507 MW (corresponding to \$■ M per year at ■ MW)	Approximately \$■ M per year at ■ MW (subject to an availability adjustment)
Energy Payment	Average of ■ center/kWh per year; increase to ■ cents/kWh >76% capacity factor	N/A (equivalent payment under GSPA estimated at ■ cents/kWh)
Availability Adjustment	Penalty and bonus for low and high availability	Equivalent structure, with a higher bonus potential. Bonus is ■ or above. Bonus increases linearly between ■
Dispatch Limits	Between ■ 76% of Dependable Capacity	Between ■ of Dependable Capacity
Maximum Start-Ups	Limit of ■ per unit per year	Limit of ■ per unit per year
Start-Up Costs	PREPA pays ECO's start-up costs until the units synchronize to the grid	Terms remain unchanged, other than ECO reimburses PREPA for fuel costs associated with start-up

\*Equivalent Availability Factor

PREPA achieved several key objectives with these and other changes, including:

1. **Cycling / Ancillary Services Mode** -- The ECO Facility has historically operated as a base load generator. The IRP and Puerto Rico law, however, envision a significant increase in renewable energy generation in the coming years, which would require more flexible operations from the ECO Facility. The renegotiated ECO PPOA allows PREPA to change the mode of operation of the ECO Facility to cycling and supply ancillary services during daylight hours, as more solar generation comes onto the grid. It includes an allowance of [redacted] shut-downs / start-ups of each ECO Facility unit per year, and provides for the supply of reactive supply and voltage control services, regulation and frequency response services, energy imbalance services, spinning reserve and supplemental spinning reserve, in each case as dispatched by PREPA. S&L estimates that, because fuel expenses will likely make up a higher percentage of the total payments to ECO/Naturgy under the combination of the ECO PPOA and the Naturgy GSPA (see Figure 3 below), over time operation in the more flexible mode the ECO PPOA will permit, and the corresponding reduction in the quantity of energy supplied by ECO, could significantly reduce PREPA's fuel expenses.

Figure 3





2. **Added Incentive for High Availability** – To further incentivize ECO to maximize the availability the ECO Facility, PREPA has negotiated an increased availability bonus, with reasonable limitations to avoid excessive compensation. These limitations include [REDACTED] and a fixed planned maintenance schedule thereafter, to prevent ECO from gaming the bonus mechanism. Anticipating that ECO will be able to make available generation capacity in excess of [REDACTED] MW, PREPA also negotiated a peak energy tariff just above [REDACTED] cents/kWh for the volumes of energy that PREPA takes between the Dependable Capacity level of [REDACTED] MW and [REDACTED] MW. The fixed price allows the parties to plan on utilizing such energy, and the additional [REDACTED] MW, if so utilized, can essentially serve as a second small power plant offering a price below even the price currently paid for energy from the AES plant.
3. **Guaranteed Efficiency of Energy Conversion** – The new energy conversion / tolling structure of the ECO PPOA requires efficient conversion into electricity of the natural gas PREPA has contracted with Naturgy to deliver to ECO. With this in mind, PREPA developed a system of heat rate testing and guarantees to help ensure that PREPA does not overpay for ECO's gas consumption and that ECO has an incentive to maintain the ECO Facility's efficiency. Under this arrangement, ECO bears the cost of excess gas if it consumes more gas than it should for a given energy output, and receives full value of any savings if it consumes less gas than it should, in each case based on a guaranteed heat rate.
4. **Reduced Payments During Severe Weather Events** – The original EcoEléctrica PPOA required PREPA to pay the capacity payment so long as ECO remained available. This led to a dispute between ECO and PREPA in the wake of Hurricane María as to whether PREPA was obligated to make the capacity payment for an approximately one-month period in which the ECO Facility could generate, but the PREPA grid system had not yet recovered. PREPA has negotiated a [REDACTED] Force Majeure exception to such capacity payment obligation going forward, to the extent that a disruption limiting the ability to take power from the ECO Facility is caused by hurricanes or other severe atmospheric disturbances ("Grid Force Majeure Events").
5. **Enhanced Linkage between the Naturgy GSPA and ECO PPOA** – Given the relationship of Naturgy with ECO, and the co-dependence of the LNG Terminal and the ECO Facility, PREPA took steps to ensure that neither counterparty's actions could leave PREPA at a disadvantage *vis-à-vis* the other. These steps included, for example, granting PREPA, subject to certain conditions, (i) [REDACTED]



- [REDACTED], (ii) [REDACTED]  
[REDACTED], and (iii) [REDACTED]  
[REDACTED]
6. **Additional Fuel Savings Resulting from the Elimination of an Oil Price Hedge** – The existing GSPA for Costa Sur has a built-in pricing hedge to oil. This provision is not included in the proposed Naturgy GSPA, and therefore the price of natural gas to be consumed in the ECO Facility will not reflect any costs relating to the maintenance of an oil price hedge. Given that natural gas prices are forecasted to remain much lower than oil prices over the next decade, S&L estimates that removing the hedge to oil and reducing the adder fee will result in average savings for PREPA of approximately \$ [REDACTED] million per year for the Costa Sur Units (see Item C.1 below). These savings are not included in the headline savings value provided in Section I above.

**B. Main ECO PPOA Risks**

PREPA remains exposed to certain risks under the ECO PPOA. These include:

1. **Capacity Payment Liability Risk** – The renegotiated PPOA exposes PREPA to a number of risks relating to its liability to make Capacity Payments. As the PREB will appreciate, it is standard in the electric utility industry for purchasers of capacity, energy and ancillary services under power purchase agreements to compensate power producers for their commitment to make capacity available. PREPA's undertaking to make Capacity Payments under the ECO PPOA are entirely consistent with this industry practice; moreover, PREPA has sought in the ECO PPOA to mitigate the risk associated with this unavoidable undertaking. Annex A describes the manner in which these risks are allocated between PREPA and ECO in the ECO PPOA.
2. **Risks to Security of Supply** – ECO's LNG terminal facilities constitute infrastructure that is critical to the supply of electric power to the island of Puerto Rico. As long as these facilities remain in the hands of a private party, PREPA and Puerto Rico ratepayers will face some risk that the party owning or controlling the LNG terminal facilities might take actions that could adversely affect the availability or price of LNG terminal services and hence the reliability and price of electric energy. So, for example, PREPA remains exposed to the risk under the ECO PPOA that ECO might (i) abandon or permanently shut down the ECO Facility or the LNG terminal, or (ii) default under and/or terminate the tolling

agreement with Naturgy. In such an event, PREPA would likely experience prolonged interruption of operations at the ECO Facility and the Costa Sur Units, and consequently the supply of power to ratepayers could either be interrupted or rendered much costlier. While this risk is inherent in the manner in which the LNG terminal and ECO Facility are owned, the PPOA partially mitigates this risk by [REDACTED]  
[REDACTED]  
[REDACTED].

C. Key Features of the Naturgy GSPA

The table appearing below summarizes the major changes in the Naturgy GSPA relative to the arrangement under which natural gas is currently supplied to the Costa Sur Units:

	Existing GSPA	Renegotiated GSPA
Term	December 2020	September 2032
Facilities Supplied	Costa Sur Units 5 and 6	Costa Sur Units 5 and 6 and ECO Facility (and potentially others)
Pricing Hedge	Hedge to No. 6 fuel oil	Market based price pegged to the New York Mercantile Exchange's Henry Hub natural gas futures contracts price ("HH"), with a fixed, but declining, premium.



	Existing GSPA	Renegotiated GSPA
Pricing Formula	<p><u>Price per MMBtu</u></p> <p>The lesser of:</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• [REDACTED], and</li> <li>• [REDACTED]</li> </ul> <p>where the [REDACTED] Price is converted from \$/bbl to \$/MMBtu by dividing by [REDACTED]</p>	<p><u>Price per MMBtu</u></p> <ul style="list-style-type: none"> <li>• Conditions precedent date until Dec. 31, 2020: [REDACTED]</li> <li>• January 1, 2021 until Dec. 31, 2021: [REDACTED]</li> <li>• January 1, 2022 until Dec. 31, 2022: [REDACTED]</li> <li>• January 1, 2023 until Sept. 2023: [REDACTED]</li> </ul> <p>(Potential price reductions up to [REDACTED] per MMBtu for Jones Act appeal or suspension)</p>
Minimum Annual Contract Quantity	[REDACTED] Tbtu (Costa Sur only)	[REDACTED] Tbtu (Costa Sur and ECO), subject to further reductions described below
Maximum Annual Contract Quantity	[REDACTED] Tbtu	[REDACTED] Tbtu (unless a reduction of the minimum annual contract quantity occurs, in which case the maximum will be [REDACTED] of the new minimum annual contract quantity)
Take-or-Pay	<p>[REDACTED] of the monthly minimum quantity, [REDACTED] of the quarterly minimum quantity, and an overall take-or-pay ("TOP") contract quantity.</p> <p>TOP amounts payable at [REDACTED] of the relevant contract price</p>	<p>[REDACTED] of the monthly minimum quantity and [REDACTED] of the quarterly minimum quantity, but no overall contract quantity.</p> <p>TOP amounts payable at [REDACTED] of the relevant contract price</p>

PREPA achieved several key objectives with these and other changes, including:

1. **Savings Resulting from the Elimination of an Oil Price Hedge** -- As noted in item A.6 above, the existing GSPA for Costa Sur has a built-in pricing hedge to oil. This provision is not included in the proposed Naturgy GSPA. S&L estimates that removing the hedge to oil and reducing the adder fee will result in average savings for PREPA of approximately

\_\_\_\_\_ million per year for the Costa Sur Units. These savings, which are based on fuel commodity price forecasts, are expected to be modest over the first five years (averaging approximately \_\_\_\_\_ million per year), but will increase in the future as the spread between natural gas and oil prices widens.

2. **Reduced Take-or-Pay Risk** -- Under the existing transaction structure, as shown in Figure 2 above, PREPA faces take-or-pay risk under the GSPA for the Costa Sur Units if those units experience an outage that reduces PREPA's natural gas offtake below \_\_\_\_\_ Tbtu/year, and also faces take-or-pay risk under the PPOA with EcoEléctrica, which indirectly passes through such risk from the ECO LNG sales agreement with Engie, to the extent PREPA cannot take electricity from the ECO Facility. The renegotiated Naturgy GSPA, also shown in Figure 2, allows for significantly increased flexibility for PREPA in terms of take-or-pay obligations. Under the Naturgy GSPA, PREPA gains the ability to (i) \_\_\_\_\_, (ii) \_\_\_\_\_, (iii) \_\_\_\_\_, and (iv) with \_\_\_\_\_ notice, reduce the overall take-or-pay commitment for natural gas as follows:

- a. If PREPA retires one or both of the Costa Sur Units, PREPA may reduce the minimum annual quantity from \_\_\_\_\_ Tbtu to as low as \_\_\_\_\_ Tbtu;
- b. if, after January 1, 2024, peak electricity demand in Puerto Rico falls below \_\_\_\_\_ megawatts, PREPA may reduce the minimum annual quantity from \_\_\_\_\_ Tbtu to as low as \_\_\_\_\_ Tbtu;
- c. if, after January 1, \_\_\_\_\_, the proportion of renewable generation sources available in Puerto Rico exceeds \_\_\_\_\_ of the total power generated by sources connected to the grid system, PREPA may reduce the minimum annual quantity from \_\_\_\_\_ Tbtu to as low as \_\_\_\_\_ Tbtu;
- d. if ECO defaults under the PPOA, and that agreement is terminated, PREPA may reduce the minimum annual quantity from \_\_\_\_\_ Tbtu to as low as \_\_\_\_\_ Tbtu; and
- e. PREPA also has a general right \_\_\_\_\_



determines are consistent with the maintenance of a reliable electric system operation and its economic dispatch program.

PREPA may, in its discretion, increase the minimum annual contract quantity specified in the Naturgy GSPA up to [REDACTED] Tbtu, but may not thereafter reduce such quantity again. Each of these options functions independently, and PREPA could potentially exercise all three at different times during the agreement term.

3. **Increased Quantity Flexibility** -- PREPA negotiated significant flexibility to increase or decrease the quantity of natural gas it purchases from Naturgy between a maximum of [REDACTED] Tbtu and a minimum of [REDACTED] Tbtu (such maximum and minimum requirements, the "Base Case"). PREPA has further flexibility to adjust the volumes it purchases under the Base Case as it may reduce the minimum required amount for any (A) scheduled maintenance, (B) forced outages, (C) routine maintenance, (D) unit limitations (limitation on other infrastructure that prohibits the Costa Sur Units or the ECO Facility to generate at maximum capacity), (E) environmental testing requirements of PREPA, or (F) for scheduled maintenance by PREPA.
4. **Increased Delivery Location Flexibility** -- Under the Naturgy GSPA, PREPA negotiated flexibility to add new delivery points. This will allow PREPA to purchase natural gas at the agreed contract price, or otherwise satisfy its take-or-pay obligations and make deliveries of natural gas to locations other than the two contemplated delivery points. The GSPA permits PREPA to request that Naturgy include as a new delivery point [REDACTED]. Upon such a request, Naturgy must study the relevant compatibility requirements, consistent with international standards, to determine if it is capable of making a delivery to [REDACTED]. Further, if [REDACTED], Naturgy will [REDACTED].
5. **Improved Liquidated Damages Regime for Shortfalls** -- In an effort to protect PREPA against Naturgy's failure to deliver required volumes under the GSPA, the GSPA establishes certain pre-determined damages (unless such delivery was excused for force majeure or reasons attributable to PREPA). The GSPA [REDACTED].

[REDACTED]<sup>3</sup> For Naturgy's failure to deliver natural gas at Costa Sur, Naturgy would pay PREPA a liquidated damages amount of [REDACTED] of the relevant contract price multiplied by relevant shortfall quantity. If, prior to the date of any assignment under the Naturgy GSPA to a Non-Commonwealth Entity, Naturgy fails to deliver the required amount of natural gas at the ECO delivery point, Naturgy must reimburse PREPA for (i) [REDACTED] and (ii) [REDACTED]. If, after the date of any assignment under the GSPA to a Non-Commonwealth Entity, Naturgy fails to deliver the required amount of natural gas at the ECO delivery point, Naturgy would be required to pay PREPA a liquidated damages amount of [REDACTED]% of the relevant contract price multiplied by the relevant shortfall quantity.

6. **Protections Against Parasitic Use of Natural Gas** – The original GSPA did not acknowledge that ECO would use natural gas owned by PREPA for the operation of the LNG Terminal, because delivery under that agreement only went to Costa Sur. The renegotiated Naturgy GSPA establishes a mechanism that compensates PREPA for ECO's / Naturgy's use of PREPA's natural gas.
7. **Force Majeure Relief for Grid System Outages** – While the original GSPA makes Force Majeure relief available to both Naturgy and PREPA, the renegotiated Naturgy GSPA also grants PREPA the right to Force Majeure relief for [REDACTED]. This mitigates many of the most likely events for which PREPA could have faced take-or-pay liability.

**D. Main Naturgy GSPA Risks**

The renegotiated Naturgy GSPA exposes PREPA to certain risks relating to the potential for supply interruptions. Annex B describes the allocation of those risks between PREPA and Naturgy. The allocation of risks is consistent with the allocation generally found in agreements for the supply of natural gas derived from LNG for power generation purposes.

<sup>3</sup> The ECO delivery point is established as the location of the metering equipment situated downstream from the connection of the boil-off gas pipe to the main pipeline where natural gas enters the ECO Facility.



### III. Compliance with Applicable Legal Requirements

The ECO PPOA amends and restates a PPOA between EcoEléctrica and PREPA that has been in place since 1995 and was the result of a competitive procurement process. As it has been amended, the ECO PPOA, originally a conventional power purchase agreement, has been converted into a "tolling agreement" under which PREPA will supply natural gas to the ECO Facility and ECO will maintain the capacity to convert and, in accordance with dispatch instructions from PREPA, will convert that natural gas into electric energy. The Naturgy GSPA amends and restates a natural gas supply agreement that was executed in 2012 to support deliveries of natural gas to PREPA's existing Costa Sur Units 5 and 6. As amended, the scope of the original gas supply agreement will be substantially enlarged to cover purchases of natural gas to be consumed in the generation of electric energy in the ECO Facility. Consequently, with the execution of the Naturgy GSPA, Naturgy will become a new supplier of natural gas to PREPA with respect to the ECO Facility, and given this the Naturgy GSPA can be considered a new contractual obligation for PREPA.

The Naturgy GSPA was not the result of a competitive bidding process. Such a process was not, however, required under the applicable provisions of PREPA's enabling act, Act No. 83 of May 2, 1941, the *Puerto Rico Electric Power Authority Act*, as amended ("Act 83-1941"). That act authorizes PREPA "[t]o make contracts and to execute all instruments necessary or convenient in the exercise of any of its powers," but generally requires PREPA to seek and obtain competitive bids before awarding contracts. There is, however, an exception to this requirement (the "sole source" exception) available in circumstances in which "there is only one supply source." Act No. 83-1941, Section 15(2)(d). Such circumstances exist in the case of Naturgy, which owns the only currently active LNG import terminal and LNG storage facility on the south shore of Puerto Rico and (through a Tolling Services Agreement with ECO) controls the entire existing capacity of this LNG import terminal to receive and vaporize LNG for the delivery of natural gas for power generation purposes. Given this, Naturgy has a *de facto* monopoly over the supply of gas into the southern part of the island and, thus, the sole source exception set forth in paragraph (d) of Section 15(2) of PREPA's enabling act applies.

PREPA proposes to enter into the ECO PPOA and the Naturgy GSPA for public purposes (the procurement of electric generating capacity and energy and of the fuel required to produce electric energy that will be transmitted and distributed to the people of Puerto Rico). This is a lawful public purpose within the meaning of Article VI, Section 9 of the Puerto Rico Constitution, and the contract should, therefore, be enforceable under Puerto Rico law. Under Act No. 120 of June 21, 2018 (the *Puerto Rico Electric System Transformation Act*) ("Act 120-2018"), P3 has been

empowered to manage the process through which what it designates as "PREPA Transactions" are to be concluded. See also *"Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System Under Act No. 120-2018, as amended"* (March 8, 2019). P3 has concluded that the transactions to be effected through the ECO PPOA and the Naturgy GSPA qualify as "PREPA Transactions," and accordingly final P3 approval will be required in order for the Agreements to be enforceable. P3 has conditionally approved the transactions envisioned by the ECO PPOA and the Naturgy GSPA, subject to its review of the final versions of these Agreements. PREPA has made a submission to P3 similar to the one being made with this letter, and P3's response and approval are pending.

Pursuant to Section 204(b)(2) of the *Puerto Rico Oversight, Management, and Economic Stability Act*, 48 U.S.C. §§ 2101, *et seq.* ("PROMESA"), the FOMB has implemented a contract review policy that requires "[a]ll contracts or series of related contracts, inclusive of any amendments, modifications, or extensions, with an aggregate expected value of \$10 million or more, including any professional advisory or personal services contracts, [to] be submitted to the FOMB for its approval before execution." *FOMB Review of Contracts*, November 6, 2017 as modified on July 3, 2018. The transactions contemplated by the ECO PPOA and the Naturgy GSPA are contemplated in PREPA's Fiscal Plan; FOMB's contract review policy is applicable to them given that the value of each exceeds the \$10 million threshold. Consequently, FOMB approval is necessary prior to contract execution. PREPA has sought this approval, and made a submission similar to the one being made with this letter, and the FOMB's review and approval are pending.

#### IV. Reconciliation of the Terms of the ECO PPOA with Assumptions Incorporated in the IRP

As the PREB is aware, PREPA's IRP adversary proceeding filed in Docket No. CEPR-AP-2018-0001, *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, envisions the replacement of the ECO Facility and the existing Peñuelas LNG receiving terminal with a new FSRU and combined cycle gas-fired generation facility in the same geographical area by 2025 (the "Replacement CCGT Project"). In PREPA's view, the terms it has secured through negotiation of the ECO PPOA and the Naturgy GSPA make the continued operation of the ECO Facility and related Peñuelas LNG receiving terminal a substantially more attractive option than the Replacement CCGT Project.



PREPA has reached this conclusion for several reasons. The ECO Facility and Naturgy, as LNG/natural gas supplier, have proven track records of reliable and cost-effective performance. They represent, from PREPA's perspective, the proverbial "bird in the hand." By contrast, the Replacement CCGT Project would entail significant execution risk and thus considerable uncertainty, given (i) the protracted timing required for Federal Energy Regulatory Commission approval of the installation and operation of the contemplated FSRU, (ii) the difficulty of obtaining land rights required for the construction of the Replacement CCGT Project, (iii) the challenges of attracting project financing for the Replacement CCGT Project due to the financial process, and (iv) the protracted time frames which have been required for PREPA (and more recently P3) to procure new generation in Puerto Rico generally. We also note that it is likely to be costly to procure alternative generation sources to bridge the timing gap in a scenario in which the currently effective EcoEléctrica PPOA lapses in 2022 but the Replacement CCGT Project actually achieves commercial operation only in 2025 or later.

PREPA believes that in the circumstances it should favor the course that is most likely to safeguard ratepayers against the risks of material delays in the timing of, and even the ability to implement, the Replacement CCGT Project. This conclusion is supported by an assessment of the alternatives recently performed by Siemens PTI/EBA using the Aurora model employed in the development of the IRP (the "EcoEléctrica New PPOA Assessment"), which is summarized in the memorandum accompanying this letter as Attachment 4. In performing the EcoEléctrica New PPOA Assessment, Siemens incorporated the Capacity Payment specified in the ECO PPOA, as well as the fuel pricing formula specified in the Naturgy GSPA. It also assumed that the ECO Facility would offer net dependable capacity of 530 MW, and a heat rates of 7.497 MMBtu/MWh at 507 MW and a heat rate at minimum load of 8.039 MMBtu/MWh (in line with the assumptions previously used in the IRP). Given these assumptions, the Aurora model found the ECO PPOA (as amended and restated from the PPOA assumed in earlier IRP model runs) to be the most economic option under Scenario 4 relative to the alternative presented by the Replacement CCGT Project. Siemens found that signing the ECO PPOA would yield savings over the IRP study period having a Net Present Value of \$705 million (or a cost reduction of 5%) relative to the alternative of not replacing the existing EcoEléctrica PPOA under Scenario 4 Strategy 2 with the ECO PPOA. Siemens concludes on the basis of the EcoEléctrica New PPOA Assessment that PREPA should seek to execute the new ECO PPOA and Naturgy GSPA.

On the basis of its analysis and the assessment Siemens has performed, PREPA has concluded that its execution of the ECO PPOA and the Naturgy GSPA are more likely to provide a secure and reliable source of power generation at the lowest reasonable costs than the

alternative of pursuing the Replacement CCGT Project. We intend to file in Docket No. CEPR-AP-2018-0001 an update in the analysis presented in the IRP Main Report to incorporate the assumptions included in the EcoEléctrica New PPOA Assessment and to reflect the conclusions summarized above. In the meantime, we invite you to let us know if you would like to discuss with PREPA and Siemens representatives the assumptions employed in and the results of these new model runs.

V. Request for Treatment of this Letter and Accompanying Documents as Confidential

PREPA requests that PREB treat this letter, the ECO PPOA (Attachment 1), the Naturgy GSPA (Attachment 2) and the Siemens analysis (Attachment 4) as Confidential because each contains information that qualifies as proprietary and includes trade secrets (*i.e.*, confidential and other protected information) which is protected under Puerto Rico law.<sup>4</sup> PREB regulations specifically provide for the designation of such information as Confidential.<sup>5</sup>

Act 80-2011 defines a trade secret as any information that:

has a present or a potential independent financial value or that provides a business advantage, insofar as such information is not common knowledge or readily accessible through proper means by persons who could make a monetary profit from the use or disclosure of such information; and [f]or which reasonable security measures have been taken, as circumstances dictate, to maintain its confidentiality.

Trade secrets may take a variety of forms, including "a process to manufacture, treat or preserve materials, a formula or recipe, a project or pattern to develop machinery, or simply a list of specialized clients that constitute a specific market which provides the owner with an advantage over his/her competitors." These examples are not exhaustive, however, and the Legislative Assembly has acknowledged in Act 80-2011's Statement of Motives that the broad

<sup>4</sup> See *Industrial and Trade Secret Protection Act of Puerto Rico, as amended*, Act No. 80-2011; see also *Puerto Rico Energy Transformation and RELIEF Act, as amended*, Act No. 57-2014, § 6.15 (establishing that any person having the obligation to submit information to the Energy Bureau can request privileged or confidential treatment of any information which the submitting party believes to warrant such protection).

<sup>5</sup> Regulation 8815, § 10.2 (recognizing appropriateness of according proprietary information and trade secrets Confidential treatment); *cf.* Regulation 8594, § 1.15 (providing for designation of information submitted in support of an IRP as Confidential).



definition of a trade secret includes "any confidential information with trade or industrial value, which its owner reasonably protects to prevent its disclosure." In Puerto Rico, moreover, trade secrets "do not require registration or compliance with any formalities in order to be protected."

As the Legislative Assembly has noted, "failure to protect trade secrets could leave companies at the mercy of any competitor or former employee who gains knowledge of any such secret, whether directly from the owner or by other means."

As a public body whose costs are ultimately borne by citizens of Puerto Rico, PREPA has a strong interest in protecting both its own trade secrets and the trade secrets of actual and prospective vendors and contractors, such as EcoEléctrica and Naturgy, which entrust PREPA with such information in confidence as part of business and financial dealings. The information concerning pricing, dispatch, nomination procedures and the like incorporated into the proposed agreements with EcoEléctrica and Naturgy is proprietary, commercially sensitive and qualifies as trade secrets from the perspective of all parties involved. The disclosure of this information could place PREPA in a competitively disadvantageous position in dealing with other prospective electric power and natural gas suppliers, and therefore could impair PREPA's ability to acquire electric energy, capacity and fuel from the markets at the lowest cost, ultimately harming customers. Similarly, the disclosure of this information could adversely affect Naturgy in its negotiation of LNG and natural gas supply agreements with third parties.

Accordingly, PREPA respectfully requests that the PREB designate this letter, the ECO PPOA, the Naturgy GSPA and this letter as Confidential. Such a designation would be consistent with a number of Resolutions and Orders addressing PREPA's requests for confidential designations in the ongoing IRP proceeding, Docket No. CEPR-AP-2018-0001.<sup>6</sup> PREPA is prepared, should the PREB direct it to do so, to submit versions of this letter and the Attachments that are redacted to remove information qualifying as Confidential.

#### VI. Request for PREB Approval

PREPA hereby requests that, pursuant to Regulation 8815, Section 7.1, PREB review and approve the ECO PPOA and the Naturgy GSPA. PREPA includes with this letter as Attachment 3 the Resolution of the PREPA Governing Board approving the submission of these Agreements to the PREB and the FOMB for their review and approval and, subject to receipt of the required P3, FOMB and PREB approvals, the execution of the ECO PPOA and the Naturgy GSPA. PREPA further

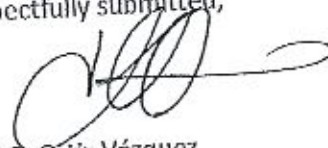
<sup>6</sup> See, e.g., June 10, 2019 Resolution and Order, at p. 2; March 14, 2019 Resolution and Order, at p. 8; January 25, 2019 Resolution and Order, at p. 3.

Mr. Edison Avilés-Dellz  
November 4, 2019  
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requests that, for good cause shown, the PREB grant any waivers of the requirements of Regulation 8815 It may deem necessary to this end, and that it issue its approval within thirty (30) days of the date of this submission, as contemplated by Section 7.1(d) of said Regulation.

Please let us know if you have any questions concerning this letter or the attached Agreements.

Respectfully submitted,



José F. Ortiz Vázquez  
Executive Director and Chief Executive Officer

Enclosed:

- Attachment 1 -- Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P. and PREPA
- Attachment 2 -- Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy Aprovisionamientos S.A. and PREPA
- Attachment 3 -- PREPA Board Resolution dated October 31, 2019
- Attachment 4 -- Memo to PREPA CEO and IRP Team from Siemens PTI/AB dated October 2, 2019



# Annex A

## Capacity Payment Liability Risk

Reason for ECO Dispatch Curtailment / Non-availability	Party Taking Risk Under PPOA		Risk Mitigation Comments
	ECO	PREPA	
Grid Damage Caused by Hurricane	✓		PPOA grants PREPA relief from Capacity Payments for up to [REDACTED] following occurrence of a hurricane – [REDACTED].
Other FM Affecting PREPA		✓	PREPA may insure itself against certain risks.
Scale-Up of Solar Generation		✓	PREPA remits Capacity Payments each month regardless of volume of dispatch but has [REDACTED].
Other New Sources of Generation		✓	PREPA controls introduction of future new sources of generation that will connect to the Grid.
Grid Constraints		✓	PREPA owns / operates Grid System and will oversee the construction of the Permanent Grid System.
Reduced Electricity Demand		✓	
FM Affecting ECO Facility	✓		See item (ii) of Appendix C of the PPOA (FMAF)
Forced Outage	✓		See item (ii) of Appendix C of the PPOA (EAF)
Derating	✓		See item (ii) of Appendix C of the PPOA (EAF)
Scheduled Maintenance	✓		See item (ii) of Appendix C of the PPOA (EAF)
Unscheduled Maintenance	✓		See item (ii) of Appendix C of the PPOA (EAF)
Gas Supply Interruption (FM Affecting Naturgy)		✓	ECO operates Facility utilizing back-up fuel (diesel) during period of gas supply interruption and PREPA reimburses ECO for cost of back-up fuel.
Gas Supply Interruption (Temp. ECO TA Default)		✓	While PREPA pays Capacity Payments and cost of back-up fuel to ECO, [REDACTED].

Reason for ECO Dispatch Curtailment / Non-availability	Party Taking Risk Under PPOA		Risk Mitigation Comments
	ECO	PREPA	
Gas Supply Interruption (ECO TA Default / Termination)	✓ (> █ days)	✓ (first █ days)	While PREPA pays Capacity Payments and cost of back-up fuel to ECO for █ following termination of TA, █ █. PREPA has right to terminate PPOA █ after termination of TA under Section 18.1 of the PPOA.
Gas Supply Interruption (All Other Reasons)		✓	While PREPA pays Capacity Payments and cost of back-up fuel to ECO, █ █.




# Annex B

## Natural Gas Supply Interruption Risk

Reason For Shortfall/Non-availability of, or PREPA Inability to Accept, Natural Gas	Party Taking Risk Under GSPA		Risk Mitigation Comments
	Naturgy	PREPA	
Grid Damage Caused by Hurricane	✓		Under Clause 15.1(f), an interruption to the Grid System, whether caused by a hurricane or otherwise qualifies as a force majeure event relieving PREPA from its obligations to purchase natural gas. Pursuant to Clauses 15.9 and 18.1(b)(ix), [REDACTED]
Other FM Affecting PREPA	✓		Pursuant to Clause 15, FM events directly affecting PREPA generally will [REDACTED]
Scale-Up of Solar Renewable Generation /	✓ (≥ [REDACTED] TBtu)	✓ (< [REDACTED] TBtu)	Clause 6.2(e) of the GSPA allows PREPA to reduce the minimum annual quantity of natural gas purchased if the proportion of renewable generation sources exceeds [REDACTED]. PREPA bears risk if taking below this level.
Reduced Electricity Demand	✓ (≥ [REDACTED] TBtu)	✓ (< [REDACTED] TBtu)	If peak electricity demand in Puerto Rico falls below [REDACTED] megawatts PREPA may reduce the minimum annual contract quantity to as low as [REDACTED] TBtu pursuant to Clause 6.2(d). PREPA bears risk if taking below this level.
FM Affecting ECO Facility	✓		Both Naturgy and PREPA are relieved from their obligations to deliver and

Reason For Shortfall/Non-availability of, or PREPA Inability to Accept, Natural Gas	Party Taking Risk Under GSPA		Risk Mitigation Comments
	Naturgy	PREPA	
			purchase natural gas, respectively, to the extent of the ECO Facility FM pursuant to Clause 15, but deliveries may be made at Costa Sur.
Forced Outage	✓		A forced outage either at ECO or Costa Sur Units relieves PREPA from take-or-pay liability under Clauses 8.2(b) and 8.4(e) of the GSPA.
Derating at ECO / Costa Sur Facilities		✓	
Scheduled Maintenance	✓		Scheduled maintenance shall reduce the minimum annual contract quantity for the relevant year proportionally to the duration of the scheduled maintenance pursuant to Clause 6.2(b)
Unscheduled Maintenance		✓	Unscheduled maintenance events that occur for reasons other than Force Majeure result in take-or-pay liability to PREPA.
Gas Supply Interruption (FM Affecting Naturgy)		✓	Clause 15 of the GSPA contemplates relief afforded to Naturgy for its failure to deliver natural gas under an FM event, such as issues affecting the LNG ships or LNG loading facilities. In those instances, PREPA will have to use and pay for back-up fuel to generate electricity.
Gas Supply Interruption (Naturgy breach of the GSPA)	✓		For a general failure of Naturgy to deliver natural gas, Clause 9 of the GSPA provides protections for PREPA in the form of damages. For failures to deliver at the Costa Sur Units, Naturgy pays [REDACTED]. For a failure to deliver at the ECO Facility, Naturgy [REDACTED]



Reason For Shortfall/Non-availability of, or PREPA Inability to Accept, Natural Gas	Party Taking Risk Under GSPA		Risk Mitigation Comments
	Naturgy	PREPA	
			

Attachment 1 .

Amended and Restated Power Purchase and Operating Agreement between EcoEléctrica, L.P.  
and the Puerto Rico Electric Power Authority

CONFIDENTIAL



Attachment 2

Amended and Restated Natural Gas Sale and Purchase Agreement between Naturgy  
Aprovisionamientos S.A. and the Puerto Rico Electric Power Authority

CONFIDENTIAL

**Attachment 3**

**PREPA Board Resolution 4745 dated October 29, 2019**



Attachment 4

Memo to PREPA CEO and IRP Team from Siemens PTI/AB dated October 2, 2019

CONFIDENTIAL

**CONFIDENTIAL**

*S&S Comments 10/15/2019*

**DATED [•], 2019**

**AMENDED AND RESTATED  
POWER PURCHASE AND OPERATING AGREEMENT**

**BETWEEN**

**ECOELÉCTRICA, L.P.**

**AND**

**PUERTO RICO ELECTRIC POWER AUTHORITY**



CONFIDENTIAL

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AMENDED AND RESTATED  
POWER PURCHASE AND OPERATING AGREEMENT  
BETWEEN  
ECOELÉCTRICA, L.P.  
AND  
PUERTO RICO ELECTRIC POWER AUTHORITY

**THIS AMENDED AND RESTATED POWER PURCHASE AND OPERATING AGREEMENT** (the "Agreement"), entered into this [•] day of [•], 2019 by and between ECOELÉCTRICA, L.P., a limited partnership organized under the laws of Bermuda with its principal office at Road 337, Km. 3.7, Bo. Tallaboa Poniente, Peñuelas, PR 00624-7501, and authorized to do business in the Commonwealth of Puerto Rico ("Seller") and herein represented by Carlos A. Reyes, President & General Manager, who is duly authorized to enter into this Agreement, and the **PUERTO RICO ELECTRIC POWER AUTHORITY**, a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, authorized to enter into this Agreement by virtue of Act Number 83 of May 2, 1941, as amended (22 L.P.R.A. § 196(f)), with offices at [1110 Ponce de Leon Avenue, Santurce, Puerto Rico] ("PREPA") and herein represented by its [•], of legal age, [married,] and resident of [•]. Both Seller and PREPA are herein individually referred to as a "Party" and collectively referred to as the "Parties".

**RECITALS**

**WHEREAS:**

- A. PREPA and Seller are parties to the Power Purchase and Operating Agreement, dated as of March 10, 1995, as amended on October 31, 1997 and September 28, 2006 (the "Pre-Restatement PPOA");
- B. Seller owns, operates and maintains an approximately 530 MW cogeneration facility in Peñuelas, Puerto Rico, that operates on natural gas as primary fuel and diesel fuel oil as backup fuel;
- C. PREPA is an electric utility engaged in the generation, transmission, distribution and sale of electric power within the Commonwealth of Puerto Rico;
- D. on July 2, 2017, PREPA commenced proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA") before the District Court for the District of Puerto Rico (the "PROMESA Court"), which is being administered under Case No. 17-4780 (LTS) (the "PROMESA Case");
- E. in connection with the transformation of the electricity sector in Puerto Rico and to provide cost savings required by PREPA's fiscal plan, the Parties have agreed to enter into this Agreement, which amends and restates the Pre-Restatement PPOA in its entirety, by among other things, providing for the purchase and sale of Dependable Capacity (as defined below) with a discount to the Capacity Payment (as defined below), and providing PREPA with greater flexibility in the procurement of Fuel (as defined below) by adopting an energy conversion structure under which PREPA will deliver to Seller all of the Natural Gas (as defined below) required for the production of Net Electrical Output (as defined below); and
- F. Seller will sell exclusively to PREPA, and PREPA will purchase, the Dependable Capacity made available by Seller in compliance with the Public Utility Regulatory Policies Act of 1978, as amended.

NOW THEREFORE, in consideration of these premises and of the mutual covenants and agreements set forth herein, Seller and PREPA, intending to be legally bound, hereby agree to amend and restate the Pre-Restatement PPOA in its entirety as follows:

## 1. DEFINITIONS AND INTERPRETATION

1.1 Each of the following terms shall have the meaning stated below:

"Acceptable Guarantor" – Any Person meeting the Credit Standards that is approved by Seller to provide a guarantee; provided that such approval shall not to be unreasonably withheld or delayed.

"Acceptable Guarantee" – A guarantee, executed by an Acceptable Guarantor and substantially in the form attached as Exhibit [●] to this Agreement (or in such form as is otherwise acceptable to Seller).

"Acceptable Former Commonwealth Entity" – An entity that timely satisfies the requirements of Section 22.4.

"Acceptable Letter of Credit" – An irrevocable, standby letter of credit in form and substance reasonably acceptable to Seller, issued with a face value of [●]<sup>1</sup> by an Acceptable Letter of Credit Provider.

"Acceptable Letter of Credit Provider" – A bank, insurance company, or other financial institution organized or licensed as a branch or agency under the laws of the United States of America that meets the Letter of Credit Issuing Bank Requirements.

"Acceptable Private Assignee" – (a) A Non-Commonwealth Entity that upon a Transfer, satisfies as of the date of the Transfer, and covenants to maintain in full force and effect during the Term, one of the following: (i) full compliance with the Credit Standards; (ii) the delivery to Seller of a legal, valid, binding and enforceable Acceptable Guarantee from an Acceptable Guarantor; or (iii) the delivery of an Acceptable Letter of Credit; or (b) an Acceptable Former Commonwealth Entity.

"Actual Gas Utilization" – Natural Gas utilized during the Billing Period as measured (a) prior to the installation of the NG Measurement Facilities, in accordance with the Agreed Operating Procedures, or (b) after such installation, by the NG Measurement Facilities.

"Additional Availability Adjustment Factor" – As set forth in Appendix C.

"Additional Performance Test" – As set forth in Section 12.1.

"Adjusted Guaranteed Base Load Heat Rate" – (a) [REDACTED] Btu per kWh for the period prior to the Declaration Date for Performance Test 1 and (b) for the period after the Declaration Date for Performance Test 1, the Guaranteed Base Load Heat Rate, as adjusted per the applicable Degradation Adjustment Factor for such period according to Appendix N.

"Affiliate" – Any Person controlling, controlled by or under common control with any other Person. For purposes of this definition, "control" (including "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of fifty percent (50%) or more of the voting securities or otherwise, including

<sup>1</sup> NTD: Under review by and between Naturgy and Seller.



through the power (whether by ownership of share capital, voting security, contract or otherwise) to appoint fifty percent (50%) of the board of directors or equivalent management body of such entity.

"Affirmative Abandonment Notice" – As set forth in Section 15.1.

"Affirmative Permanent Abandonment Purchase Price" – As set forth in Section 15.1.

"Agreed Operating Procedures" – (a) Prior to the finalization of the Agreed Operating Procedure under Section 8.11, the Agreed Operating Procedure dated November 23, 2004 and (b) thereafter, as set forth in Section 8.11, as may be modified from time to time with the written consent of the Parties.<sup>2</sup>

"Agreement" – As set forth in the first paragraph of this document.

"Ancillary Services" – As set forth in Appendix K.

"Assumption Order" – An order of the PROMESA Court, in form and substance acceptable to Seller, that authorizes the assumption by PREPA of this Agreement.

"Assumption Period" – As set forth in Section 15.6.

"Authorized Officer" – The President, any Vice President, the Treasurer, the Secretary or the Assistant Secretary of Seller.

"Automated Peaking Request" – Net Electrical Output, in excess of Dependable Capacity, automatically generated by the Facility in response to a frequency disturbance or other event.

"Automatic Generation Control" or "AGC" – Provides supplementary control that (a) automatically adjusts the power output level of the Facility, (b) maintains system frequency as close as possible to the desired value, minimizing the accumulation of system time error, and (c) maintains the Facility as close as possible to its economic loading as calculated by the Economic Dispatch. AGC includes Load Frequency Control, Economic Dispatch, spinning reserve computation, and production cost monitoring. Appendix A specifies the Design Limits applicable to the Facility for the purpose of AGC. Such limits shall include maximum ramping rates and allowable step changes.

"Available Capacity" – For any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for dispatch to PREPA for that hour, expressed in kilowatts.

"Available Hours" – The number of hours in which the Facility is capable of providing service and such service is made available to PREPA, whether or not it is actually in service and regardless of the capacity level that can be provided.

"Average Correction Factor" – The weighted average (weighted on an hourly basis by the delivery of the entire volume of Net Electrical Output during a Billing Period) of the Fuel Cost Correction Factors, as determined in accordance with the formula set forth in Appendix O.

"Average Net Derating" – For any hour, the difference expressed in kilowatts between the Dependable Capacity and the Available Capacity, including deratings attributable to a Force Majeure claimed by Seller, for such hour; provided that, where Available Capacity exceeds Dependable Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

<sup>2</sup> The Agreed Operating Procedures will need to be revised to reflect the new fuel procurement arrangements (including the procurement of Backup Fuel) contemplated by this Agreement.

"Backup Fuel" – Diesel fuel oil No. 2 distillate procured by Seller or any other type of fuel or fuel arrangements as mutually agreed by the Parties.

"Backup Fuel Cost" – The cost of Backup Fuel procured by Seller during a Billing Period in accordance with Section 13.1.

"Backup Fuel Delivery Point" – The Backup Fuel tank at the Seller's Complex.

"Backup Fuel Measurement Procedures" – As set forth in the Agreed Operating Procedures.

"Backup Fuel Specifications" – As set forth in Appendix F.

"Base Load Heat Rate" – The Heat Rate, assuming operation of the Facility at Dependable Capacity.

"Billing Period" – As set forth in Section 10.4.

"Calendar Year" or "Year" – A Calendar Year shall be the twelve (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31. The terms Calendar Year and Year may be used interchangeably and shall have the same definition.

"Capacity Payment" – Seller's entire remuneration for the provision of Available Capacity and Ancillary Services and the delivery of Net Electrical Output at the Interconnection Point associated with such Available Capacity, as calculated in accordance with Section 11.2.

"Capacity Payment Discount" – As set forth in Appendix C.

"Capacity Purchase Price" – As set forth in Appendix C.

"Commercial Operation Date" – March 21, 2000.

"Commonwealth Entity" – A government agency, body, or public corporation that is controlled entirely by the Commonwealth of Puerto Rico.

"Commonwealth Assignee" – A Commonwealth Entity to whom a Transfer was made pursuant to Section 22.3.

"Contract Capacity" – [REDACTED] MW.

"Court of Competent Jurisdiction" – The state courts of the Commonwealth of Puerto Rico, the United States District Court for the District of Puerto Rico, the PROMESA Court, the United States Court of Appeals for the First Circuit and the United States Supreme Court.

"Credit Standards" – (a) Two credit ratings that are equal to or better than the following, as applicable: (i) BBB- by S&P, (ii) Baa3 by Moody's or (iii) BBB- by Fitch, or (b) two long-term unsecured debt ratings that are equal to or better than the following, as applicable: (i) BBB- by S&P, (ii) Baa3 by Moody's or (iii) BBB- by Fitch; provided that if two or more of the foregoing agencies cease to exist or issue credit ratings, such other equivalent ratings of another rating agency of comparable standing that is reasonably acceptable to Seller shall apply.

"Credit Standard Event" – Either (a) with respect to an Acceptable Private Assignee that has not provided an Acceptable Guarantee or an Acceptable Letter of Credit, the failure of such Acceptable Private Assignee to continue to meet the Credit Standards, or (b) with respect to an Acceptable Guarantor, the failure of the Acceptable Guarantor to meet the Credit Standards, or



any other condition imposed by Seller in order for such guarantor to be considered an Acceptable Guarantor.

"Current Assets" – Cash held in an operating and maintenance reserve account, cash and marketable securities (both not restricted for use and available for current operations), inventories, receivables collectible within one (1) year, accounts receivable, notes receivable, prepaid expenses, and consumables and spare parts expected to be used in the Seller's Complex within one (1) year and that are not required to be depreciated according to GAAP.

"Current Liabilities" – Accounts payable, collections received in advance of services, accrued expenses and other liabilities (excluding principal and interest repayment) coming due within one (1) year.

"Declaration Date" – As set forth in Section 12.4.

"Declaration Notice" – As set forth in Section 12.2.

"Decmed Abandonment Purchase Price" – As set forth in Section 15.2(c).

"Degradation Adjustment Factor" – The Heat Rate degradation factor per original equipment manufacturer degradation curves, as utilized in setting the Heat Rate Degradation Curves.

"Demand Charge" – The demand charge of \$ [REDACTED].

"Demand Charge Escalation Factor" – One (1) for 2019, which amount is readjusted each Year, beginning January 1, 2020 (whether or not the Effective Date has occurred prior to such date), using an escalation factor of two percent (2%) per Year.

"Dependable Capacity" – (a) The Contract Capacity, for the period prior to the Declaration Date for Performance Test 1, and (b) on any date thereafter, (i) except in the event that the Parties have agreed to a Dependable Capacity in accordance with Section 12.3, the lower of (A) Contract Capacity, and (B) the Tested Capacity, declared by Seller on the most recent Declaration Date and (ii) in the event that the Parties agreed to a Dependable Capacity in accordance with Section 12.3, such agreed to level of capacity.

"Derated Hours" – That hour or hours, exclusive of Outage Hours, when the Facility is not capable of operating at one hundred percent (100%) of its Dependable Capacity, including hours attributable to a Force Majeure claimed by Seller.

"Design Limits" – As set forth on Appendix A hereto.

"Dispatch" – The ability of PREPA's dispatching centers to schedule and control, directly or indirectly, manually or automatically, the generation of the Facility in order to increase or decrease the Net Electrical Output delivered to the PREPA system in accordance with Prudent Utility Practices, and subject to the Agreed Operating Procedures and the Facility's Design Limits.

"Dispatch Instructions" – As set forth in Section 7.1.

"Dispatchable Mode" – A period during which the Facility will be on PREPA's AGC system with the turbine-generator governors in the frequency bias mode and voltage regulators in service, or off AGC and block-loaded at PREPA's request, with the speed governors and voltage regulators in service.

"Economic Dispatch" – The distribution of total PREPA energy needs among available sources for optimum system economy in accordance with Prudent Utility Practices.



"Effective Date" – As set forth in Section 2.1.

"Electrical Metering Equipment" – All meters and metering devices (including RTUs) used to measure the delivery and receipt of Net Electrical Output and Available Capacity at the Interconnection Point.

"Emergency" – A condition or situation which in the sole judgment of PREPA is likely to result in imminent significant disruption of service to a significant number of customers or is imminently likely to endanger life or property.

"Energy Control Center" – Energy control center for the operation of the Grid System.

"Energy Policy Act" – The "Puerto Rico Energy Public Policy Act" (SB 1121), enacted April 11, 2019.

"Environmental Costs" – As set forth in Section 20.1.

"Equity" – Seller's net worth in the Seller's Complex after deducting its liabilities from its assets.

"Equivalent Availability Adjustment Factor" – As set forth in Appendix C.

"Equivalent Availability Factor" – As set forth in Appendix C.

"Equivalent Derated Hours" – For any period of time, the number of hours, equal to the sum of the fractions obtained by dividing the Average Net Deratings for each hour during such period by the Dependable Capacity applicable to such hour.

"Equivalent Grid Force Majeure Hours" – As set forth in Appendix C.

"Equivalent Force Majeure Hours" – For a Force Majeure claimed by Seller during any period of time, the sum of (a) the sum of the fractions obtained by dividing, for each Derated Hour during such period, the Average Net Deratings during such Derated Hour attributable to such Force Majeure by the Dependable Capacity applicable to that Derated Hour, plus (b) all Outage Hours attributable to such Force Majeure.

"Equivalent Total Force Majeure Hours" – As set forth in Appendix C.

"Excludable Contract" – Any contract entered into between Seller and another Person (the "Counterparty") if such contract fails to satisfy any of the following requirements: (i) a prudent person exercising reasonable business judgment in light of the facts and circumstances prevailing at the time such contract was executed would have entered into such contract, (ii) such contract is reasonably related to the performance (or ensuring the performance) by Seller of its obligations under this Agreement, (iii) such contract was entered into by Seller in good faith and not with a view to adversely affecting PREPA's interests under Article 15, (iv) if the Counterparty to such contract is an Affiliate of Seller, the rights and obligations of Seller under such contract relate solely to the supply, transportation or terminalling of fuel for use in the Facility or such contract is the Tolling Agreement and the rights and obligations of Seller under such contract (taken as whole) are not materially less favorable to Seller than Seller could have obtained in a comparable transaction entered into at the same time such contract was executed with a Person who was not an Affiliate of Seller, (v) such contract does not require Seller to repay, guarantee or otherwise become liable in respect of any indebtedness for borrowed money (or to reimburse any Person for amounts drawn under a letter of credit), and (vi) such contract does not evidence any interest hedging transaction (or other similar hedging transaction); provided that (x) the Tolling Agreement need not satisfy the requirements of clause (ii) of this definition and (y) if the Tolling Agreement does not initially satisfy the requirements of clause

(iv) of this definition, the Tolling Agreement may be amended or modified on or prior to the Purchase Closing Date pursuant to Article 15 so as to bring it into compliance with the requirements of clause (iv) of this definition. Seller and PREPA agree that there shall be a rebuttable presumption that all contracts to which Seller is a party on such Purchase Closing Date satisfy clauses (i), (ii), (iii), and (iv) of this definition; provided that this presumption shall not apply to any such contract unless Seller delivers to PREPA, reasonably in advance of such Purchase Closing Date, (i) a copy of such contract certified by Seller as being a true, complete and correct copy thereof and (ii) all information reasonably available to Seller (or any of its Affiliates) without undue burden that is relevant to establishing whether or not such contract is an Excludable Contract within the meaning of this definition.

“Facility” – Seller’s cogeneration facility, consisting of two combustion turbine units of approximately 187 MW each and one steam turbine unit of approximately 214 MW, including auxiliary equipment and unit transformers on Seller’s side of the Interconnection Point.

“Fair Market Value” – The fair market value as determined by a Valuation Firm, based on such firm’s assessment of the cash price that an informed and willing seller (under no compulsion to sell) would reasonably obtain in an arms-length private sale of (i) the Seller’s Complex, and (ii) if applicable under Section 15.3, the LNG Terminal or LNG Terminal Inventory, to an informed and willing buyer (under no compulsion to purchase), using a commonly accepted valuation methodology applicable at the time of determination and assuming a closing date of sixty (60) days after the Valuation Firm renders such determination.

“FERC” – The Federal Energy Regulatory Commission, or any successor thereto.

“Final Order” – Any order or other action of a Court of Competent Jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired, excluding any additional time periods that may begin as a result of United States Federal Rule 60(b).

“Fiscal Year” – The Calendar Year, unless otherwise agreed by the Parties.

“Fitch” – Fitch Ratings, Inc. or any successor thereto.

“Fixed Cost Escalation Factor” – A fraction, (i) the numerator of which shall be the average of the twelve (12) monthly values of the US-CPI corresponding to the twelve (12) months ending on December 31 of the Year immediately preceding the date of such calculation and (ii) the denominator of which shall be the average of the twelve (12) monthly values of the US-CPI corresponding to the twelve (12) months ending on December 31, 2018. For the Year 2019 the Fixed Cost Escalation Factor shall be equal to 1 (one).<sup>3</sup>

“Fixed O&M Charge” – As set forth in Appendix C.<sup>4</sup>

“FOMB” – The Fiscal Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

<sup>3</sup> For the avoidance of doubt, the Fixed Cost Escalation Factor for an Effective Date in the Year 2020 shall be based on escalation from 2019 to 2020.

<sup>4</sup> Fixed O&M Charge for the Year 2019 of [REDACTED] is equal to \$ [REDACTED] (the fixed O&M charge stipulated in the original contract).



"Force Majeure" – As set forth in Article 17.

"Fuel" – Natural Gas or Backup Fuel.

"Fuel Cost Correction Curve" – The specifications set forth in Appendix B.

"Fuel Cost Correction Factor" – For each hour, the factor used in the determination of the Average Correction Factor, based on the average for the hour of the Percent of Dependable Capacity (rounded to the nearest percentage point) determined in accordance with Appendix B.

"Fuel Delivery Point" – The NG Delivery Point and the Backup Fuel Delivery Point.

"Fuel Supply Requirement" – As set forth in Section 13.1.

"GAAP" – Generally Accepted Accounting Principles, as promulgated by the Financial Accounting Standards Board or its predecessor or successors.

"Gas Fuel Cost" – The cost of NG during a Billing Period, as invoiced to PREPA by the NG supplier for the first LNG cargo unloaded at the LNG Terminal during the Billing Period, or if no LNG cargo was unloaded at the LNG Terminal during the Billing Period, the cost of NG at the last shipment of LNG cargo unloaded regardless of the Billing Period in which the unloading occurred.

"General Technical Requirements" – As set forth in Appendix K.

"Grid Force Majeure Event" – As set forth in Section 17.3.

"Grid Force Majeure Event Floor" – An amount in dollars equal to the product of the Fixed O&M Charge multiplied by the Dependable Capacity.

"Grid Restoration Period" – As set forth in Section 17.3.

"Grid System" – The interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to ratepayers in the Territory.

"Guaranteed Base Load Heat Rate" – (a) [REDACTED] Btu per kWh for the period prior to the Declaration Date for Performance Test 1, and (b) on any date of determination from and after the Declaration Date for Performance Test 1, the lower of (a) the Adjusted Guaranteed Base Load Heat Rate in effect on the date before the most recent Declaration Date, and (b) the Tested Heat Rate, declared by Seller on the most recent Declaration Date.

"Guaranteed Fuel Utilization" – Means the guaranteed fuel utilization for the Units (utilizing Natural Gas that complies with the NG Fuel Specifications) determined in accordance with the formula set forth in Appendix O.

"Heat Rate" – The fuel energy consumption expressed in Btu (Higher Heating Value) required for the Facility to generate one (1) kWh of net electric energy.

"Heat Rate Adjustment" – As set forth in Appendix O.

"Heat Rate Degradation Curves" – The Heat Rate degradation curves set forth in Appendix N that show the expected Heat Rate degradation utilized to establish the Degradation Adjustment Factor.



"Higher Heating Value" – The amount of heat released by the unit mass or volume of fuel (initially at 25°C) once it is combusted and the products have returned to a temperature of 25°C, including the latent heat of the vaporization of water.

"Interconnection Facilities" – Seller Interconnection Facilities and PREPA Interconnection Facilities.

"Interconnection Point" – The physical point(s) where the Facility interconnects with the Grid System, as set forth on Appendix E.

"Interim Operator" – As set forth in Section 15.8.

"Interim Period" – As set forth in Section 15.8.

"Interest" – The compensation for the accrual of monetary obligations under this Agreement computed monthly and prorated daily from the time each such obligation is past due based on an annual interest rate equal to the lesser of (i) the Prime Commercial Lending Rate as set by Citibank N.A., New York, New York or any other bank as mutually agreed by the Parties or any other equivalent rate as mutually agreed by the Parties and (ii) the maximum rate allowable under Article 1649 of the Puerto Rico Civil Code or successor statute applicable to past due amounts.

"Inventory Amount" – On any date of determination, an amount equal to the audited cost to Seller (determined in accordance with GAAP) of spare parts owned by Seller and maintained as inventory for the Seller's Complex on such date; provided, that such spare parts (i) have been purchased by Seller no earlier than six (6) years prior to such date, (ii) do not include any expendables, consumables, or bulk materials, (iii) have a unit cost (or unit set cost) of no less than ten thousand dollars (\$10,000), which amount shall be subject to the Annual PPI Adjustment (as defined below); (iv) individually are new or reconditioned and in good working order; and (v) have been purchased in accordance with Prudent Utility Practices; and provided, further that PREPA's obligation to pay to Seller the portion of the Inventory Amount pursuant to Article 15 shall not exceed twenty-seven million, five hundred thousand dollars (██████████), which amount shall be subject to the Annual PPI Adjustment (as defined below). For purposes of this definition, "Annual PPI Adjustment" means, with respect to any dollar amount specified in this definition, an adjustment of such dollar amount as of January 1 of each Year (commencing on the first full year to occur after the Commercial Operation Date) in an amount equal to such dollar amount (as previously adjusted from time to time) multiplied by a fraction, the numerator of which shall be the average of the twelve (12) monthly values of the PPI for the twelve (12) months ending on December 31 of the Year immediately prior to the date of calculation, and the denominator of which shall be the average of the twelve (12) monthly values of the PPI for the twelve (12) months ending on December 31 of the Year which is two (2) Years prior to the date of calculation.

"Letter of Credit Default" – A Letter of Credit Issuer Event occurs with respect to a Letter of Credit Issuer if:

- (a) a Letter of Credit Issuer fails to honor Seller's request to draw on an Acceptable Letter of Credit when such request is in accordance with the requirements of such Acceptable Letter of Credit;
- (b) a Letter of Credit Issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenge the validity of, an Acceptable Letter of Credit;

- (c) an Acceptable Letter of Credit expires or terminates (including expiration or termination in accordance with its terms), or fails or ceases to be in full force and effect at any time after the execution date thereof;
- (d) any bankruptcy event occurs with respect to a Letter of Credit Issuer; or
- (e) an Acceptable Letter of Credit is not renewed or replaced at least fourteen (14) business days prior to the expiration of such Acceptable Letter of Credit.

"Letter of Credit Issuer" – An entity that has issued an Acceptable Letter of Credit.

"Letter of Credit Issuer Event" – A Letter of Credit Issuer has ceased to satisfy the Letter of Credit Issuing Bank Requirements or is no longer organized or licensed as a branch or agency under the laws of the United States of America.

"Letter of Credit Issuing Bank Requirements" – For an Acceptable Letter of Credit Provider, two credit ratings that are equal to or better than the following, as applicable: (a) A3 by Moody's, (b) A- by S&P, or (c) A- by Fitch; provided that if more of than one of Moody's, S&P and Fitch ceases to exist or issue credit ratings, an equivalent rating of another rating agency (or if all three so cease, two rating agencies) of comparable standing that is reasonably acceptable to Seller.

"LNG" – Natural Gas in a liquid state at or below its boiling point and at or near atmospheric pressure.

"LNG Terminal" – The unloading arms, pier, dock, storage and vaporization facilities and all related interconnection and ancillary equipment utilized in Seller's Complex to unload, store, and vaporize LNG.

"LNG Terminal Inventory" – As of the effective date of any purchase of the LNG Terminal pursuant to Section 15.3, the spare parts owned by Seller and maintained as inventory for the LNG Terminal on the day prior to such date; provided, that (i) Seller has purchased such spare parts no earlier than six (6) years prior to such date, (ii) such spare parts exclude any expendables, consumables, or bulk materials, have a unit cost (or unit set cost) of no less than ten thousand dollars (\$10,000), which amount shall be subject to the Annual PPI Adjustment (as defined below) and individually are new or reconditioned and in good working order.

"Load Frequency Control" – The control function within the AGC system for the regulation of the power output of the Facility, in response to changes in system frequency and so as to help maintain the scheduled frequency within predetermined limits.

"Maximum Recovery Period" – A period of [REDACTED] consecutive days following the occurrence of a Grid Force Majeure Event.

"MM I Program" – As set forth in Section 12.1(b).

"MM II Program" – As set forth in Section 12.1(c).

"MMBTU" – Million British thermal units (Higher Heating Value).

"MRCC" – As set forth in Section 26.1(c).

"Mode of Operation" – As set forth in Appendix K.

"Moody's" – Moody's Investors Service, Inc. or any successor thereto.



"Monthly Aggregate Amount" – An amount for any month, equal to the sum of the Capacity Payment, the Monthly Start-up Reimbursement, Heat Rate Adjustment, Backup Fuel Cost and Peaking Energy Cost.

"Monthly EAF" – As set forth in Appendix C.

"Monthly Invoice" – As set forth in Section 11.1(a).

"Monthly Start-up Reimbursement" – The amount in dollars, calculated in accordance in Appendix G, to reimburse Seller for the restart of any Unit of the Facility following (i) a request by PREPA under Section 7.3 to shut down any Unit of the Facility or (ii) any shutdown of a Unit Facility triggered by the Grid System; provided that Seller shall credit to PREPA the cost of the fuel required for a gas turbine Unit to achieve synchronization with the Grid System during each start up as provided in Appendix G.

"Natural Gas" or "NG" – Any saturated hydrocarbon or mixture of saturated hydrocarbons consisting essentially of methane and other combustible and non-combustible gases in a gaseous state.

"NG Delivery Point" – The position of the NG Measurement Facilities located downstream from the connection of the boil-off gas pipe to the main pipeline where Natural Gas enters the Facility, as further detailed in Appendix II.<sup>5</sup>

"NG Fuel Specifications" – The specifications set forth in Appendix J.

"NG Measurement Facilities" – The main and back-up meter and other equipment as necessary to measure the volume and energy of Natural Gas delivered pursuant to this Agreement, and the on-line chromatographs installed and maintained by Seller, that are necessary to measure the quality of Natural Gas delivered pursuant to this Agreement.

"NG Measurement Review Period" – As set forth in Section 13.8.

"Naturgy" – Naturgy Aprovevisionamientos S.A. or any of its Affiliates.

"Net Electrical Output" – The net electrical energy output of the Facility, expressed in kWh, delivered from the Facility at 230 kV to the Interconnection Point.

"Non-Commonwealth Entity" – A Person that is not, or that ceases to be, a Commonwealth Entity.

"Non-Conforming NG" – As set forth in Section 13.6(a).

"Non-Scheduled Outage" – A planned interruption of all or a portion of the electrical output of the Facility that has been coordinated with PREPA and is required for any purpose including inspection, preventive maintenance, or corrective maintenance and which has not been included in the Scheduled Outage Program.

"Operation Security" – As set forth in Section 19.3(a).

"Original Effective Date" – March 10, 1995.

"Outage Hours" – The number of hours, including hours attributable to a Force Majeure claimed by Seller, that the Facility is not capable of providing service at any capacity level,

<sup>5</sup> **NTD:** This definition should align with the definition in the TSA and the Restatement GSPA.



including any period of time that the Facility is not available due to outages affecting the LNG Terminal.

"P3A" – The Puerto Rico Public-Private Partnership Authority.

"Party" or "Parties" – As set forth in the first paragraph of this Agreement.

"Peaking Energy Cost" – An amount (expressed in dollars) equal to the Peaking Rate multiplied by the volume of Net Electrical Output delivered to the Interconnection Point in response to a Peaking Request.

"Peaking Rate" – An amount equal to \$[REDACTED] per kilowatt hour, as increased annually, commencing in calendar year 2020, by the Demand Charge Escalation Factor.

"Peaking Request" – An Automated Peaking Request or a PREPA Peaking Request.

"Percent of Dependable Capacity" – As set forth in Appendix B.

"Performance Tests" – The Scheduled Performance Tests and the Additional Performance Tests.

"Performance Test 1" – As set forth in Section 12.1(a).

"Performance Test 2" – As set forth in Section 12.1(b).

"Performance Test 3" – As set forth in Section 12.1(c).

"Period Hours" – All hours in the relevant period.

"Permanent Abandonment" – (a) An affirmative action taken by Seller, its successors, or assignees, as applicable, to permanently shut down the operations of the Facility, or (b) the Available Hours equalling zero (0) for any period of twenty-four (24) consecutive months whether or not a Force Majeure event has been claimed by Seller, except to the extent that the shutdown referenced in subsection (b) of this definition is the result of PREPA not having satisfied the Fuel Supply Requirement.

"Permanent Closing" – Shall be deemed to have occurred when the Available Hours equal zero (0) for any period of twelve (12) consecutive months, excluding periods of outages due to Force Majeure.

"Permits" – All permits, licenses, approvals, authorizations, consents, variances or waivers issued by federal, Commonwealth and local agencies, commissions, authorities and regulatory bodies with jurisdiction over Seller and the Seller's Complex which are necessary or required for the development, construction, operation or maintenance of the Seller's Complex.

"Person" – An individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

"PPI" – The Producer Price Index For Capital Equipment, Construction machinery and equipment (Table 2, Commodity code 11-2) as published by the United States Department of Labor, Bureau of Labor Statistics.

"Post-Original Effective Date Environmental Costs" – As set forth in Section 20.1.

"Post-Original Effective Date Taxes" – As set forth in Section 20.1.

"Pre-Restatement PPOA" – As set forth in the first recital of this Agreement.

"PREB" – The Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

"PREPA 1974 Agreement" – The 1974 Agreement between PREPA and State Street Bank and Trust, Company, as successor trustee

"PREPA 1974 Indenture" – The Trust Indenture dated January 1, 1974, as amended between PREPA and The Chase Manhattan Bank (National Association) as successor trustee.

"PREPA Interconnection Facilities" – All equipment and facilities located on PREPA's side of the Interconnection Point constructed and installed for the purpose of interconnecting the Facility with PREPA's electric transmission system, including but not limited to, all Electrical Metering Equipment, transmission lines and associated equipment, relay and switching equipment, and protective devices and safety equipment, as set out in Appendix E.

"PREPA LNG Terminal Purchase Notice" – As set forth in Section 15.3.

"PREPA's Operating Period" – As set forth in Section 19.6(a).

"PREPA Peaking Request" – As set forth in Section 7.5.

"PREPA Power Plant Purchase Notice" – As set forth in Section 15.1.

"Project Lender" – As set forth in Section 22.2.

"PROMESA" – As set forth in the fourth recital of this Agreement.

"PROMESA Case" – As set forth in the fourth recital of this Agreement.

"PROMESA Court" – As set forth in the fourth recital of this Agreement.

"Prudent Electrical Practices" – Those practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been used in prudent electrical engineering and operations to operate a facility similar to the Facility under the same or similar circumstances, including equipment for the generation, transmission, distribution and delivery of electricity, lawfully and with efficiency and dependability, and that are in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state or local code.

"Prudent Utility Practices" – Those practices, methods, standards and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been generally followed by the electric generation industry in the United States and Puerto Rico, as changed from time to time, which generally include, but are not limited to, engineering and operating considerations.

"Purchase Closing Date" – As set forth in Section 15.6.

"Purchased Assets" – As set forth in Section 15.6.

"Purchase Price" – As set forth in Section 15.6(a).

"PURPA" – The Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder in effect as of the date this Agreement is executed or as they are amended in the future from time to time.



"Qualified Operator" – Seller or any Affiliate of Seller or any Affiliate of either of Seller's general partners, or another qualified and experienced operator acceptable to PREPA.

"Qualifying Facility" – A cogeneration facility or a small power production facility which is a Qualifying Facility under Subpart B of Subchapter K, Part 292 of Chapter I, Title 18, Code of Federal Regulations, promulgated by the FERC as such regulations are in effect on the date hereof or as amended from time to time.

"Quarter" – A three (3) month period beginning 12:00 midnight on January 1, April 1, July 1, or October 1.

"Ramp Rates" – The rate(s) of time required for the Facility to change its per kilowatt output from a particular output level to another output level, determined in accordance with Appendix A.

"Required Capital Expenditures" – On any date of determination, an amount equal to the aggregate capital expenditures paid by Seller on or prior to such date but only if and to the extent that (a) such capital expenditures were (i) required to be made by Seller to the Seller's Complex in order to comply with its obligations under this Agreement and (ii) paid by Seller after the Commercial Operation Date and (b) the necessity for such capital expenditures arose out of events that occurred after the Commercial Operation Date; provided that such capital expenditures shall be net of the value of any equipment replaced or retired and shall not include (i) any capital expenditures required in order to complete the construction of the Seller's Complex and to achieve the Commercial Operation Date, (ii) any capital expenditures paid by PREPA under Section 19.6(b) or otherwise pursuant to this Agreement, (iii) any capital expenditures required as a result of casualty losses to the extent such losses were or should have been covered by insurance required to be maintained by Seller hereunder or were covered by other insurance maintained by Seller, (iv) any capital expenditures made in connection with the maintenance of the Seller's Complex or (v) any capital expenditures made as a result of a defect in the design, engineering or construction of the Seller's Complex (whether or not covered under warranty); the amount paid by Seller for such capital expenditures and the determination of whether such capital expenditures constitute "Required Capital Expenditures" within the meaning of this definition shall be determined and certified by an independent engineer selected by PREPA.

"Required Capital Expenditures-Straight Line" – On any date of determination, an amount equal to the amount of the Required Capital Expenditures that would remain outstanding on such date if each capital expenditure constituting such Required Capital Expenditures was depreciated on straight-line basis over the period commencing on the date such capital expenditure was incurred and ending on the earlier of (i) the end of the useful life of such capital expenditure and (ii) the date which is twenty (20) years after the date such capital expenditure was incurred.

"Restatement GSPA" – The Amended and Restated Gas Sale and Purchase Agreement to be executed by PREPA and Naturgy for the supply of Natural Gas for the Facility and the Costa Sur facility.

"Rolling 2020 Cap" – As set forth in Appendix C.

"RTU" – As set forth in Section 7.1.

"S&P" – S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.



"Scheduled Outage" – A planned interruption of the Facility's generation that has been coordinated in advance with PREPA with mutually agreed start and duration pursuant to Article 8.

"Scheduled Outage Program" – As set forth in Section 8.1.

"Scheduled Performance Tests" – Performance Test 1, Performance Test 2 and Performance Test 3.

"Seller" – As set forth in the first paragraph of this Agreement.

"Seller's Complex" – The collective reference to the premises, facilities and infrastructure comprising the Facility, including the land upon which the Facility is located, the Seller Interconnection Facilities, the desalination plant and associated water pipelines, and other equipment reasonably incidental and ancillary to the operation of the Facility, owned by Seller, for the purpose of performing its obligations under this Agreement. For the avoidance of doubt, "Seller's Complex" does not include the LNG Terminal.

"Seller Interconnection Facilities" – All equipment and facilities, located on Seller's side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with PREPA's electric transmission system, including but not limited to, all Electrical Metering Equipment, transmission lines and associated equipment, relay and switching equipment, and protective devices and safety equipment, as set forth in Appendix E.

"T&D Operator" – Any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory that is a Commonwealth Entity or an Acceptable Private Assignee.

"Taxes" – As set forth in Section 20.1.

"Term" – As set forth in Article 5.

"Terminal Abandonment Notice" – As set forth in Section 15.3.

"Territory" – The unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

"Tested Capacity" – For each Performance Test, the net electric generating capacity for the Facility (gross electric generating capacity less station use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the use of supplementary firing, measured by such test.

"Tested Heat Rate" – For each Performance Test, the Base Load Heat Rate, measured by such test.

"Third Party Fuel Test" – As set forth in Section 13.6.

"Tolling Agreement" – The Amended and Restated LNG Tolling Services Agreement dated September 5, 2019 between Naturgy and Seller.

"Transfer" – As set forth in Section 22.3.

"Twelve Month EAF" – As set forth in Appendix C.

"Unit" – Each of the individual gas turbine units and steam turbine units of the Facility.

"US-CPI" -- The All Items, U.S. City Average, Not Seasonally Adjusted, Base: 1982-84=100, All Urban Consumers (CPI-U) Consumer Price index as reported by the U.S. Bureau of Labor Statistics. If the Consumer Price index ceases to be published, or the method of calculation of that index substantially alters, then the nearest equivalent index to the Consumer Price Index published by the Bureau of Labor Statistics for the Labor Department of the Government of the United States of America shall be used as a replacement for the Consumer Price Index in this definition.

"Valuation Firm" -- An independent, nationally recognized third-party valuation firm reasonably acceptable to Seller.

"Working Capital" -- The amount by which Current Assets exceeds Current Liabilities.

## 1.2 Interpretation

In this Agreement and unless the context otherwise requires:

- (a) each of the terms Seller, PREPA, Party and Parties shall include all successors and assigns of each such entity under Article 22 hereof;
- (b) words in the singular may be interpreted as referring to the plural and vice versa;
- (c) where the context requires, terms used in the present tense may be interpreted as referring to the past tense and vice versa; and
- (d) all calculations shall be rounded upward to the nearest eight (8) decimal places, except calculations resulting in a dollar amount to be paid hereunder shall be rounded to the nearest cent and calculations of Equivalent Availability Factor, Equivalent Availability Adjustment Factor and Additional Availability Adjustment Factor shall be rounded to the nearest one tenth (1/10) of a percent.

## 2. EFFECTIVENESS OF THE AGREEMENT

- 2.1 This Agreement shall become effective on the date on which the Parties jointly sign a certificate, which in the case of PREPA, may be signed by PREPA's counsel, confirming the satisfaction or waiver of each of the following conditions precedent (the "Effective Date"):

- (a) for satisfaction by PREPA:

- (i) obtaining approval of the P3A to proceed with the finalization of this Agreement;
- (ii) obtaining approval of each of FOMB, the governing board of PREPA and PREB for the execution and delivery by PREPA of this Agreement;
- (iii) delivery by PREPA of a legal opinion prepared by its external counsel in a form reasonably acceptable to Seller, confirming the warranty made by PREPA in Section 6.13(b); and
- (iv) full force and effectiveness of the Restatement GSPA.

- (b) for satisfaction by Seller:

- (i) delivery by Seller of a legal opinion prepared by its external counsel in a form reasonably acceptable to PREPA, confirming the warranty made by Seller in Section 6.5(d);



- (ii) full force and effectiveness of the Tolling Agreement;<sup>6</sup>
    - (iii) delivery by Seller to PREPA of a replacement Operation Security in a form reasonably acceptable to PREPA; and<sup>7</sup>
    - (iv) delivery by Seller of each of the documents and certificates set forth in Sections 26 and **Error! Reference source not found.**<sup>8</sup>
  - (c) for joint satisfaction by each of the Parties, the Assumption Order shall have been entered by the PROMESA Court and become a Final Order.
- 2.2 Until the occurrence of the Effective Date, this Agreement shall have no force or effect, and the Pre-Restatement PPOA shall remain in effect in accordance with its terms.
- 3. SALE AND PURCHASE OF DEPENDABLE CAPACITY**
- 3.1 Seller agrees to sell, and PREPA agrees to purchase, Dependable Capacity, subject to the terms and conditions of this Agreement.
- 3.2 As part of the provision of Dependable Capacity, Seller agrees to deliver, and PREPA agrees to accept delivery of, Net Electrical Output of the Facility, subject to the terms and conditions of this Agreement.
- 3.3 PREPA hereby confirms that Seller has delivered the following information under the Pre-Restatement PPOA:
- (a) one or more documents evidencing that Seller owns the Seller's Complex and has the right to use, for the Term of the Agreement, the real property on which the Seller's Complex is located. Such document or documents may include a deed of purchase or a lease agreement;
  - (b) a report by a qualified independent consultant selected by both Parties, certifying that (i) the Facility and the Interconnection Facilities, if operated and maintained in accordance with Prudent Electrical Practices, Prudent Utility Practices and/or other appropriate industry standards, can be expected to have a useful life at least equal to the Term of Agreement, and (ii) the Facility and Interconnection Facilities have been designed and constructed in compliance with the terms of the Agreement;
  - (c) originals of certificates of insurance policies for insurance coverage required by Article 21; and
  - (d) copies of all material Permits needed to construct and operate the Facility and Seller Interconnection Facilities.
- 3.4 Without limiting any other obligations of Seller in this Agreement, PREPA's obligation to purchase Dependable Capacity from Seller is conditioned upon Seller, at its expense, acquiring and maintaining in effect any Permits and completing or having completed any environmental impact studies, in each case necessary (a) for the operation and maintenance of the Facility, which, if not obtained, would prevent Seller from operating the Facility, and/or (b) for Seller to perform its obligation to deliver Net Electrical Output to PREPA in accordance with this Agreement.

<sup>6</sup> **NTD:** The Tolling Agreement will be shared with PREPA's counsel for an "attorney's eyes" only review (with price terms redacted) prior to the signing of this Agreement.

<sup>7</sup> **NTD:** Mechanics to be coordinated to ensure only one Seller Operation Security letter of credit is outstanding at a time.

<sup>8</sup> **NTD:** Under review by local counsel.

**4. NOTICES**

- 4.1 All notices and other communications hereunder shall be in writing, other than dispatch orders which may be oral and immediately confirmed by telecopy (or such other means as may be agreed by the Parties in writing), and shall be deemed duly given upon receipt after being delivered by hand or sent by registered or certified mail, return receipt requested, postage prepaid or by recognized overnight courier service or by telecopy, addressed as follows:

**If to Seller to:**

EcoEléctrica, L.P.  
Road 337, Km 3.7 Bo Tallaboa,  
Poniente, Peñuelas PR 00624  
Attention: General Manager  
Telecopy: (787) 487-6002

**If to PREPA:**

Puerto Rico Electric Power Authority (if by hand)  
1110 Ponce de Leon Avenue  
Office #601  
Santurce, Puerto Rico]  
[Attention: Executive Director]  
[With a copy to: General Superintendent – Cogenerators Administration]

Puerto Rico Electric Power Authority (if by mail)  
[G.P.O. Box 364267  
San Juan, Puerto Rico 00936]  
[Attention: Executive Director]  
[With a copy to General Superintendent – Cogenerators Administration]

- 4.2 Either Party hereto may change, by notice as above provided, the persons and/or addresses to which all such notices are to be sent.

**5. TERM**

The term of this Agreement shall begin with the Original Effective Date and expire on September 30, 2032, unless terminated or cancelled in accordance with the terms hereof (the "Term").

**6. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 6.1 Seller covenants and warrants that the Seller's Complex shall be operated and maintained by a Qualified Operator in accordance with (a) the Agreed Operating Procedures, (b) Prudent Electrical Practices and (c) Prudent Utility Practices, including without limitation, synchronizing, voltage and reactive power control.
- 6.2 Seller covenants and warrants that the Facility shall be operated at the voltage levels determined pursuant to the Agreed Operating Procedures and that the Design Limits shall have an MVA capability based on a 0.85 power factor. Seller warrants that it will correct any Facility design or construction defect that causes the Facility to have a material adverse effect on PREPA's voltage level or voltage waveform.
- 6.3 Seller shall, at all times, comply with all applicable laws, ordinances, rules and regulations applicable to it and the use, occupancy and operation of the Seller's Complex, unless the



noncompliance therewith would not have a material adverse effect on the operation of the Seller's Complex, provided that in the event of any such noncompliance, Seller shall be diligently contesting any such law, ordinance, rule or regulation in good faith. Seller shall give all required notices and shall pay all charges and fees in connection therewith, unless Seller shall be diligently contesting such payments in good faith.

- 6.4 Seller shall have the sole responsibility for the payment of any and all fines or other penalties incurred by or imposed upon Seller or its agents, employees, suppliers or subcontractors for noncompliance by Seller, its agents, employees, suppliers or subcontractors with laws, rules, regulations or ordinances applicable to or in connection with the development, construction, ownership and/or the proper operation of the Seller's Complex as determined by those having jurisdiction over the Seller's Complex, and PREPA shall be held harmless from any such fines or penalties and expenses related to these (including without limitation all reasonable attorneys' fees).

- 6.5 Seller hereby warrants:

- (a) As of the Effective Date, Seller is a limited partnership duly organized, validly existing and in good standing under the laws of Bermuda, is registered to do business in the Commonwealth of Puerto Rico, and its general partners are IPM Puerto Rico Holding, Inc., the ultimate parent of which is IPM Eagle I.L.P., a joint venture seventy percent (70%) owned by Engie and thirty percent (30%) Mitsui & Co., and Buenergía Gas & Power LLC, the ultimate parent of which is Naturgy SDG, S.A. Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.
- (b) The execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary partnership action, and do not and will not (i) require any consent or approval of Seller's partners, other than that which has been obtained, as certified by the partnership resolution dated [●] and delivered to PREPA not later than the Effective Date, (ii) violate any provision of Seller's partnership agreement or other organic documents, any indenture, contract or agreement to which it is a party or by which it or its properties may be bound, or any law, ordinance, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect, or (iii) result in a breach of or constitute a default under Seller's partnership agreement or other organic documents or other material indentures, contracts or agreements to which it is a party or by which it or its property may be bound.
- (c) Seller is not in default under contracts or agreements to which it is a party or by which it or its property may be bound, and which would be expected to materially and adversely impact the ability of Seller to perform its obligations under this Agreement.
- (d) This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
- (e) Except as previously disclosed in writing, there is no pending action or proceeding in which Seller is a party before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of Seller or the ability of Seller to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement as in effect on the date hereof.
- (f) Seller agrees to maintain a minimum Working Capital of [REDACTED] for the duration of the Term.



6.6 Seller agrees that, within forty-five (45) days after every other Quarter following the Effective Date it will cause to be delivered to PREPA a report prepared in accordance with GAAP and signed by the President, Vice President, Treasurer or Controller of Seller or any of Seller's general partners setting forth the following:

- (a) a separate income and expense statement for such semiannual period just ended;
- (b) a balance sheet as of the end of such semiannual period;
- (c) a statement of cash flows of such semiannual period;
- (d) a statement of changes in stockholders' Equity as of the end of such semiannual period;  
and
- (e) notes to the financial statements, as applicable.

PREPA acknowledges that all such information delivered to PREPA is confidential information of Seller.

In addition, Seller agrees that each Fiscal Year following the Effective Date it will cause an audit to be prepared in accordance with GAAP, of its books and accounts pertaining to the Seller's Complex by an independent firm of certified public accountants of suitable experience and acceptable to PREPA. Such audit shall commence on or before thirty (30) days after the end of the Fiscal Year and shall be completed within ninety (90) days after its commencement date. On or before the last day of the first month following the completion of such audit, reports of such audits shall be delivered to PREPA. Such audit reports shall set forth, in respect to the preceding Fiscal Year, the same matters as are herein above required for the semiannual reports.

Seller further agrees that it will cause to be delivered to PREPA an annual certification of the names of its Authorized Officers, accountants, and consulting engineers.

6.7 Seller shall make available to PREPA all copies that Seller receives of any maintenance evaluations or reports to be provided by Seller to any third party with a financial security interest in or lien on the Seller's Complex, including evaluations or reports generated at the request of such third parties or performed by an engineering firm employed by such third party.

6.8 Seller agrees to preserve and keep in full force and effect during the Term its partnership existence (including via merger or consolidation with or into another entity, subject to Article 22). Seller further agrees that it will not dissolve and wind-up its affairs, or otherwise dispose of all or substantially all of its assets without the prior approval of PREPA, which approval shall not be unreasonably withheld or delayed.

6.9 PREPA agrees that all information (whether financial, technical, or otherwise) obtained from Seller, including without limitation information obtained pursuant to Section 6.6, or from PREPA's inspections of the Seller's Complex or from any third parties pursuant to Section 6.7, which is not otherwise generally available to the public shall be kept confidential and used solely by PREPA in connection with the performance of its obligations under this Agreement. Disclosure of such information may be made only within PREPA's organization to key personnel, and to third parties serving as PREPA's legal, financial or technical advisors, whose duties justify their need to review and know such material. PREPA shall require each person (and personnel thereof) to agree for the benefit of Seller to maintain the confidentiality of such information. To the extent PREPA is required to disclose such information by any court, governmental agency or to the extent necessary to secure governmental approval or authorization, PREPA shall use its best efforts to seek a confidentiality agreement that assures confidential treatment of the information consistent with the terms of this Section 6.9. In the event PREPA is not successful in obtaining a confidentiality agreement, PREPA and Seller



shall use reasonable efforts to obtain through court action the appropriate protective order. Notwithstanding the foregoing, PREPA may disclose the terms and conditions of this Agreement to (i) FOMB, PREB, the PROMESA Court, and any governmental authority or agency of Puerto Rico or the Government of the United States of America for the purposes of obtaining the consents and approvals described in Section 2.1(a), together with such additional information as may be required to obtain such consents and approvals, and (ii) any potential T&D Operator or its Affiliates and their respective advisors and lenders.

- 6.10 For so long as the PREPA 1974 Indenture remains in effect, all payments by PREPA to Seller under this Agreement shall be treated as current expenses as defined by the terms of the PREPA 1974 Agreement.
- 6.11 At all times, as available, Seller agrees to provide at no cost to PREPA copies of all final site-related reports and applications, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Seller's possession, excluding any proprietary design information relating to the Seller's Complex.
- 6.12 (a) Seller agrees to use its best reasonable efforts, when soliciting and obtaining personnel to perform services for the Seller's Complex in Puerto Rico, to achieve a goal that not less than fifty percent (50%) expended in Seller's performance of the services pursuant to this Agreement following Commercial Operation Date shall be performed by individuals who are bona fide residents of Puerto Rico as defined in this Section 6.12.
- (b) For purposes of Section 6.12 of this Agreement, an individual shall be considered a bona fide resident of Puerto Rico if said individual has been a resident of Puerto Rico immediately prior to commencing work on the Seller's Complex. To the extent that despite Seller's best reasonable efforts Seller has failed to achieve the goals set forth in Sections 6.12(a), Seller may for purposes of calculating satisfaction of said goals include the services of individuals who at some time prior to commencing work on the Seller's Complex, but not necessarily including the period of time immediately prior to commencing work on the Seller's Complex, were residents of Puerto Rico for at least five (5) consecutive years and who relocated to Puerto Rico in order to perform work on the Seller's Complex. Seller shall, in good faith, be entitled to rely on the representation of each individual applicant as to whether such individual meets the criteria set forth herein.
- (c) Nothing contained herein shall be interpreted as obligating Seller to take any action which would be in violation of the United States Constitution, federal law or the laws of Puerto Rico or of any affirmative action program or equal opportunity obligation to which Seller or its affiliated companies are or may be bound under federal law or the laws of Puerto Rico.
- 6.13 PREPA warrants that:
- (a) pursuant to Act Number 83 of May 2, 1941, as amended, PREPA is a public corporation duly organized and validly existing under the laws of the Commonwealth of Puerto Rico and has all requisite power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement;
- (b) this Agreement is a legal, valid and binding obligation of PREPA, enforceable against PREPA in accordance with its terms; and
- (c) except for the PROMESA Case, or as previously disclosed in writing, there is no pending or, to its best knowledge, threatened action or proceeding against PREPA before any court, governmental agency or arbitrator that could reasonably be expected to affect materially and adversely the financial condition or operations of PREPA or the ability of PREPA to



perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Agreement (as in effect on the date hereof).

- 6.14 Seller shall not be relieved of its obligations under this Agreement as a result of subcontracting any of its obligations to a third party.
- 6.15 Seller shall provide PREPA with as-built drawings of the Facility within one hundred twenty (120) days after any material modification of the Facility.

## 7. DISPATCHING

- 7.1 Subject to Section 7.4 and the other terms of this Agreement, PREPA (or, for the avoidance of doubt, the T&D Operator, under the circumstances described in Section 22.3), at its sole discretion, shall have the right to Dispatch the Facility within its Design Limits. PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its Automatic Generation Control system and the use of Prudent Utility Practices, and will communicate the same to Seller (the "Dispatch Instruction"). Seller will give the dispatcher a status report every eight (8) hours of the Seller's Complex conditions, including any Seller's Complex restrictions, and the hourly integrated net generation during that period. Seller shall notify the dispatcher immediately if there is any pertinent change in the Seller's Complex status. Seller shall make available through the Facility's remote terminal unit ("RTU") the actual Facility load limit adjustment.
- 7.2 The Facility will be operated in the Dispatchable Mode. On the fifteenth (15th) day of each month, PREPA shall provide Seller with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Seller with an estimated hourly schedule of operations for the following five (5) weeks. The actual schedule will be determined by the requirements for operation in accordance with Economic Dispatch and Prudent Utility Practices and may be substantially different than the schedule provided in accordance with this section. PREPA will immediately provide notice to Seller at any time that the total level that it intends to Dispatch the Facility during a month changes by five percent (5%) or more from the total level of estimated schedules of operations previously provided to Seller.
- 7.3 PREPA will use all reasonable efforts to provide Seller with six (6) hours advance notice of a request to either start-up or shutdown either one or two of the gas turbine Units of the Facility. PREPA agrees there will be no more than [REDACTED] requests to shut down the Units of the Facility in any Year; provided, however, that the parties may agree to increase the maximum number of shut-down and start-up requests of any gas turbine Unit of the Facility on an annual basis. The notices herein mentioned must be given orally and confirmed by telecopy (or such other means as may be agreed by the Parties in writing) to the Facility.
- 7.4 The Facility can be dispatched during any hour up to one hundred percent (100%) of its Dependable Capacity, subject to the Ramp Rates and the Agreed Operating Procedures. In the event that the Facility is operating with the gas turbine or the steam turbine Units not in operation, the Facility Dispatch levels will be reduced in accordance with Prudent Utility Practices and so as to comply with the Facility's Permits. The Facility's Fuel Cost Correction Factor will vary from unity (1.00) based on the Facility's correction curve described in the definition of Fuel Cost Correction Factor.
- 7.5 At any time, PREPA may request, through the Energy Control Center, Dispatch of the Facility at a level in excess of the Dependable Capacity (each, a "PREPA Peaking Request"). Upon receipt of a PREPA Peaking Request, Seller shall notify the Energy Control Center within one (1) hour of such receipt whether Seller intends to make available Net Electrical Output



contemplated by such request at the Interconnection Point. To the extent that Seller confirms such intention to make such output available in such notice, Seller shall make such volumes available during the hours indicated in such request. PREPA shall pay Seller the applicable Peaking Rate for Net Electrical Output in response to a Peaking Request.

- 7.6 Seller shall provide PREPA with Ancillary Services set forth in Appendix K, which can be used by PREPA to maintain the reliability of the Grid System in accordance standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, contemplated by the Energy Policy Act. Seller hereby confirms that the Facility can provide each of the Ancillary Services within the Design Limits.

## 8. CONTROL AND OPERATION OF THE FACILITY

- 8.1 Seller shall submit to PREPA, in writing, by September 1 of each Year, its desired scheduled outage program (the "Scheduled Outage Program") for the next Year. Seller shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA shall have the right, upon one hundred eighty (180) days' prior written notice, to revise the period during which Seller shall not schedule a Scheduled Outage. If a Scheduled Outage was set for the time period that PREPA has determined a shutdown should not occur, Seller shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Scheduled Outages shall be requested and scheduled by the Parties in accordance with Appendix I to this Agreement. Seller undertakes to perform all planned maintenance on the LNG Terminal during periods of the Scheduled Outages at the Facility.

- 8.2 Within sixty (60) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Seller in writing whether the requested Scheduled Outage periods are acceptable. If PREPA cannot accept any of the requested Scheduled Outage periods in the Scheduled Outage Program, PREPA shall advise Seller of the time period closest to the requested period when the outage can be scheduled.

Seller shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Seller has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Seller shall notify PREPA, as soon as possible, of the cause or causes for such delay and of the additional time required to end the Scheduled Outage. In such event, Seller will use all reasonable efforts to return the Facility to operation in the shortest possible time.

- 8.3 Seller shall use reasonable efforts to notify PREPA of and coordinate all Non-Scheduled Outages with PREPA. Seller shall use reasonable efforts to schedule Non-Scheduled Outages to occur during times when the Facility is not projected to be Dispatched, during Scheduled Outages or at such other times as will minimize any adverse effect on the operation of PREPA's electric system. Seller shall use reasonable efforts to perform and complete Non-Scheduled Outages in a timely manner consistent with Prudent Utility Practices.

- 8.4 Seller shall employ qualified personnel for monitoring the Seller's Complex and for coordinating operations of the Seller's Complex with PREPA's system. As personnel changes occur, Seller shall periodically provide PREPA with an updated list and qualifications of Seller's personnel who will be responsible for supervising the operation and maintenance of the Seller's Complex and for coordinating operations of the Seller's Complex with PREPA's system.

Seller shall ensure that listed supervisory personnel will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.



- 8.5 If an Emergency is declared by PREPA, PREPA's dispatching centers will notify Seller's personnel and, if requested by PREPA, Seller's personnel shall place the Net Electrical Output within the exclusive control of PREPA's dispatching centers for the duration of such Emergency. Without limiting the generality of the foregoing, PREPA's dispatching centers may require Seller's personnel to delay synchronization or raise or lower production of energy generated by the Facility to maintain safe and reliable load levels and voltages on PREPA's transmission and/or distribution system; provided, however, any changes in the level of Net Electrical Output required by PREPA hereunder shall be implemented in a manner consistent with Prudent Utility Practices and within the Facility's Design Limits.
- 8.6 Seller shall cooperate with PREPA in establishing Emergency plans, including without limitation, recovery from a local or widespread electrical blackout; voltage reduction in order to effect load curtailment; and other plans which may arise. Seller shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability.
- 8.7 If Seller has a Scheduled Outage or a Non-Scheduled Outage, and such Scheduled Outage or Non-Scheduled Outage occurs or would occur during an Emergency, Seller shall make all good faith efforts, consistent with Prudent Utility Practices and with PREPA's approval, to reschedule the Scheduled Outage or Non-Scheduled Outage or if the Scheduled Outage or Non-Scheduled Outage has begun, to expedite the completion thereof.
- 8.8 Seller has previously provided the following communication facilities linking the Facility with PREPA's dispatching centers:
- (a) for the purpose of telemetering, data acquisition, and automatic generation control by PREPA:
    - (i) one dual ported RTU for data acquisition and generation control compatible with PREPA's energy management system;
    - (ii) two voice grade telecommunication circuits for the dual ported RTU. One to Monacillos transmission center ("TC") and the other to Ponce TC;
    - (iii) one voice grade telecommunication circuit for the Facility for the backup telemetry to Monacillos TC; and
    - (iv) pro rata cost of installation by PREPA of all equipment needed for this purpose outside of the Facility and attributable to the Facility, as set forth in the interconnection study performed by PREPA pursuant to Section 9.3 of the Pre-Restatement PPOA;
  - (b) a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with the Energy Control Center;
  - (c) for so long as telecopier communications are required by this Agreement, telephone line and equipment to transmit and receive telecopies;
  - (d) ring down telephone line to Monacillos TC; and
  - (e) telecommunications radio compatible with PREPA's trunking radio system.
- 8.9 Each Party shall keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement.
- (a) All such records shall be maintained for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by regulatory agencies with jurisdiction over the Parties; provided, however, that neither Party shall dispose of or



destroy any such records that are specifically designated by the other Party even after five (5) years without thirty (30) days' prior notice to the other Party. If notice is given to the notifying Party during such thirty (30) day period, the notifying Party shall promptly deliver such records and data to the Party wishing to retain such records.

- (b) Seller shall maintain an accurate and up-to-date operating log at the Facility with records of: (i) real and reactive power production for each hour; (ii) changes in operating status and Scheduled Outages; (iii) any unusual conditions found during inspections; (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA.
  - (c) Either Party shall have the right from time to time, upon fourteen (14) days written notice to the other Party and during regular business hours, to examine the records and data of the other Party relating to the proper administration of this Agreement any time during the period the records are required to be maintained.
- 8.10 At PREPA's request, Seller shall provide certifications of tests and inspections of the electric and protection equipment which may impact PREPA's electrical system. PREPA shall have the right to visit and visually monitor the Seller's Complex during operation and testing.
- 8.11 Within ninety (90) days after the Effective Date, PREPA and Seller shall mutually develop and reach an agreement on an updated detailed written operating procedures (the "Agreed Operating Procedures") for the operation of the Facility and the LNG Terminal under the terms of this Agreement, including detailed procedures for: (i) the daily nominations, management and coordination of the supply of Fuel, (ii) the reading of the NG Measurement Facilities (when installed in accordance with Section 13.7) and (iii) the resolution of disputes regarding material discrepancies between the quantity of Natural Gas delivered at the NG Delivery Point as registered by the main meter and the backup meter.

## **9. INTERCONNECTION**

- 9.1 Seller shall own and be responsible for the safe and adequate operation and maintenance of all Seller Interconnection Facilities, other than Electrical Metering Equipment. PREPA shall own and be responsible for the safe and adequate operation and maintenance of the PREPA Interconnection Facilities.
- 9.2 PREPA reserves the right to modify or expand, its requirements for protective devices in the Seller Interconnection Facilities in conformance with Prudent Electrical Practices.
- 9.3 Each Party shall notify the other in advance of any changes to its system that will affect the proper coordination of protective devices on the two (2) systems.

## **10. METERING OF NET ELECTRICAL OUTPUT**

- 10.1 PREPA shall own and maintain all Electrical Metering Equipment. Seller shall install Electrical Metering Equipment for backup purposes subject to Section 10.3; provided that such backup Metering Equipment shall be subject to PREPA's approval. PREPA covenants to repair or replace all Electrical Metering Equipment no later than one hundred eighty (180) days after the Effective Date.
- 10.2 All Electrical Metering Equipment shall be located at the Interconnection Point and sealed, and the seals shall be broken only by PREPA personnel when the meters are to be inspected, tested or adjusted. PREPA shall give Seller two (2) weeks' prior written notice thereof and Seller



shall have the right to have a representative present during the meter inspection, testing or adjustment. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party.

- 10.3 At least once a Year at PREPA's cost and, in addition, from time to time upon two (2) weeks' prior written notice by Seller, at Seller's cost, PREPA will test and calibrate the Electrical Metering Equipment (including any backup meters), in accordance with the provisions for meter testing as established in the American National Standard Code for Electricity Metering (ANSI) Standard C 12.16 for Solid State Electricity Meters and the Handbook for Electrical Metering, Edison Electric Institute 8th Edition or the updated edition in effect and available to PREPA at the time the test is performed. When, as a result of such a test of the Electrical Metering Equipment, a meter is found to be inaccurate by no more than two percent (2%), no adjustment will be made in the amount paid to Seller for Net Electrical Output and Dependable Capacity delivered to PREPA. If the meter is found to be inaccurate by more than two percent (2%), PREPA will use the backup meters to calculate the correct amount delivered to PREPA for the actual period during which inaccurate measurements were made or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to the time elapsed since the most recent test, but in no case for a period in excess of one hundred eighty (180) days. If the backup meters are not available, or if the testing of the backup meters demonstrates that those meters are inaccurate by more than two percent (2%), the meter readings shall be adjusted based on the corrected meter readings of the most accurate meter for the actual period during which inaccurate measurements were made, or, if the actual period cannot be determined to the mutual satisfaction of the Parties, for a period equal to one-half of the time elapsed since the most recent test, but in no case for a period in excess of one hundred eighty (180) days. The previous payments by PREPA for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference shall be offset against or added to the next payment to either Party as appropriate under this or other agreements between the Parties. Each Party shall comply with any reasonable request of the other Party concerning the sealing of meters, the presence of a representative of the other Party when the seals are broken and the test is made, and other matters affecting the accuracy of the measurement of electricity delivered from the Facility. If either Party believes that there has been a meter failure or stoppage, it shall immediately notify the other Party.

- 10.4 During each one (1) Year period, PREPA shall read the Electrical Metering Equipment twelve (12) times to determine the amount of Net Electrical Output delivered to PREPA between any such two (2) consecutive meter readings (the "Billing Period"). The Billing Period shall not exceed thirty-three (33) days nor be less than twenty-eight (28) days. The meters will be read on the dates indicated on the meter reading program prepared by PREPA and submitted to Seller on or before January 1st of each Calendar Year. PREPA shall notify Seller in advance of any change on the meter reading program. Seller may be present, at its option, during all meter readings. PREPA shall provide Seller with a written statement containing the results of such meter readings within ten (10) days following the reading. PREPA shall, upon prior written notice, also provide access to the results of such meter readings to the P3A, the owner of the Grid System and the T&D Operator.

## 11. COMPENSATION, PAYMENT AND BILLINGS

- 11.1 For each Billing Period, PREPA shall pay an amount equal to the Monthly Aggregate Amount as follows:
- (a) On or before the tenth (10<sup>th</sup>) day following the end of each Billing Period, Seller shall provide PREPA with proposed terms for the Available Capacity, Mode of Operation and Net Electrical Output for the purposes of calculating the Monthly Aggregate Amount due



to Seller for such Billing Period. If a discrepancy exists in any of the proposed figures of the terms in the preceding sentence, the Parties shall act in good faith to resolve such discrepancies prior to Seller's issuance of a Monthly Invoice pursuant to Section 11.1(b) below.

- (b) On or before the fifteenth (15th) day following the end of each Billing Period, Seller shall provide PREPA with a written invoice for the Monthly Aggregate Amount and for all other amounts or reimbursements due to Seller hereunder (a "Monthly Invoice"). PREPA shall pay each Monthly Invoice it receives within forty-seven (47) days after the end of the Billing Period. Interest shall accrue on the outstanding payments due to Seller commencing on the forty-eighth (48) day after the Billing Period. Notwithstanding the payment requirements set forth in this Section, PREPA shall have the right to offset against the amounts due to Seller from PREPA under this Agreement any amounts owed to PREPA by Seller relating to the Seller's Complex that are not paid when due to PREPA. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Seller shall be made by wire transfer to an account with a bank to be specified by Seller in writing. Either Party may, by written notice to the other, change the account to which such payments are to be sent.

- (c) If after Seller provides PREPA with a Monthly Invoice discrepancy exists between the amount of Available Capacity determined by PREPA and the amount set forth in a Monthly Invoice to PREPA, or PREPA in good faith disputes any other amount in such Monthly Invoice, PREPA shall pay the amount it determines in good faith is due based on its meter reading or otherwise, until the dispute is resolved in accordance with this Agreement.

- 11.2 The Capacity Payment shall be calculated in accordance with the formulae set forth in Appendix C; provided in the event that the calculation of the Capacity Payment at any time results in an amount less than zero dollars (\$0), the Capacity Payment shall equal zero dollars (\$0).

## 12. PERFORMANCE TESTS

- 12.1 Seller shall conduct a performance test of the Facility to establish the Tested Heat Rate and the Tested Capacity:

- (a) within ninety (90) days after the Effective Date ("Performance Test 1");
- (b) within thirty (30) days following the completion of the next planned major maintenance cycle of the Units (the "MM I Program"), currently scheduled for 2021 and 2022 ("Performance Test 2"); and
- (c) within thirty (30) days following the completion of second planned major maintenance cycle of the gas turbine and steam turbine Units (the "MM II Program"), currently scheduled for 2027 and 2028 ("Performance Test 3").

Each of the Parties shall have the right to require additional performance tests at any time before the sixth anniversary of the completion of a Scheduled Performance Test (each, an "Additional Performance Test"). Seller shall bear one hundred percent (100%) of the costs of the Scheduled Performance Tests. The Party requesting any Additional Performance Test shall bear one hundred percent (100%) of the cost of such test. Seller shall complete the MM I Program and MM II Program on each of the gas and steam turbine Units and the hot gas inspection on each gas turbine Unit in accordance with the schedule set forth in Appendix I.



- 12.2 Upon completion of each Performance Test in accordance with Appendix M, Seller shall declare, and provide PREPA with notification of, the Tested Capacity and Tested Heat Rate of the Facility within five (5) days after receiving such Performance Test report from the qualified third party contracted to conduct the test according to Appendix M (each, a "Declaration Notice"). In the event that the Parties dispute the results of a Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, if resolved, declare the applicable Tested Capacity and/or Tested Heat Rate in accordance with such resolution.
- 12.3 In the event that a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, PREPA shall have the right to request an increase in the Dependable Capacity to any level above the Contract Capacity up to such Tested Capacity, which Seller, in its sole discretion, shall have the right to accept or reject. In the event that Seller accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Dependable Capacity for purposes of this Agreement shall increase as agreed by the Parties from the date indicated in such certificate.
- 12.4 Each adjustment to the Dependable Capacity and the Guaranteed Base Load Heat Rate, arising out of a Performance Test shall take effect on the date of delivery of the Declaration Notice in accordance with Section 12.2 (each, a "Declaration Date").

### 13. FUEL SUPPLY

- 13.1 Commencing on the Effective Date, PREPA shall deliver Natural Gas to Seller at the NG Delivery Point in compliance with the NG Fuel Specifications for each day of operation, at such times as may be required by Seller to satisfy the hourly dispatch requirements to be provided by PREPA (the "Fuel Supply Requirement"), and shall be measured at the NG Delivery Point. Seller shall procure and obtain delivery of Backup Fuel to the Backup Fuel Delivery Point in compliance with the Backup Fuel Specifications, at such times as may be agreed upon with PREPA in accordance with the Agreed Operating Procedures. Seller shall regularly procure and obtain delivery of Backup Fuel, and provide PREPA with a monthly Backup Fuel inventory report, in order to maintain an inventory equivalent to the amount of Backup Fuel necessary to operate the Facility at the full Dependable Capacity for at least three (3) consecutive days, or such larger quantities as may be mutually agreed to by the Parties.
- 13.2 Unless PREPA (i) delivers Natural Gas that does not conform with the NG Fuel Specifications, or (ii) requests Seller to use Backup Fuel, Seller shall use its best efforts to ensure that each Unit of the Facility operates at the Adjusted Guaranteed Base Load Heat Rate at all times from the Effective Date until the expiration of the Term other than during a Scheduled Outage.
- 13.3 Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel to the Fuel Delivery Point with the operation of the Facility as follows: (i) by providing the other Party such information as the first Party shall reasonably request regarding the supply and transportation of the Fuel to the Fuel Delivery Point (on both a historical and estimated future basis) and (ii) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation. Subject to the foregoing, PREPA shall have the right to change the quantities of Fuel nominated and received on a daily basis, or more frequently, to the extent permitted, so long as such changes do not disrupt Seller's operations.
- 13.4 PREPA shall be deemed to be responsible for any damage or personal injury caused by the delivery of NG up to the NG Delivery Point. Seller shall be responsible for any losses of Fuel, and any damages or injury caused by, such NG at and from the NG Delivery Point. PREPA warrants that NG caused to be delivered hereunder to Seller shall be free and clear of all liens or other encumbrances. Risk of loss of all NG shall transfer from PREPA to Seller upon



delivery to the Fuel Delivery Point. Notwithstanding the foregoing, Seller waives, and releases PREPA from, any and all liability for any damage to the LNG Terminal or the Seller's Complex or personal injury of third parties arising out of or resulting from Seller's operation of the LNG Terminal.

- 13.5 After receiving the daily Dispatch Instructions, Seller shall provide to PREPA the Natural Gas daily nominations as required by Seller to satisfy the Dispatch Instructions. The detailed procedure for daily nominations and for renominations shall be set forth in Agreed Operating Procedures.<sup>9</sup>
- 13.6 (a) If NG supplied by PREPA fails to conform with the NG Fuel Specifications ("Non-Conforming NG"), Seller shall, as soon as reasonably practicable, give written notice to PREPA that Seller has received Non-Conforming NG, giving details of the nature and expected magnitude of the variance from the parameters in the NG Fuel Specifications and the reason of the non-compliance.
- (b) In the event that Seller informs PREPA that it has received Non-Conforming NG in accordance with clause (a) above, PREPA shall have the right to request that Seller send a sample of such NG to an independent third party to be agreed to by the Parties, to determine whether such sample satisfies the criteria for Non-Conforming NG ("Third Party Fuel Test"). The final determination made by such Third Party Fuel Test regarding the Non-Conforming NG shall be binding on both Parties. The cost of such Third Party Fuel Test shall be borne (i) by Seller in the event that the Third Party Fuel Test concludes that the NG conforms with the NG Fuel Specifications, or (ii) by PREPA in the event that the Third Party Fuel Test concludes that the NG is Non-Conforming NG.
- (c) PREPA shall, promptly upon becoming aware of the delivery of Non-Conforming NG or promptly upon receipt of notice from Seller referred to in Section 13.6, send a notice to Seller stating, to the extent known to PREPA, the period during which the Non-Conforming NG was delivered, the quantity thereof and how its specifications vary from the ones set out in Appendix J.
- (d) If, after exercising commercially reasonable efforts to receive the Non-Conforming NG, Seller determines that it cannot accept, or operate, the Facility, on such Non-Conforming NG, then Seller shall have no obligation to accept such fuel.
- 13.7 During the Scheduled Outage scheduled for the Year 2020, Seller shall install the NG Measurement Facilities at the Fuel Delivery Point in accordance with the recommendations of the American Gas Association.
- If one or more components of the NG Measurement Facilities fails to function or a Party reasonably believes that such facilities inaccurately register the volumes of Fuel delivered to the Fuel Delivery Point, the Parties shall determine the volume of Fuel delivered during such period of failure or inaccurate registration by using one of the following techniques, presented in a descending order of priority:
- (a) by using the registration of the backup meter;
- (b) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or

<sup>9</sup> Nominations to be aligned with the Amended GSPA. Daily dispatch nominations to be included in the Agreed Operating Procedures.

- (c) by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.
- 13.8 In the event that a Party notifies the other Party of a material discrepancy between the quantity of NG delivered to the Fuel Delivery Point as measured by the main meter and backup meter of the NG Measurement Facilities either Party shall have the right to request an adjustment for NG delivered up to the later of (i) one hundred eighty (180) days before the notice of any such NG measurement discrepancy, and (ii) the date of the last meter reading that preceded such notification (the "NG Measurement Review Period"). The Parties shall exercise their reasonable efforts to resolve such discrepancy amicably (including with respect to adjustments for NG delivered during the NG Measurement Review Period).
- 13.9 Seller shall be responsible for the maintenance and repair of all storage facilities for Backup Fuel, which shall be located at the Seller's Complex.
- 13.10 Seller shall measure the LNG Terminal electrical energy consumption each Billing Period and provide PREPA with a statement identifying the amount of energy in MMBTU utilized to produce such volume of electrical energy during such Billing Period.

#### 14. LIABILITY

- 14.1 Each Party shall be responsible for the electrical energy and facilities, including the Seller Interconnection Facilities and PREPA Interconnection Facilities, located on its respective side of the Interconnection Point. The Net Electrical Output made available by Seller to PREPA under this Agreement shall become the property of PREPA at the Interconnection Point, and, except as provided in Section 14.2 below, Seller shall not be liable to PREPA for loss or damage to PREPA's generation, transmission, and distribution system, including the Seller Interconnection Facilities and PREPA Interconnection Facilities, resulting directly or indirectly from the use, misuse or presence of such Net Electrical Output once it passes the Interconnection Point.
- 14.2 Each Party shall be liable for all foreseeable damages suffered by the other as a necessary consequence of Seller or PREPA's respective negligent performance, omission or failure to perform its respective obligations under this Agreement, as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Section 14.3 below.
- 14.3 Notwithstanding anything to the contrary contained in this Agreement, neither Party nor any of its Affiliates nor any of their respective directors, officers, shareholders, partners, employees, agents and representatives nor any of their respective heirs, successors and assigns shall in any event be liable to the other Party or its officers, directors, agents, employees or representatives for claims for incidental, consequential or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or resulting from performance or nonperformance under this Agreement, including without limitation, claims made by either Party's customers or suppliers, or claims made by third parties, or claims made by either Party for lost profits (except payments specifically provided for in Article 11). Further provided that Seller's liability and PREPA's sole remedy for any damage resulting from the failure to deliver the Net Electrical Output resulting from the low availability of the Facility and its failure to achieve the committed Twelve Month EAF of ninety-three (93%) are those adjustments to the Capacity Purchase Price set forth in Section 11.2. The Parties agree that the remedies provided in the preceding sentence shall not limit any other remedy PREPA may be entitled to under this Agreement in the event the Agreement is terminated pursuant to Article 18.
- 14.4 Nothing in this Article 14 shall relieve either Party of its obligation to make payments that become or have become due pursuant to Article 11.



15. OPTION TO PURCHASE THE SELLER'S COMPLEX AND LNG TERMINAL

- 15.1 If a Permanent Abandonment will occur under clause (a) of the definition of Permanent Abandonment, (a) Seller shall provide PREPA with at least ninety (90) days prior notice of such occurrence (the "Affirmative Abandonment Notice"), and (b) PREPA shall have the first option to purchase the Seller's Complex at a purchase price (the "Affirmative Permanent Abandonment Purchase Price") equal to [REDACTED].

If PREPA desires to exercise such option: (x) PREPA shall provide Seller with notice thereof (a "PREPA Power Plant Purchase Notice") no later than thirty (30) days following its receipt of the Affirmative Permanent Abandonment Notice, and (y) the Parties shall exercise their best efforts to consummate the transfer of the Seller's Complex assets to PREPA within sixty (60) days after the earlier of the delivery of such notice and the occurrence of such Permanent Abandonment. If PREPA does not deliver a timely PREPA Power Plant Purchase Notice, a Permanent Abandonment under clause (a) of the definition will take effect at the conclusion of the one-hundred eightieth (180<sup>th</sup>) day following the delivery of the Affirmative Abandonment Notice, or such later date as Seller may have indicated in the Affirmative Abandonment Notice. If PREPA shall have delivered a timely PREPA Power Plant Purchase Notice, then, a Permanent Abandonment under clause (a) of the definition will only take effect on the earlier of (i) the date when PREPA takes title to the Seller's Complex assets and (ii) 365 days after the Affirmative Abandonment Notice.

15.2

- (a) In the event that Available Hours equal zero (0), either for [REDACTED] consecutive days (excluding periods of outages due to Force Majeure) or [REDACTED] consecutive days (regardless of whether a Force Majeure has occurred), then at any time thereafter, PREPA may request, in writing, that Seller provide it with a good faith assessment of whether a Permanent Closing or a Permanent Abandonment under clause (b) of the definition of Permanent Abandonment, as applicable, is reasonably likely to occur. Seller shall respond to such a written inquiry from PREPA within thirty (30) days of receipt thereof, and, to the extent that Seller confirms the likelihood of such occurrence, (i) Seller's response shall also indicate a forecasted date of such occurrence, and (ii) a Permanent Closing or a Permanent Abandonment under clause (b) of the definition as applicable shall be deemed to occur on the date indicated in such response.
- (b) Without limiting Section 15.2(a), in the event that Available Hours equal zero (0), either for [REDACTED] (excluding periods of outages due to Force Majeure) or [REDACTED] (regardless of whether a Force Majeure has occurred), then at any time thereafter, PREPA can seek to establish the Fair Market Value for the Seller's Complex by delivering notice to Seller of its intent thereof.
- (c) Without limiting anything else in this Section 15, upon a Permanent Closing or a Permanent Abandonment under clause (b) of the definition of Permanent Abandonment, PREPA shall have the first option to purchase the Seller's Complex at a price equal to Fair Market Value (the "Deemed Abandonment Purchase Price"), as determined by a Valuation Firm selected by PREPA. If PREPA desires to exercise such option, PREPA shall provide Seller with notice thereof no later than thirty (30) days following a Permanent Closing or a Permanent Abandonment under clause (b) of the definition of Permanent Abandonment. In the event that PREPA exercises such option, unless the process to establish Fair Market value was commenced under Section 15.2(b), the Parties shall have a period, which will not exceed one hundred eighty (180) days after PREPA's notification to Seller of its intent to purchase the Seller's Complex under this Section 15.2, to establish the Fair Market Value for the Seller's Complex. The Parties shall exercise their best efforts to consummate



the transfer of the Seller's Complex assets to PREPA within sixty (60) days of the determination of Fair Market Value.

- 15.3 If Seller intends to abandon the operation of the LNG Terminal for any reason, (a) Seller shall provide PREPA with at one hundred eighty (180) days prior notice of such intention (the "Terminal Abandonment Notice"), and (b) PREPA shall have the first option to purchase the LNG Terminal and LNG Terminal Inventory at a price equal to Fair Market Value, determined by a Valuation Firm selected by PREPA. If PREPA desires to exercise such option, PREPA shall provide Seller with notice thereof ("a PREPA LNG Terminal Purchase Notice") no later than thirty (30) days following its receipt of the Terminal Abandonment Notice. The Parties shall have a period, which will not exceed one hundred eighty (180) days after PREPA's notification to Seller of its intent to purchase the LNG Terminal and the LNG Terminal Inventory under this Section 15.3, to establish the Fair Market Value. The Parties shall exercise their best efforts to consummate the transfer of the LNG Terminal and the LNG Terminal Inventory to PREPA within sixty (60) days of the determination of Fair Market Value. If PREPA does not deliver a timely PREPA LNG Terminal Purchase Notice, Seller may cease operation of the LNG Terminal at the conclusion of the one-hundred eightieth (180<sup>th</sup>) day following the delivery of the Terminal Abandonment Notice, or such later date as Seller may have indicated in the Terminal Abandonment Notice. If PREPA shall have delivered a timely PREPA LNG Terminal Purchase Notice, then, Seller shall continue to perform the obligations it has under the Tolling Agreement at such time, and Seller's right to abandon the LNG Terminal shall not take effect until the earlier of (i) the date on which Seller transfers title to the LNG Terminal and the LNG Terminal Inventory in accordance with this Section 15.3 and (ii) 365 days after the Terminal Abandonment Notice.
- 15.4 If PREPA shall have provided notice of its intent to purchase the LNG Terminal following the delivery by Seller of a Terminal Abandonment Notice, upon PREPA's written request, the Parties shall negotiate in good faith and use their commercially reasonable efforts to provide for the operation of the LNG Terminal by Seller (at no cost, expense, or risk to Seller) during the period between the abandonment of the LNG Terminal and the consummation of the transfer as contemplated by Section 15.3, up to a maximum of one hundred eighty (180) days.
- 15.5 If after the one hundred eighty (180) day period pursuant to Sections 15.2 or 15.3 a Valuation Firm fails to reach a determination of Fair Market Value or a Party disputes such determination, the case will be submitted to a voluntary eminent domain process in a Court of Competent Jurisdiction. In this event, the Parties mutually agree to request the Court of Competent Jurisdiction to appoint a special master pursuant to Rule 41 of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App.III, R.41, for the purpose of determining the Fair Market Value of the Seller's Complex and / or the LNG Terminal and LNG Terminal Inventory (as applicable).
- 15.6 If PREPA exercises any of the purchase options pursuant to Sections 15.1, 15.2 or 15.3, then the Parties shall select a mutually agreeable date for the consummation of such purchase, it being agreed that such date shall be as soon as reasonably practicable after the date of the exercise by PREPA of such option. On the date (the "Purchase Closing Date") when the Parties have determined the Purchase Price and can otherwise satisfy all other requirements for the transfer of Seller's Complex and / or the LNG Terminal and LNG Terminal Inventory (as applicable, the "Purchased Assets") contemplated under this Article 15:
- (a) PREPA shall pay to Seller in immediately available funds an amount (each, a "Purchase Price") equal to (i) for an option exercised under Section 15.1 or 15.2, the sum of the Deemed Abandonment Purchase Price or the Affirmative Permanent Abandonment Purchase Price (as applicable) plus the Inventory Amount, and (ii) for the option exercised under Section 15.3, Fair Market Value of the LNG Terminal and LNG Terminal Inventory;



- (b) Seller shall convey to PREPA, free and clear of all liens and encumbrances, (i) good and marketable title to all elements of the Purchased Assets, (ii) all rights of Seller to use the elements of the Purchased Assets, and (iii) for the option exercised under Section 15.3, good and marketable title to spare parts for the LNG Terminal / LNG Terminal Inventory or utilized in the calculation of the Inventory Amount (as applicable).

In addition, on the Purchase Closing Date, PREPA shall (and Seller shall take such action as may be necessary to permit PREPA to) assume all rights and obligations of Seller under all contracts (other than Excludable Contracts) to which Seller is a party on the Purchase Closing Date to the extent such rights and obligations arise during the period (the "Assumption Period") from and after the Purchase Closing Date to the last day of the Term; provided that PREPA shall not be required to assume (and Seller shall provide PREPA with an indemnity reasonably satisfactory to PREPA in respect of) (x) any liabilities or obligations of Seller under such contracts that arise out of events occurring prior to the first day of, or after the last day of, the Assumption Period or that occur as a result of any failure by Seller to perform its obligations under such contracts or (y) any liabilities or obligations (whether or not then due) of Seller under such contracts which arose out of the provision of goods or services under such contracts on or prior to the Purchase Closing Date. Notwithstanding the foregoing, the Purchase Price shall be reduced by an amount equal to the sum (without duplication) of all amounts then due and payable by Seller to PREPA hereunder on the Purchase Closing Date.

- 15.7 Notwithstanding any other provision to the contrary in this Article 15, PREPA's exercise of any purchase option hereunder shall not extinguish PREPA's obligations to make any payments to Seller in return for its past performance under the Agreement that are due and owing in accordance with the terms thereof.
- 15.8 Each Party shall bear fifty percent (50%) of the cost of such Valuation Firm during the determination of the Fair Market Value.

## 16. INDEMNIFICATION

- 16.1 Each Party shall indemnify and hold harmless the other Party and each of its Affiliates and each of their respective directors, officers, shareholders, partners, employees, agents and representatives and each of their respective heirs, successors and assigns from and against any and all damages, claims, losses, liabilities, actions, causes of action, costs, expenses and obligations (including, without limitation, all reasonable attorneys' fees) whether arising in contract, tort or otherwise to third parties for or on account of injury, bodily or otherwise, to or death of persons or for damage to or destruction of property, in each case resulting from, arising out of or in connection with such indemnifying Party's negligent performance or failure to perform under this Agreement.
- 16.2 In the event any Party to this Agreement receives notice of any claim or cause of action for which such Party elects to assert a right of indemnification and hold harmless from the other Party, the Party receiving such notice must give prompt written notice to the other Party of the claim. The Party required to give the indemnification and hold harmless under the terms and provisions of this Agreement will have control of the defense of any such claim or cause of action (except to the extent prevented by any legal conflict of interest) including the selection of counsel to handle same. In addition to the counsel so selected, the Party being indemnified and held harmless shall be entitled to be represented by counsel of his or its own choosing but, in such event, the cost and expense of said additional counsel shall be borne by the indemnitee.
- 16.3 As of the Effective Date and for the Term, Seller shall indemnify and hold harmless PREPA for any and all judgments and expenses (including reasonable costs and attorneys' fees) required to be incurred by PREPA as a result of claims of any nature whatsoever resulting from



any environmental harm due to the actions of Seller or Seller's agents or employees in the design, planning, construction or operation of the Facility or arising as a result of the presence at the Facility of pollutants, hazardous substances, materials or wastes in excess of amounts and concentrations permitted by applicable federal or Commonwealth laws, rules or regulations then in effect. In the event Seller fails to reimburse PREPA for such expenses within thirty (30) days of receipt of written notice from PREPA stating that such expenses were incurred, PREPA may offset the amount of such expenses against amounts due Seller from PREPA under this Agreement.

## 17. FORCE MAJEURE

17.1 For purposes of this Agreement, Force Majeure means any cause beyond the reasonable control of and not the result of the fault or negligence of the Party claiming the Force Majeure. A Force Majeure shall excuse the performance of the Party claiming a Force Majeure event if such event causes the non-performance or inability to perform. The burden of proof as to whether a Force Majeure has caused a non-performance or inability to perform shall be on the Party claiming the Force Majeure. Except as provided in Section 17.5, the Parties hereto shall be excused from performing hereunder and shall not be liable in damages or otherwise to the extent the non-performance or inability to perform is due to a Force Majeure event.

17.2 Provided that the provisions of Section 17.1 above are met, Force Majeure events include, but are not limited to, the following:

- (a) acts of God, strikes, acts of public enemy, war, blockades, boycotts, riots, insurrections, epidemics, earthquakes, storms, floods, civil disturbances, fires, explosions,
- (b) interruptions of services due to acts or failure to act of any governmental authority,
- (c) condemnation,
- (d) any delay or inability of Seller in obtaining or maintaining Permits,
- (e) the failure of any subcontractor or supplier (including any supplier of fuel to PREPA or its subcontractors or suppliers) to perform as a result of an event that would constitute a Force Majeure hereunder, or, with respect to the supply of Natural Gas from Naturgy, that would constitute Force Majeure under the Restatement GSPA;

The Force Majeure events listed in this Section 17.2 shall not be construed as excluding any other event as long as such event meets the provisions under Section 17.1.

17.3 The occurrence of a hurricane or other severe atmospheric disturbance or event that damages the Grid System and curtails PREPA's ability to Dispatch the Facility within the Design Limits shall qualify as a Force Majeure event affecting PREPA (a "Grid Force Majeure Event"). The duration of each Grid Force Majeure Event ("Grid Restoration Period") shall extend until the earlier of (i) the expiration of the Maximum Recovery Period, and (ii) the date that the restoration of the Grid System first permits PREPA to Dispatch the Facility within the Design Limits in accordance with Prudent Utility Practice as determined using grid operation criteria specified in the Agreed Operating Procedures; provided that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

17.4 Except as otherwise provided in Sections 17.5 hereunder or in Article 11, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; provided that: (i) the non-performing Party, within ten (10)



days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence and its estimated duration; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure consistent with Prudent Utility Practices; (iii) no obligations of either Party which arose prior to the Force Majeure be excused as a result of the Force Majeure; and (iv) the non-performing Party uses its best efforts, consistent with Prudent Utility Practices, to remedy its inability to perform and resume in full its performance under this Agreement; provided that this obligation shall not require the settlement of any strike, walkout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.

17.5 Neither Party shall be excused by reason of Force Majeure from the obligation to make any payments, when due, to the other Party.

17.6 Notwithstanding Section 17.5, for each Billing Period in which the Facility can make Dependable Capacity available at the Interconnection Point during the pendency of a Grid Restoration Period, the Capacity Payment otherwise due and owing for such Billing Period shall be reduced in proportion to the curtailment of Dispatch caused by the Grid Force Majeure Event in accordance with Appendix C; provided that for so long as the Facility remains available, such reduced Capacity Payment shall never fall below the Grid Force Majeure Event Floor to compensate Seller for its fixed, non-financial cost during such Billing Period.

Following the expiration of the Grid Restoration Period, the foregoing reduction to each Capacity Payment shall no longer apply and PREPA shall remit the full Capacity Payment when due, regardless of the Dispatch of the Facility.

17.7 For purposes of this Article, if a Party disputes the other Party's claim of Force Majeure, such dispute shall be resolved by binding arbitration in accordance with the following requirements:

- (i) If within sixty (60) days the dispute is not resolved through negotiations pursued diligently in good faith, the Parties shall attempt to agree on a person with special knowledge and expertise with respect to the claimed Force Majeure to serve as arbitrator. If the Parties cannot agree on an arbitrator within ten (10) days, each shall then appoint one person to serve as an arbitrator and the two thus appointed shall select a third arbitrator with such special knowledge and expertise to serve as chairman of the panel of arbitrators; and such three arbitrators shall determine all matters by majority vote; provided, however, if the two arbitrators appointed by the Parties are unable to agree upon the appointment of the third arbitrator within five (5) days after their appointment, both shall give written notice of such failure to agree to the Parties, and, if the Parties fail to agree upon the selection of such third arbitrator within five (5) days thereafter, then either of the Parties upon written notice to the other may require such appointment from and pursuant to the then-current rules of the American Arbitration Association with the selection of arbitrators from the National Roster of Arbitrators and Mediators (Commercial Arbitrator Panel). Prior to appointment, each arbitrator shall agree to conduct such arbitration in accordance with the terms of this subsection. The arbitration panel may choose legal counsel to advise it on the remedies it may grant, procedure and such other legal issues as the panel deems appropriate.
- (ii) The Parties shall have sixty (60) days to perform discovery and present evidence and argument to the arbitrators. During that period, the arbitrators shall be available to receive and consider all such evidence as is relevant and, within reasonable limits due to the restricted time period, to hear as much argument as is feasible, giving a fair allocation of time to each Party to the arbitration. The arbitrators shall use all reasonable means to expedite discovery and to sanction noncompliance with reasonable discovery requests or any discovery order. The arbitrators shall not consider any evidence or argument not presented during such period and shall not extend such period except by the written



- consent of both Parties. At the conclusion of such period, the arbitrators shall have forty-five (45) days to reach a determination. To the extent not in conflict with the procedures set forth herein, which shall govern, such arbitration shall be held in accordance with the prevailing rules of the American Arbitration Association for commercial arbitration.
- (iii) The arbitrators shall have the right only to interpret and apply the terms and conditions of this Agreement and to order any remedy allowed by this Agreement but may not change any term or condition of this Agreement, deprive either Party of any right or remedy expressly provided hereunder, or provide any right or remedy that has been excluded hereunder.
  - (iv) The arbitrators shall give a written decision to the Parties stating their findings of fact, conclusions of law and order, and shall furnish to each Party a copy thereof signed by them within five (5) days from the date of their determination.
  - (v) Any actual determination made by the arbitrators shall be conclusive and binding upon the Parties and not subject to judicial review, except on the grounds of fraud or bias.
  - (vi) The Parties shall each pay fifty percent (50%) of the cost of arbitrator or arbitrators.
  - (vii) During the pendency of the arbitration, the Party claiming Force Majeure shall use its best efforts, consistent with Prudent Utility Practices, to remedy its inability to perform and resume in full its performance under this Agreement; provided that this obligation shall not require the settlement of any strike, walkout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its best interest.

## **18. TERMINATION**

- 18.1 Termination of this Agreement shall occur only upon: (a) expiration of the Term of this Agreement as provided in Article 5; (b) mutual written consent of the Parties; (c) the Permanent Abandonment or Permanent Closing of the Seller's Complex; (d) the material breach of any of the terms and conditions of this Agreement by either Party, subject to the provisions of Article 19 hereof; or (e) any reason as specified in this Article 18, or (f) at the election of PREPA if (i) the Tolling Agreement was terminated solely due to Seller's default thereunder and (ii) within thirty (30) days after such termination if Seller has not entered into a new tolling agreement with PREPA under the same terms and conditions as the Tolling Agreement.
- 18.2 Termination of this Agreement shall not discharge either Party hereto from any obligation it owes to the other Party under this Agreement by reasons of any event as described in Sections 15.1, 15.2 or 15.3, transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at termination or whether the circumstances, events or basis of the same shall be known or unknown at termination) shall survive termination. Any indebtedness by either Party to the other shall be considered payable within ninety (90) days of the termination of this Agreement. This Section 18.2, together with Section 6.9, Article 15, Article 16, Sections 24.4 and 24.7 and Article 25 shall survive termination of this Agreement.

## **19. BREACH OF AGREEMENT, DELAYS AND SECURITY**

- 19.1 A breach of this Agreement shall be deemed to exist upon the occurrence of any one of the following: (a) the failure by either Party to perform in any material respect its obligations under this Agreement, subject to the provisions of Section 19.2 below; (b) the Equivalent Availability Factor is less than [REDACTED] for any period of twelve (12) consecutive months, or less than [REDACTED] for any period of twenty-four (24) consecutive months, subject



to the provisions of Section 19.2(a); provided that the occurrence of clause (c) of this Section 19.1 shall not give rise to a breach under this clause (b); or (c) in connection with a Permanent Abandonment (unless with respect thereto Seller shall have complied with its obligations under Section 15.1(a) and Section 15.2 (as applicable)), or Permanent Closing (unless Seller shall have complied with its obligations in Section 15.2).

- 19.2 If either Party believes the other Party has breached this Agreement pursuant to Section 19.1(a) above or if PREPA believes Seller has breached this Agreement pursuant to Section 19.1(a) above, the non-breaching Party shall provide the other Party with written notice (the "Notice of Breach") thereof. If within fifteen (15) days of the receipt of such Notice of Breach, such other Party fails to respond in writing to the Notice of Breach, the non-breaching Party shall be entitled to invoke its remedies under this Agreement and/or under the law. If such other Party disputes in writing that a breach by it has occurred, the Parties may attempt to resolve the matter by any form of dispute resolution mutually acceptable. If the matter is not resolved within sixty (60) days of receipt of the Notice of Breach, either by admission that a specific breach has occurred or by any other agreed solution, the Party serving the Notice of Breach may pursue its remedies under this Agreement and/or under the law. In case the other Party admits in writing, or the resolution contemplated above determines that a breach (other than a payment breach) has occurred, the breaching Party shall have a minimum of thirty (30) days from the latest of (a) receipt of the Notice of Breach, (b) its admission of breach, or (c) when the resolution contemplated above determines that a breach has occurred, to cure the breach or the cause of such breach if the breach is one which by its nature cannot be cured; provided however, that if the breach or such cause cannot be cured within the thirty (30) day period, the breaching Party shall be given an additional reasonable period of time to cure the breach or such cause with the exercise of due diligence. If the breaching Party fails to cure the breach or such cause within such time period, the non-breaching Party may pursue its remedies under this Agreement and/or under the law.
- 19.3 (a) Seller shall provide to PREPA, at Seller's sole expense, an unconditional and irrevocable direct pay letter(s) of credit issued by a local bank or any other bank, which such issuing bank and letter(s) of credit shall be subject to PREPA's approval, or a parent company guaranty acceptable to PREPA provided by the ultimate parents of Seller's partners, (or other security acceptable to PREPA) in the amount of [REDACTED] ("Operation Security").
- (b) PREPA may draw from the Operation Security required under Section 19.3(a) above to offset any damages PREPA may be entitled to under this Agreement upon Seller's breach of this Agreement under Sections 19.1(a) or 19.1(b) that is not cured within the applicable period set forth in Section 19.2(a); provided that PREPA either obtains the agreement of Seller to the level of damages or obtains a judgment from a Court of Competent Jurisdiction specifying the level of damages. If PREPA reasonably determines that the Operation Security would otherwise expire or cease to exist prior to such agreement or judgment, PREPA may draw from the Operation Security an amount equal to PREPA's claim of damages; provided that PREPA places the drawn amounts in an escrow account in a bank reasonably acceptable to Seller until the appropriate amount of damages is determined. Following such agreement or determination, PREPA may draw from the escrow account and retain amounts equal to the amount of damages, if any, determined to be due to PREPA and PREPA shall deliver to Seller all amounts remaining in the escrow account, if any. Drawing under the Operation Security shall not be the exclusive remedy available to PREPA.
- 19.4 Any amount drawn by PREPA from the Operation Security according to Section 19.3(b) above after the Commercial Operation Date shall be replenished in the form of cash escrow, an unconditional and irrevocable direct pay letter(s) of credit issued by a local bank or any other bank, which cash escrow, issuing bank and letter(s) of credit shall be subject to PREPA's



approval, or a parent company guaranty acceptable to PREPA (or other security acceptable to PREPA) by Seller from and to the extent of the net after-tax cash flow to Seller that is produced after the date that PREPA draws amounts on the Operation Security. If any Operation Security drawn according to Section 19.3(b) above after the Commercial Operation Date is not replenished within ninety (90) days of drawdown by PREPA, Seller shall provide PREPA with a monthly statement from a recognized independent accounting firm, until full replenishment is accomplished, certifying in accordance with GAAP that the net after-tax cash flow from the project is insufficient to replenish the Operation Security. Any failure of Seller to replenish the Operation Security in the manner specified above shall be considered a material breach of this Agreement and PREPA may terminate this Agreement pursuant to Section 18.1(d), without Seller being entitled to any cure period.

19.5 Seller shall be entitled to terminate and have returned to it the Operation Security required under Section 19.3(a) above upon termination of the Agreement and after payment of any and all amounts owed to PREPA and resolution of any pending issues relating thereto.

19.6 (a) Should a Permanent Abandonment of the Seller's Complex occur under paragraph (a) of the definition of Permanent Abandonment without PREPA being notified in accordance with Section 15.1(a), Seller shall be in default under this Agreement. In such case, PREPA shall be entitled to invoke its remedies under this Agreement and/or under the law; provided that PREPA shall also have the right, and Seller shall permit PREPA, to operate the Seller's Complex for a period of sixty (60) months from the occurrence of such Permanent Abandonment decreased by the actual number of months between the date of notice to PREPA of such Permanent Abandonment and the date operation of the Seller's Complex by Seller actually ceases, or for a period of sixty (60) months from occurrence of a Permanent Closing ("PREPA's Operating Period"), including the corresponding interest amount; further provided, that PREPA shall have and retain an option to purchase the Seller's Complex at any time after the occurrence of a Permanent Abandonment or Permanent Closing, in accordance with Section 15.1 hereof.

(b) Any amount paid by PREPA to reduce the debt of the Seller's Complex and/or any capital improvement made by PREPA on the Seller's Complex during PREPA's Operating Period, shall be reimbursed to PREPA by Seller, its successors, or assignees, as applicable, upon the termination of this Agreement, or may be reduced from the determination of the appraised value of the Seller's Complex in the event PREPA exercises its option to purchase the Seller's Complex in accordance with Section 15.1 hereof. In the event PREPA does not exercise its option to purchase, and the Seller's Complex is sold to a third party, PREPA shall turnover to Sellers the proceeds of such sale net of the reimbursement of amounts to reimburse PREPA for capital improvements made pursuant to this paragraph.

19.7 Upon any termination of this Agreement prior to the end of the Term described in Article 5 hereof which is attributable to Seller's breach of the Agreement or Permanent Abandonment or Permanent Closing of the Seller's Complex, Seller agrees to provide at no cost to PREPA copies of all site related data, including without limitation, technical, environmental, geological, seismological, licensing and permitting data in Seller's possession, excluding any proprietary design information relating to the Seller's Complex.

19.8 If requested by PREPA, Seller shall consent to an assignment of the Tolling Agreement from Naturgy to PREPA or its designee in the event that Naturgy defaults under the Restatement GSPA.

## 20. TAXES AND ENVIRONMENTAL COSTS



20.1 For purposes of this Agreement, "Taxes" shall mean any and all taxes, fees or other charges of any nature, excluding income taxes and repatriation (tollgate) taxes, that are imposed or assessed on or as a result of the ownership or operations of the Seller's Complex by federal, Commonwealth or municipal governmental bodies or agencies responsible for implementing tax laws, rules, regulations or orders. "Environmental Costs" shall mean any and all fixed and variable costs incurred by Seller resulting from the imposition or assessment on or as a result of the ownership or operations of the Seller's Complex by laws, rules, regulations or orders relating to the environment issued by federal, Commonwealth or municipal governmental bodies or agencies. "Post-Original Effective Date Taxes" shall mean all Taxes resulting from tax laws, rules, regulations or orders enacted, approved or issued after the Original Effective Date. "Post-Original Effective Date Environmental Costs" shall mean all Environmental Costs resulting from laws, rules, regulations or orders enacted, approved or issued after the Original Effective Date.

- (a) Seller shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs; provided that PREPA shall reimburse to (if such value is positive) or receive from (if such value is negative), Seller the net effect of any changes in the payments of Taxes by Seller that are the result of the enactment of Post-Original Effective Date Taxes and for all changes in Seller's Environmental Costs that are the result of the enactment of Post-Original Effective Date Environmental Costs, all applicable to Seller by reason of the ownership or operation of the Seller's Complex for the purpose of the delivery or sale by Seller to PREPA of Net Electrical Output or Dependable Capacity (collectively called "Changes") which either (i) are Taxes applicable to fuel used by Seller to provide Net Electrical Output or (ii) are Taxes imposed or assessed by Commonwealth or municipal governmental bodies or agencies; provided, however, that the term "Changes" shall not include (x) any Change after the Commercial Operation Date, as compared to the situation immediately prior to the Commercial Operation Date, which reduce taxes, fees or charges on the extraction or use of seawater utilized in the Seller's Complex to produce electrical energy or desalinated or potable water, or (y) any change resulting from Seller's failure to comply with the conditions or requirements of the Grant of Industrial Tax Exemption to EcoEléctrica L.P., Case No. 08-135-I-42, pursuant to the terms of Act 135 of December 2, 1997, as executed by the Governor of the Commonwealth of Puerto Rico, as amended, or any elective benefit further granted thereunder, or any other tax exemption, decree or grant in effect on the Commercial Operation Date.
- (b) Seller agrees that any financial impact attributable to a Post-Original Effective Date Tax or Post-Original Effective Date Environmental Cost paid by PREPA will be subject to the end of Fiscal Year audit, as provided in Section 6.6 hereof, and properly adjusted if applicable.

20.2 Seller will promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon it or in respect of all or any part of its property or business, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which, if unpaid, might become a lien or charge upon any of its property; provided, however, that Seller shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (a) the validity, applicability or amount thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of Seller or any material interference with the use thereof by Seller and (b) Seller shall set aside on its books reserves deemed by it to be adequate with respect thereto.

## 21. INSURANCE



- 21.1 Except for the insurance described in Section 21.1(e), Seller shall obtain or cause its agent or its Affiliate to obtain and maintain during the remainder of the Term the following policies of insurance issued by an A. M. Best rated insurance company or any other insurance providers reasonably acceptable to PREPA, such as Lloyds of London:
- (a) Workmen's Compensation Insurance which complies with the laws of the Commonwealth of Puerto Rico and Employer's Liability Insurance with limits of at least \$1,000,000;
  - (b) Comprehensive or Commercial General Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in Article 16, broad form property damage liability, personal injury liability, explosion and collapse hazard coverage, products/completed operations liability; and where applicable, watercraft protection and indemnity liability which may be covered on a separate policy;
  - (c) Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per occurrence covering vehicles owned, hired or non-owned;
  - (d) Excess Umbrella Liability Insurance with a single limit of at least \$9,000,000 per occurrence in excess of the limits of insurance provided in subparagraphs (a), (b) and (c) above;
  - (e) All risk physical damage insurance, including comprehensive boiler and machinery coverages, to cover all real and personal property of Seller (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost to the extent available on commercially reasonable terms as determined by Seller and subject to a reasonable deductible which shall be the responsibility of Seller. This policy of insurance shall be placed into effect on the earlier of Commercial Operation Date or on the date that the insurance provided in Section 21.1(f) expires; and
  - (f) Builder's "All Risk" insurance on a "replacement cost" basis insuring the total cost of the Facility to the extent available on commercially reasonable terms as determined by Seller and subject to reasonable deductibles.
- 21.2 The amounts of insurance required in Section 21.1 above may be satisfied by Seller purchasing primary coverage in the amounts specified or by buying a separate Excess Umbrella Liability policy together with lower limit primary underlying coverage. The structure of the coverage is Seller's option, so long as the total amount of insurance meets PREPA's requirements set forth in Section 21.1.
- 21.3 The coverages requested in Section 21.1(b) above and any required umbrella or excess coverage could be "occurrence" form policies if available on commercially reasonable terms. In the event Seller has "claims-made" form coverage, Seller shall notify PREPA and the retroactive date established on the first "claims-made" policy shall be maintained on all subsequent renewals.
- 21.4 Seller shall cause its insurers to amend its Comprehensive or Commercial General Liability and, if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Seller's Complex; and to amend Seller's Worker's Compensation and Automobile Liability policies with endorsement item (e):
- (a) PREPA and their respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Seller's indemnity obligations elsewhere in this Agreement;



- (b) this insurance is primary, but only for liability arising out of the operation of the Seller's Complex or other matters arising in relation to this Agreement; with respect to the interest of PREPA and their respective directors, officers, and employees, and other insurance maintained by them is excess and not contributory with this insurance;
  - (c) the following cross liability clause or other clause with substantially similar language is made a part of the policy: "In the event of claims being made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance and only if such claim pertains to the Agreement";
  - (d) insurer hereby waives all rights of subrogation against PREPA and their respective officers, directors and employees; and
  - (e) notwithstanding any provision of the policy, this policy may not be cancelled non-renewed, or materially changed by the insurer without giving thirty (30) days' (ten (10) days in the case of non-payment of premiums) prior written notice to PREPA. All other terms and conditions of the policy remain unchanged.
- 21.5 Regarding breach of insurance warranties by Seller, all insurance policies under Sections 21.1(b), 21.1(c) and 21.1(d) shall be endorsed, to the extent available on commercially reasonable terms, as follows or with substantially similar language agreeable to the Parties: "The breach of any of the warranties or conditions in this policy by Seller shall not prejudice PREPA's right under this policy." If Seller does not obtain the aforementioned endorsement, then Seller shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.
- 21.6 Seller shall cause its insurers or agents to provide PREPA not later than seven (7) days prior to the Effective Date, with the originals of the certificates of insurance evidencing the policies and endorsements listed above (except the insurance requested under Section 21.1(e), in which case certificates of insurance evidencing the policies will be provided within thirty (30) days following the effective date of such policies) with respect to the Seller's Complex. Failure of PREPA to obtain certificates of insurance does not relieve Seller of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Article 21 shall in no way relieve or limit Seller's obligations and liabilities under other provisions of this Agreement.
- 22. ASSIGNMENT<sup>10</sup>**
- 22.1 This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempt to assign this Agreement without the prior written consent of the corresponding Party shall be void.
- 22.2 PREPA acknowledges that as a result of an assignment of Seller's rights and interests (but not its obligations) under this Agreement to a lender of Seller (a "Project Lender"): (a) the Project Lender(s) will have the right upon the occurrence of a default under the Project Lender(s) agreements with Seller to assume or cause a nominee to assume all of the rights and obligations of Seller under this Agreement and (b) the Project Lender(s) will have the right to cure defaults

<sup>10</sup> **NTD:** The terms and provision associated with Article 22 should match the fuel supply agreement, including with respect to credit worthiness of the assignee, and remain subject to comments by Naturgy and Seller.



by Seller under this Agreement on the same terms and during the same periods available to Seller.

- 22.3 Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that PREPA is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act No. 120-2018, otherwise known as Puerto Rico Electric System Transformation Act, as amended), PREPA may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "Transfer") any of its rights, title, or interest (by novation or other instrument) in this Agreement as permitted by applicable law and at any time, and without Seller's consent without cost, expense or incremental liability to PREPA or a T&D Operator.
- 22.4 If at any time during the Term, PREPA or a Commonwealth Assignee were to become a Non-Commonwealth Entity, Seller will have the right to terminate the Agreement pursuant to Section 18.1(d), unless effective on the date on which PREPA (or, if applicable, the Commonwealth Assignee) were to become a Non-Commonwealth Entity, PREPA (or, if applicable, the Commonwealth Assignee) satisfies, and covenants to maintain in full force and effect during the Term, one of the following:
- (a) full compliance with the Credit Standards;
  - (b) the delivery to Seller of a legal, valid, binding and enforceable Acceptable Guarantee; or
  - (c) the delivery of, an Acceptable Letter of Credit.
- 22.5 Any Acceptable Letter of Credit provided by an Acceptable Private Assignee pursuant to this Agreement shall be subject to the following provisions:
- (a) Unless otherwise agreed in writing by the Parties, each Acceptable Letter of Credit shall be maintained for the benefit of Seller. The Acceptable Private Assignee shall renew or cause the renewal of any Acceptable Letter of Credit on a timely basis as provided in the relevant Acceptable Letter of Credit. If a Letter of Credit Default occurs Seller shall have the right to make a drawing on the Acceptable Letter of Credit in full unless such assignee shall have provided for the benefit of Seller a substitute Acceptable Letter of Credit (meeting the conditions of this Section 22.5) in equal amount to the Acceptable Letter of Credit being replaced by the close of business on the date that is five (5) business days following the occurrence of such Letter of Credit Default.
  - (b) Each Acceptable Letter of Credit shall provide that Seller may draw upon the Acceptable Letter of Credit in an amount (up to the face amount for which the Acceptable Letter of Credit has been issued) that is equal to any or all amount(s) that are due and owing from such assignee under this Agreement, but have not been paid to Seller when due, upon presentation to the issuing bank of one or more statements certified by Seller that the amount(s) drawn under the Acceptable Letter of Credit represent amounts due and owing under the Agreement.
  - (c) Each Acceptable Letter of Credit shall provide that Seller may draw the full amount due and owing by such assignee to Seller on the date thereof pursuant to this Agreement (up to the entire undrawn amount of the Acceptable Letter of Credit) if any event giving Seller the right to terminate this Agreement pursuant to Sections 22.4 and Section 18.1(d) has occurred and is continuing, upon presentation to the issuing bank of one or more statements certified by Seller that such an event has occurred and is continuing with respect to the Acceptable Private Assignee.



- (d) Each Acceptable Letter of Credit shall provide that Seller may draw the full amount of such Acceptable Letter of Credit in case of any default by such assignee under the Agreement.
- 22.6 An Acceptable Private Assignee, other than an Acceptable Private Assignee that has provided an Acceptable Letter of Credit to Seller, shall (a) notify Seller promptly, but in no event more than fourteen (14) days after the date on which such assignee becomes aware of the occurrence of a Credit Standard Event and (b) within thirty (30) days of such Credit Standard Event, provide replacement credit support in the form of an Acceptable Guarantee or an Acceptable Letter of Credit. If the Acceptable Private Assignee fails to deliver such Acceptable Letter of Credit or Acceptable Guarantee in accordance with clause (b) of the previous sentence, Seller may terminate this Agreement upon notice with immediate effect.
- 22.7 An Acceptable Private Assignee that has provided an Acceptable Letter of Credit to Seller, shall (i) notify Seller promptly, but in no event more than fourteen (14) days after the date on which such assignee becomes aware of the occurrence of a Letter of Credit Issue Event and (ii) within thirty (30) days of such Letter of Credit Issue Event, provide replacement credit support in the form of an Acceptable Guarantee or an Acceptable Letter of Credit. If the Acceptable Private Assignee fails to deliver such Acceptable Letter of Credit or Acceptable Guarantee in accordance with clause (ii) of the previous sentence, Seller may terminate this Agreement upon notice with immediate effect.

### 23. QUALIFYING FACILITY STATUS/ APPLICABILITY OF PURPA

- 23.1 Seller in its sole option may maintain the status of the Facility as a Qualifying Facility. In the event that Seller elects to maintain Qualifying Facility status, this Agreement, and the purchase and sale of Net Electrical Output shall be subject to PURPA.
- 23.2 [In the event the Facility loses its status as a Qualifying Facility pursuant to PURPA, Seller shall vigorously pursue and use reasonable efforts to reobtain Qualifying Facility status. Notwithstanding the above, should Seller be unable to obtain such status, this Agreement shall remain in full force and effect and Seller shall comply, in its relationship with PREPA, with all other provisions of PURPA and the regulations approved under PURPA by FERC or any successor applicable to the relationship between Qualifying Facilities and electric utilities, in particular those provisions which protect, defend, preserve, and/or are propitious to electric utilities; provided, however, that nothing under PURPA or the regulations thereunder shall materially adversely affect in any way the rights, duties, and obligations of the Parties under this Agreement.]<sup>11</sup>

### 24. MISCELLANEOUS PROVISIONS

- 24.1 This Agreement, including the appendices thereto, can be amended only by agreement between the Parties in writing.
- 24.2 The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

<sup>11</sup> NTD: Eco reviewing QF status-related provisions.

- 24.3 The headings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.
- 24.4 This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.
- 24.5 No officer, employee, or agent of Seller or PREPA or of the Territory or municipal governments shall be entitled to any share or part of this Agreement or to any benefit that may arise therefrom that would be in violation of any law, rule, regulation, order, or policy of the Territory or PREPA.
- 24.6 This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 24.7 Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations incurred prior to, or as a result of, such cancellation, expiration or earlier termination of this Agreement, which by their nature should survive such events, including without limitation warranties, remedies, promises of indemnity and confidentiality.
- 24.8 PREPA agrees to provide electric service to Seller as requested by Seller, at the most advantageous rate available to Seller in accordance with PREPA's applicable rates.
- 24.9
- (a) Seller hereby certifies and warrants that at the Effective Date it has filed its income tax return for the last five (5) Years, if required, and does not owe any income taxes to the Commonwealth of Puerto Rico, unless it is under a payment plan whose terms and conditions are being complied with.
  - (b) Seller certifies and warrants that at the Effective Date it has made all payments and does not owe any monies to the Labor and Human Resources Department of Puerto Rico required by the Puerto Rico Employment Security Act to cover applicable unemployment, temporary disability or sickness, and social security for chauffeurs.
  - (c) It is expressly agreed that the conditions in clauses (a) and (b) of this Section 24.9 are an essential requirement of the present Agreement and if the above-mentioned certifications are not correct in any material respect, this will be sufficient cause to cancel this Agreement, following the lapse of any cure period of [sixty (60)] days.
  - (d) All subcontractors employed by Seller shall also comply with the above-mentioned certifications. Seller shall be responsible for requiring such certification, from all subcontractors and notifying PREPA of such compliance.
- 24.10 Each Party to this Agreement warrants that, except to the extent that a particular provision of this Agreement expressly creates a different standard, it will be reasonable with respect to the timing and substance of any exercise of its respective rights, obligations, duties and discretions in implementing this Agreement, including, without limitation, the making of and satisfying of requests, the issuance and withholding of consents and findings of acceptability or satisfaction, the incurrence of costs that are the responsibility of the other Party, and the provision of notice to the other Party.



- 24.11 This Agreement shall inure to the benefit of and be binding upon Seller and PREPA and their respective successors and assigns.
- 24.12 Either Party may waive breach by the other Party; provided that no waiver by or on behalf of either Party of any breach of this Agreement shall take effect or be binding on that Party unless the waiver is in writing. A waiver of breach shall extend only to the particular breach waived and shall not limit or otherwise affect any rights that either Party may have with respect to any other or future breach.
- 24.13 This Agreement is intended by the Parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement with respect to the Net Electrical Output delivered, and Dependable Capacity sold and purchased hereunder and other matters set out herein with respect to the Seller's Complex. All prior written or oral understandings, offers or other communications of every kind pertaining to the sale of Dependable Capacity hereunder to PREPA by Seller (including under the Pre-Restatement PPOA) are hereby superseded.
- 24.14 If any provision hereof shall be held invalid, illegal or unenforceable by any Court of Competent Jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 24.15 Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

## **25. CHOICE OF LAW AND VENUE**

- 25.1 This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America.
- 25.2 Unless otherwise specified in this Agreement, the venue for all disputes hereunder shall be in a Court of Competent Jurisdiction.

## **26. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS**

Seller will comply with all applicable state law, Regulations and executive orders that regulate the contracting process and establish the requirements for governmental contracting in the Commonwealth of Puerto Rico, including but not limited to those mentioned in this Article. Also, Seller shall provide, before the Effective Date the following documents and certifications:

- 26.1 Seller shall provide, before the Effective Date the following documents and certifications:
- (a) Pursuant to Executive Order Number OE-1991-24 of June 18, 1991, Seller shall provide a certification to the effect that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. Seller further will certify that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico.
  - (b) Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Seller shall provide a certification to the effect that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof.



- (c) Government of Puerto Rico Municipal Tax Collection Center: Seller shall provide a certification to the effect that it does not have any current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (known in Spanish as Centro de Recaudación de Ingresos Municipales ("CRIM")). Seller further will certify to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. To request such certification, Seller will use the form issued by the Municipal Revenues Collection Center ("MRCC") (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" on the MRCC's website).
  - (d) Seller shall provide a Personal Property Tax Filing Certification, issued by the MRCC which indicates that Seller has filed its Personal Property Tax Return for the last five (5) contributory terms or Negative Debt Certification issued by the MRCC with respect to real and property taxes indicating that (i) during the last five (5) years it has had no taxable business or personal property on the 1st of January of each year, (ii) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended, and (iii) that for such reason it does not have an electronic tax file in the MRCC's electronic system.
  - (e) Seller shall provide a Puerto Rico Sales and Use Tax Filing Certificate, issued by the Treasury Department of Puerto Rico indicating that Seller has filed its Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods and does not owe Puerto Rico Sales and Use taxes to the Commonwealth of Puerto Rico or is paying such taxes by an installment plan and is in full compliance with its terms.
  - (f) Seller shall provide a copy of Seller's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
  - (g) Seller shall provide an Employer Compliance Certificate indicating that either (i) it is complying with all income withholding orders as established in all cases or (ii) there are no active income withholding orders to comply with at present.
  - (h) Seller shall provide a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any Person performing equivalent functions for Seller has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.
- 26.2 Seller shall provide, whenever requested by PREPA during the term of this Agreement, a certification regarding Seller's compliance with its income tax returns to the Government of Puerto Rico. During the term of this Agreement, Seller agrees to pay and/or to remain current with any repayment plan agreed to by Seller with the Government of Puerto Rico.
- 26.3 If requested by PREPA, Seller shall request from each and every supplier and subcontractor whose service Seller has secured in connection with the services to be rendered under this Agreement, a certification substantially similar to the certification set forth in Section 26.1(b) and shall forward evidence to PREPA within ten (10) days after its receipt from the relevant supplier and/or subcontractor.
- 26.4 Seller shall provide, whenever requested by PREPA during the term of this Agreement, a certification issued by the MRCC, certifying that Seller does not owe any tax accruing to such governmental agency. To request such Certification, Seller will use the form issued by the MRCC (called "CRIM-Certificados, Radicación, Estado de Cuenta y Todos los Conceptos" in the website). During the Term of this Agreement, Seller agrees to pay and/or to remain current



with any repayment plan agreed to by Seller with the Government of Puerto Rico with regards to its property taxes.

- 26.5 Compliance with Act No. 1 of Governmental Ethics: Pursuant to Act 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, no employee or executive of PREPA nor any member of their immediate family (spouse, dependent children or other members of their household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Agreement, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government. 3 L.P.R.A. § 8611 et seq.
- 26.6 Law 168-2000: In the event any employee of Seller is bound to pay support for care of elderly people under the Law for the Strengthening of the Family Support and Livelihood of Elderly People in Spanish: "Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada", 3 L.P.R.A. §8611 et seq., Seller shall comply with any requirement or order issued by the corresponding administrative agency or local court.
- 26.7 Law 127-2004: Contract Registration in the Comptroller's Office of Puerto Rico Act: Payment for services object of this Agreement will not be made until this Agreement is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law 18 of October 30, 1975, as amended.
- 26.8 Prohibition with respect to execution by public officers: 3 L.P.R.A. 8615(c): No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- 26.9 Prohibition with respect to contracting with officers or employees: 3 L.P.R.A. 8615(d): No executive agency may execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the last four (4) years prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice.
- 26.10 Prohibition with respect to contracts with officers and employees of other Government entities: 3 L.P.R.A. 8615(e): No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency, unless the Governor gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.
- 26.11 Prohibition with respect to evaluation and approval by public officers: 3 L.P.R.A. 8615(f): No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- 26.12 Prohibition with respect to execution by public officers' contracts with former public officers: 3 L.P.R.A. 8615(h): No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.



**27. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO**

- 27.1 Seller agrees to comply with the provisions of Act 2-2018, as the same may be amended from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico. Seller hereby certifies that it does not represent particular interests in cases or matters that imply a conflicts of interest, or of public policy, between the executive agency and the particular interests it represents.
- 27.2 Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- 27.3 PREPA shall have the right to terminate the Agreement in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3 or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- 27.4 Consequences of Non-Compliance: Seller expressly agrees that the conditions outlined throughout this Article are essential requirements of this Agreement. Consequently, should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the PREPA to terminate this Agreement.

**28. CONSEQUENCES OF NON-COMPLIANCE**

- 28.1 Seller expressly agrees that the conditions outlined throughout Section 26 and 27 are essential requirements of this Agreement. If any of the certifications listed in these Sections shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of the execution of this Agreement. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to PREPA a proof of payment of this debt; otherwise, Seller accepts that the owed amount be retained at the origin by PREPA and deducted from the corresponding payments to be forwarded to the corresponding governmental agency. Seller accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Seller has secured in connection with the services to be rendered under this Agreement and shall forward evidence to PREPA as to its compliance with this requirement. Should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, and should such non-compliance not be cured within sixty (60) days, there shall be sufficient cause for PREPA to terminate this Agreement. In case that the Seller is not able to obtain the required documentation during the term provided here for causes not in Seller's control, then PREPA agrees to extend the term for Seller to comply. Seller understands and agrees that PREPA is



prohibited to process any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

**29. NON-DISCRIMINATION**

- 29.1 Seller agrees that it will not discriminate against any employee or applicant for employment on account of race, color, gender, age, sex, national or social origin, social status, political ideas or affiliation, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigrant status, for physical or mental disability, for veteran status or genetic information.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written,

ATTEST:

ECOELÉCTRICA, L.P.

By: \_\_\_\_\_  
Title: [•]  
[•]

By: \_\_\_\_\_  
Title: [•]

ATTEST:

PUERTO RICO ELECTRIC POWER  
AUTHORITY

By: \_\_\_\_\_  
Title: [•]

\_\_\_\_\_  
Title: [•]



## APPENDIX A – DESIGN LIMITS

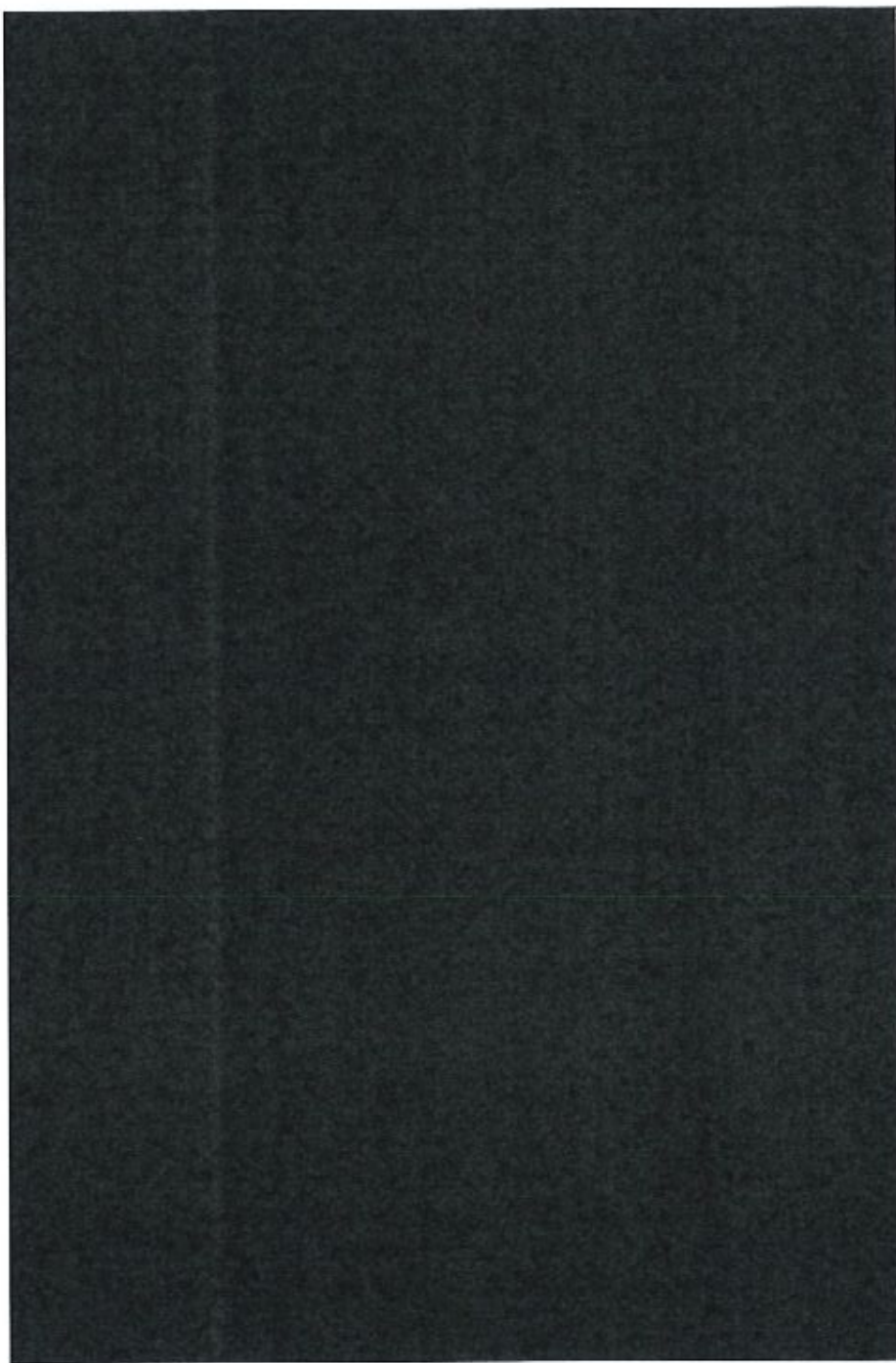
This Appendix specifies the Design Limits applicable to the Facility for the purpose of Automatic Generation Control including Ramp Rates.

The following are preliminary Design Limits for each Unit of the Facility. These values are identical to those identified as approved criteria in Appendix M:

[illegible]

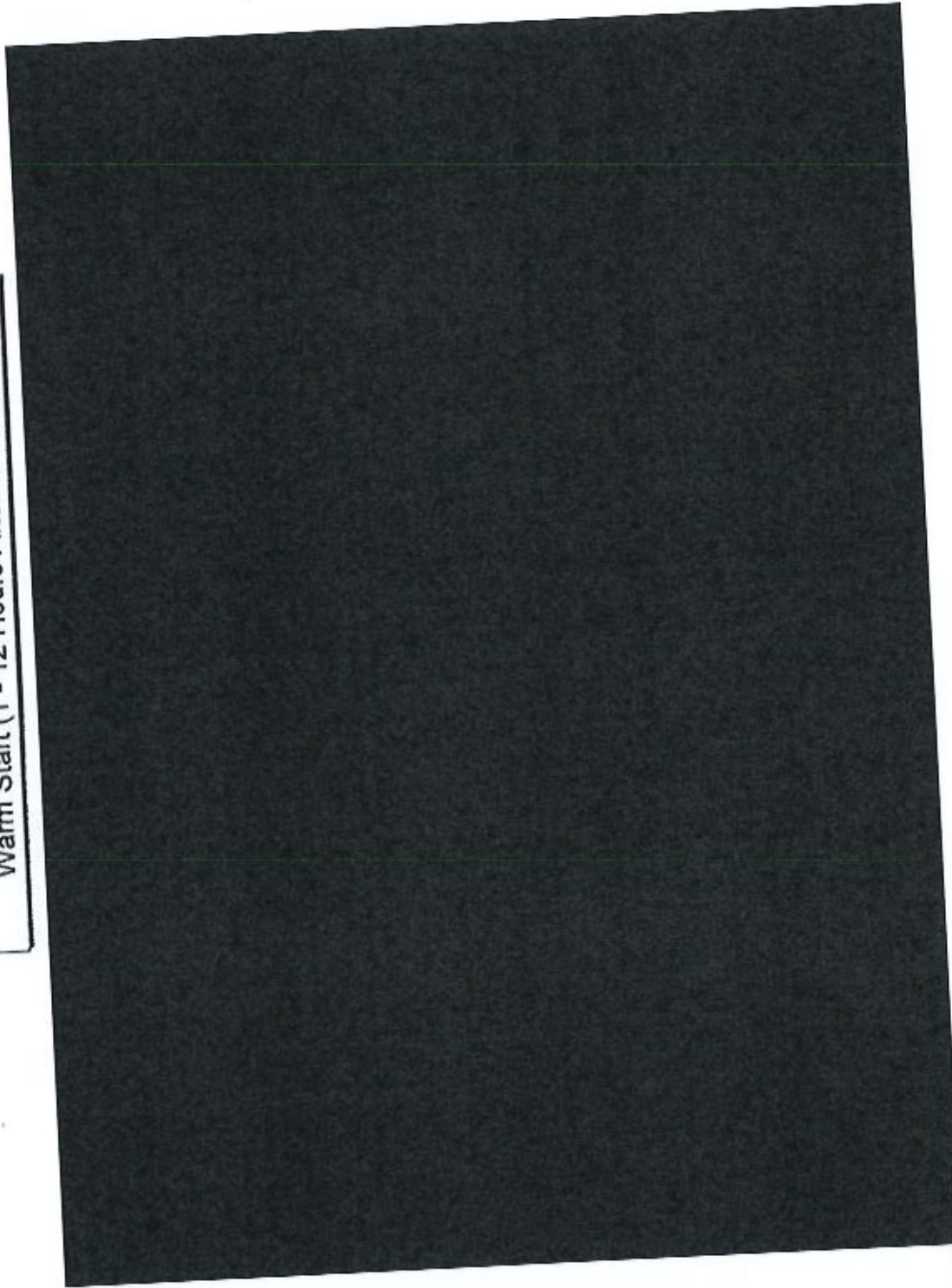
This Appendix includes three charts depicting Preliminary Normal Start and Loading Characteristics for each of the three types of Facility starts: Hot Start, Warm Start and Cold Start. Hot Start, Warm Start and Cold Start are defined in Appendix G. Each of these charts indicates the Facility's percent of rated load as a function of time and provides the preliminary Ramp Rates for the Facility in units of megawatts per minute ("MW/min").

Preliminary Normal Start and Loading Characteristics  
Hot Start (<1 Hour After Shutdown)

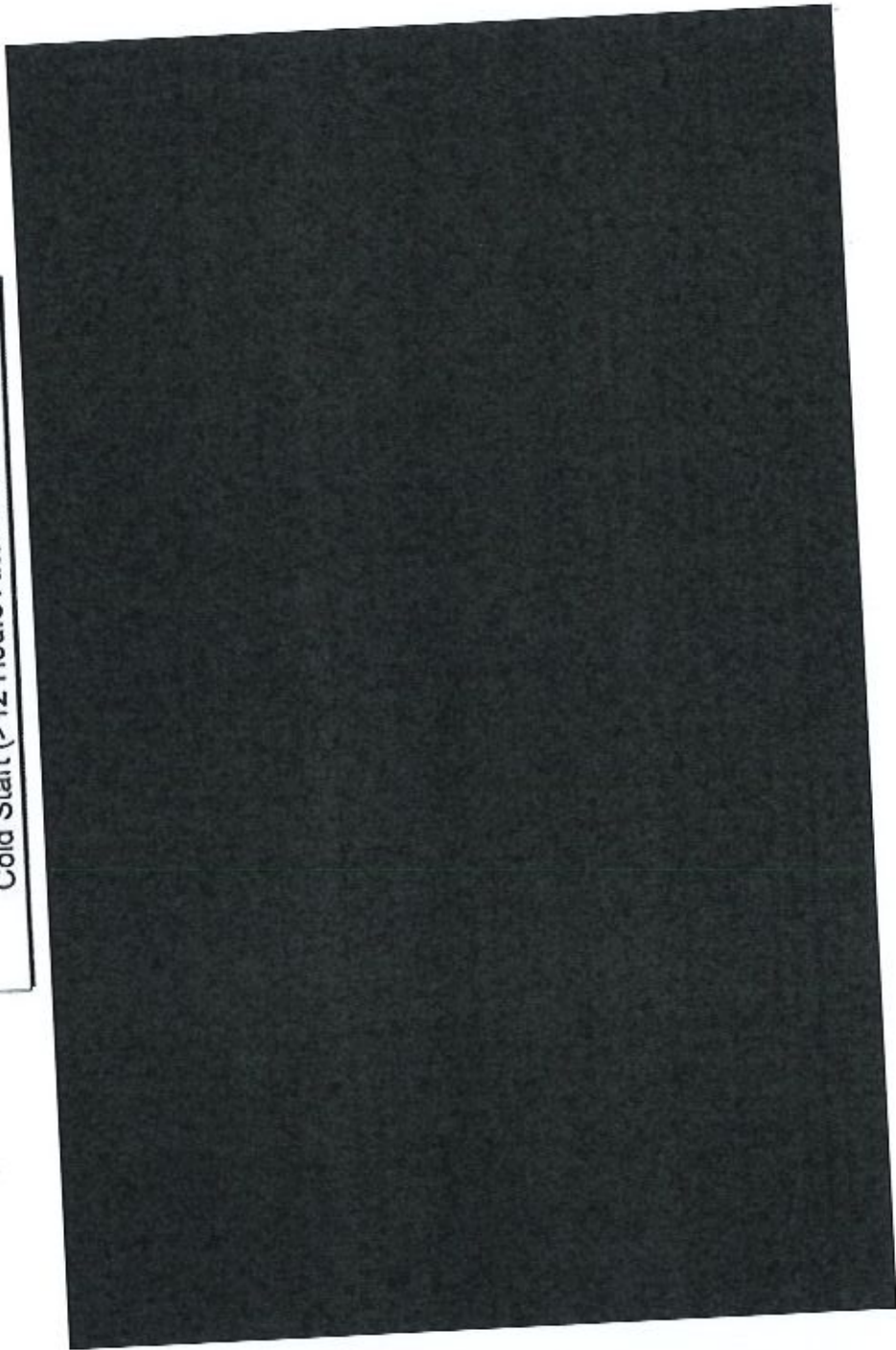




Preliminary Normal Start and Loading Characteristics  
Warm Start (1 - 12 Hours After Shutdown)



Preliminary Normal Start and Loading Characteristics  
Cold Start (>12 Hours After Shutdown)





## APPENDIX B – FUEL COST CORRECTION CURVE

### I. Objective

This Appendix sets forth the procedure to develop several Fuel Cost Correction Curves (collectively "FCCCs" or individually "FCCC"). A FCCC will be developed for each operating configuration including combined-cycle operation with two (2) combustion turbines, combined-cycle operation with one (1) combustion turbine, simple-cycle operation with two (2) combustion turbines, and simple-cycle operation with one (1) combustion turbine.

The abscissa of the FCCC is the Percent of Dependable Capacity ("PDC<sub>i</sub>") and the ordinate of the FCCC is the Fuel Cost Correction Factor ("FCCF<sub>i</sub>"). The PDC<sub>i</sub> for each hour *i*, is defined as that quantity, expressed as a percent, the numerator of which is the Seller's capacity output for that hour *i* ("SCO<sub>i</sub>") and the denominator of which is the Dependable Capacity ("DPC"). The FCCF<sub>i</sub> for each hour *i*, is defined as that quantity the numerator of which is the Facility's Heat Rate for such hour *i* ("HR<sub>i</sub>") at SCO<sub>i</sub> and the denominator of which is the Base Load Heat Rate "BHR"). The FCCF at 100 Percent of Dependable Capacity is unity.

$$PDC_i = \frac{SCO_i}{DPC} \times 100\%$$

$$FCCF_i = \frac{HR_i}{BHR}$$

### II. Requirements

- A. The derived thermal performance data will reasonably reflect actual operation for each operating configuration.
- B. Characteristics will be represented in the form of an equation or equations which best fit the operating data. The FCCC equation(s) will be either second or third order polynomial equation(s) derived to describe the FCCF as a function of PDC. A piecewise curve fit is allowed.

### III. Performance Test Method

Performance Tests will be conducted for various capacity outputs over the operating range of the Facility. In order to represent steady state conditions the minimum run at each point, following Unit stabilization, will be one (1) hour. During this period, all plant systems consistent with normal operations will be functioning and there shall be no process steam extraction.

- A. The Tested Capacity and Tested Heat Rate will be derived during each Performance Test.
- B. For each operating configuration, one test will be conducted at the minimum dispatch level. Additional Performance Tests will be conducted at various capacity outputs at a maximum interval of 10 Percent of Dependable Capacity or such lesser interval as maintains the change in FCCF at 0.05 or less.
- C. For each test, the PDC<sub>i</sub> will be the net kilowatt-hours measured at the Interconnection Point divided by the time increment expressed in hours rounded to the nearest one-hundredth (1/100) of an hour, with the resulting amount divided by the Tested Capacity. The resulting heat rate (HR<sub>i</sub>) corresponding to the PDC will be the gross fuel consumption over this period divided by the net kilowatt-hours measured at the

Interconnection Point. The corresponding FCCF<sub>i</sub> will be the HR, divided by the Base Load Heat Rate.

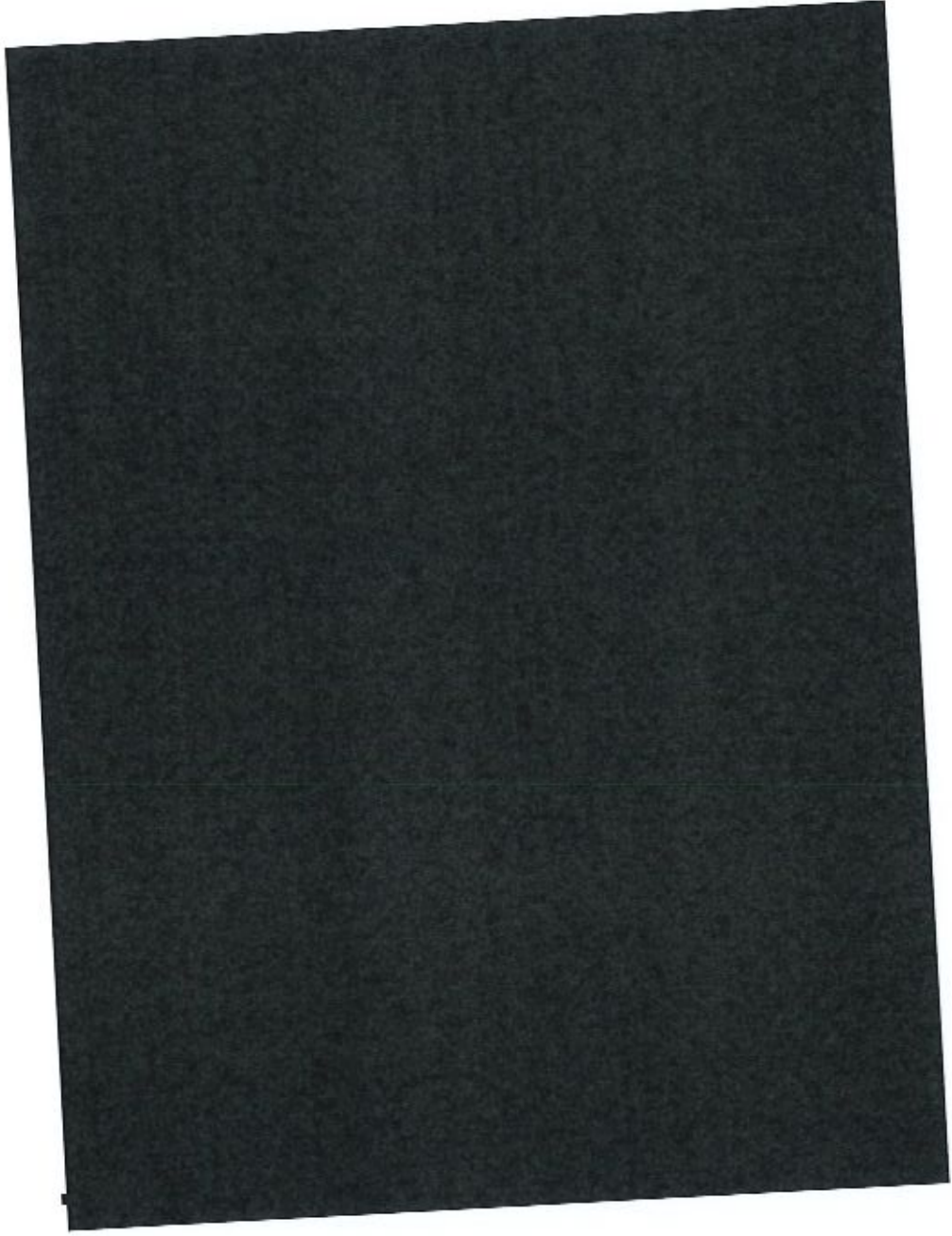
Example:

Assume under combined-cycle operation using two (2) combustion turbines the Tested Capacity is 461,000 kW, the Base Load Heat Rate is 7,500 Btu/kWh and that while producing 230,500 kW (D), the Facility's Heat Rate (HR) is 9,060 Btu/kWh. At this condition, the Facility's PDC is 50.0 percent ( $230,500 \text{ kW} \div 461,000 \text{ kW}$ ) and the  $\text{FCCF}_{50.0\%}$  is 1.21 (i.e.  $9,060 \text{ Btu/kWh} \div 7,500 \text{ Btu/kWh}$ ), based on the preliminary FCCF curve.<sup>12</sup>

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<sup>12</sup> NTD: "Adder" from 9-19-19 Excel provided by Eco to be attached.





## APPENDIX C – CAPACITY PAYMENT CALCULATION

The Capacity Payment ("CP") shall be calculated as follows:

$$CP (\$) = (CPP \times DPC)$$

Where:

Where:

DPC	=	Dependable Capacity, expressed in kW
CPP (\$/kW-month)	=	Capacity Purchase Price, calculated as follows:

$$CPP = ((DC \times DCEF) + (FOMC \times FCEF)) \times FMAF \times EAAF - CPD \times DCEF \times ((BPH - EGFMH)/BPH) \times (1 + AAAF)$$

Where:

[illegible]





Hours, divided by the Period Hours less the Equivalent Total Force Majeure Hours, expressed as a percentage pursuant to the following formula:

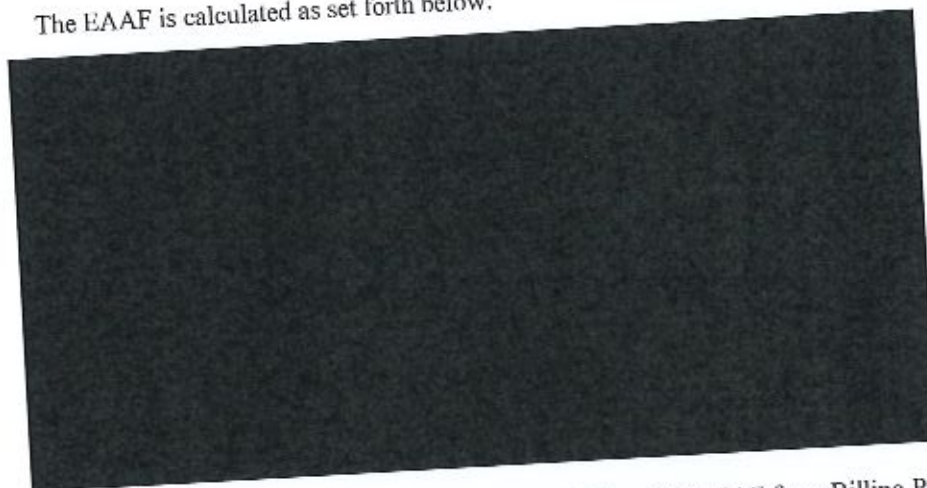
$$EAF (\%) = \frac{PH - OH - EDH - EGFMH}{PH - ETFMH} \times 100$$

Where:

EAF	=	Equivalent Availability Factor
PH	=	Period Hours
OH	=	Outage Hours
EDH	=	Equivalent Derated Hours
ETFMH	=	Equivalent Total Force Majeure Hours
EGFMH	=	Equivalent Grid Force Majeure Hours

All hours shall be rounded to the nearest one-tenth (1/10) of an hour and the EAF to the nearest one-tenth (1/10) of a percent.

The EAAF is calculated as set forth below:



- (iii) Additional Availability Adjustment Factor (AAAF) – If the EAF for a Billing Period (the “Monthly EAF”) exceeds [REDACTED], an additional availability adjustment factor (the “AAAF”) will apply for that Billing Period, subject to the Rolling 2020 Cap.
- For Billing Periods where the Monthly EAF falls between [REDACTED] and [REDACTED], the AAAF for that Billing Period will be a value that linearly increases from zero percent (0%) to [REDACTED]. Where the Monthly EAF exceeds [REDACTED], the AAAF for that Billing Period will be constant at [REDACTED]. In such Billing Periods (that is, where the Monthly EAF exceeds [REDACTED]), the EAAF for that Billing Period shall be the EAAF determined pursuant to clause (ii) above, plus the AAAF.
  - During the Billing Periods of 2020 the AAAF is subject to a rolling twelve (12) month cap, whereby the average monthly EAAF plus the applicable monthly AAAF adjustments for the prior twelve (12) months (that is, the last twelve (12)



Billing Periods ending with the one being billed), shall not exceed [REDACTED] (the "Rolling 2020 Cap").

- c. Appendix C sets out example calculations of Monthly EAF and AAAP.



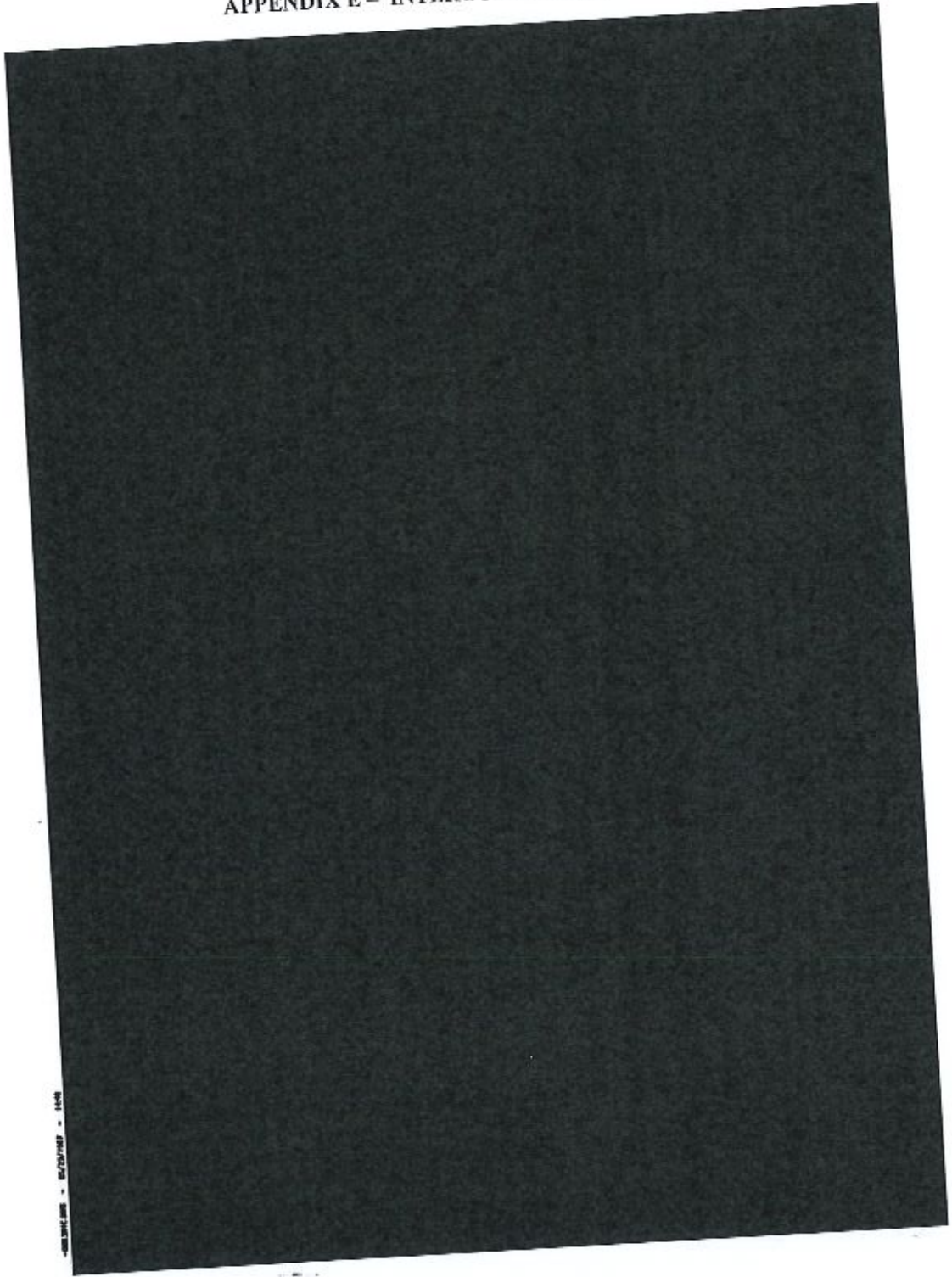


## APPENDIX D – EAF AND AAAF CALCULATION EXAMPLES<sup>14</sup>

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<sup>14</sup> NTD: PREPA to confirm calculation examples.

APPENDIX E – INTERCONNECTION



NYDOCS02/1200628.19



## APPENDIX F – BACKUP FUEL SPECIFICATIONS

Parameter	Weight %
Sulphur	████
Fuel Bound Nitrogen	████
Ash	████
Carbon	████
Hydrogen	████

## APPENDIX G – START-UP REIMBURSEMENT

Start-up costs shall be allocated between the parties as follows: (a) PREPA shall reimburse Seller for costs incurred by Seller in restarting any Unit of the Facility that was shut down due to PREPA's request (whether or not notice was received by Seller), and (b) Seller shall credit PREPA the cost of fuel required for a gas turbine Unit to achieve synchronization with the Grid System during each start-up. Monthly Start-up Reimbursement ("MSRU") shall be determined during each month in accordance with the following formula:

$$\text{MSRU} = [(\text{NCS} \times \$\text{CS}) + (\text{NWS} \times \$\text{WS}) + (\text{NHS} \times \$\text{HS}) + \text{Applicable Demand Charge}]$$

where the following terms have the following meanings:

"Applicable Demand Charge"

The difference between the actual Demand Charge billed to Seller by PREPA and the Demand Charge calculated excluding any demand established by Seller in the Billing Period and any prior Billing Period in restarting a Unit as a result of a shutdown of both units at the request of PREPA.

"\$CS"

██████████, being the cost per Cold Start of a Unit, which amount shall be adjusted annually and on the first day of each Year during the Term by multiplying such amount times the Fixed Cost Escalation Factor.

"Cold Start"

a restart of a Unit that has been shut down for more than twelve hours.

"Hot Start"

a restart of a Unit that has been shut down for less than one hour.

"\$HS"

██████████, being the cost per Hot Start of a Unit, which amount shall be adjusted annually and on the first day of each Year during the Term by multiplying such amount times the Fixed Cost Escalation Factor.

"NCS"

the number of Cold Starts of Units during such month that are the first occurring restarts after a shutdown requested by PREPA.

"NHS"

the number of Hot Starts of Units during such month that are the first occurring restarts after a shutdown requested by PREPA.

"NWS"

the number of Warm Starts of Units during such month that are the first occurring restarts after a shutdown requested by PREPA.

"Unit"

one of the two gas turbines that are part of the Facility.

"\$WS"

██████████, being the cost per Warm Start of a Unit, which amount shall be adjusted annually and on the first day of each Year during the Term by multiplying such amount times the Fixed Cost Escalation Factor.

"Warm Start"

a restart of a Unit that has been shut down for between one hour and twelve hours.





## APPENDIX I – SCHEDULED OUTAGE PROGRAM

Annual Scheduled Outages shall not exceed the amounts set forth below.

### Minor Inspection Year

Combustion Inspection – occurs every year

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

### Intermediate Inspection Year

Hot Gas Path Inspection – occurs every three years

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

### Major Overhaul Year

Major Inspection – occurs every six (6) years

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Note: Inspection types for each Unit may not coincide on the same year.



## APPENDIX J – NG FUEL SPECIFICATIONS

Natural Gas redelivered to EcoEléctrica at NG Delivery Point:

- (i) shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the Natural Gas;
- (ii) shall not contain more than three-tenths grains of hydrogen sulphide per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (iii) shall not contain more than two grains of total sulphur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (iv) shall not contain more than 0.25 grains of mercaptan sulphur per hundred standard cubic feet of standard cubic feet Natural Gas volume, as measured by methods in accordance with accepted industry practice, or such higher content as will not result in deliveries of Natural Gas containing more than three-tenths grains of mercaptan sulphur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
- (v) shall not contain more than 2% by volume of carbon dioxide, as measured by methods in accordance with acceptable industry practice;
- (vi) shall not have a water vapor content in excess of seven pounds per million standard cubic feet of Natural Gas volume, such vapor content to be measured by methods in accordance with accepted industry practice;
- (vii) shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than 0.4% by volume of oxygen, as measured by methods in accordance with acceptable industry practice;
- (viii) shall have a heating value of not less than 950 Btu per standard cubic foot and not more than 1165 Btu per standard cubic foot. The heating value shall be measured by methods in accordance with accepted industry practice, such as, but not limited to, recording calorimeter(s) or Natural Gas chromatograph(s) located at appropriate points; and
- (ix) shall be delivered to a NG Delivery Point at a temperature of more than 30° F and less than 100° F, and at the maximum pressure available when operating the vaporizers of 650 psig.

## APPENDIX K – ANCILLARY SERVICES

From the Effective Date until the expiration of the Term and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Seller shall provide to, and PREPA shall have the right to Dispatch the Facility for the receipt into, the Grid System at the Interconnection Point of (i) Reactive Supply and Voltage Control Services, (ii) Regulation and Frequency Response Services, (iii) Energy Imbalance Services, (iv) Spinning Reserve Services, (v) Supplemental Reserve Services, and (vi) Generator Imbalance Services (collectively, the “Ancillary Services”) in accordance with the General Technical Requirements (as defined below) and Prudent Electrical Practices and Prudent Utility Practices,

where:

“**Reactive Supply and Voltage Control Services**” means the provision by the Facility, within its design limits, of measurable dynamic reactive power voltage support to the Grid System for the maintenance of voltage levels within acceptable limits.

“**Regulation and Frequency Response Services**” means an immediate, proportional increase or decrease of the delivery of Net Electrical Output by the Facility in response to a frequency deviation within the Grid System, which balances generation supply with load and maintains scheduled Grid System frequency on a continuous basis.

“**Energy Imbalance Services**” means, for any hour, an increase or decrease of the delivery of the Net Electrical Output by the Facility, which offsets a foreseeable difference between actual energy delivered to a load and the energy scheduled to that load during such hour.

“**Spinning Reserve**” means the online generation capacity of the Facility, which exceeds the capacity required to supply assigned dispatch and which the Facility can make available to respond to sudden load changes or loss of a generation sources elsewhere in the Grid System by means of primary or secondary frequency control.

“**Spinning Reserve Capacity**” means the electric generating capacity of the Facility expressed in kilowatts made available by Seller at the Interconnection Point as spinning reserve for immediate dispatch by PREPA.

“**Supplemental Spinning Reserve**” means the off-line generation at the Facility, which Seller can synchronize with the Grid System within the times specified in the table below to replace Spinning Reserve following a Unit startup order from the Energy Control Center.

The following requirements shall apply to the provision of Ancillary Services by Seller (the “**General Technical Requirements**”):

1. **Reactive Supply and Voltage Control Services**  
During the provision of Reactive Supply and Voltage Control Services, Seller shall telemeter the status of its automatic voltage regulating equipment to PREPA on a real time basis.
2. **Regulation and Frequency Response Service**  
Units should be operated with primary control enabled whenever synchronized to the grid and with secondary control enabled per PREPA's ECC request.
3. **Energy Imbalance Services**  
Energy Imbalance Services will be provided following PREPA's ECC instructions via either AGC or verbal dispatch instructions.
4. **Spinning Reserve**  
PREPA shall have the right to (i) nominate the Spinning Reserve Capacity from time to time and (ii) utilize the Spinning Reserve Capacity by dispatching the Facility up to its Dependable Capacity, subject in each case to the operational limits of the Facility's automatic generation



control ("AGC") described in the [subsequent paragraph]. Units should be operated with primary control enabled whenever synchronized to the grid and with secondary control enabled per PREPA's ECC request. [The applicable Ramp Rate in such event will be as determined in accordance with Appendix A.] If at the time of Spinning Reserve Capacity operation, the Facility is dispatched at less than the Dependable Capacity, for purposes of complying with the required Ramp Rate, such Ramp Rate will apply to the five (5) minutes following the start of the underfrequency disturbance which caused the Spinning Reserve Capacity operation.

For any hour in which the Facility operates in one of the modes identified in the column captioned "Mode of Operation" of the table below, PREPA shall have the right to nominate Spinning Reserve Capacity at an electric generating capacity (expressed in MW) that does not exceed the difference between the higher AGC regulation limit for the Facility identified in the column captioned "AGC HREG Limit MW" of the table below and the lower AGC regulation limit for the Facility identified in the column captioned "AGCL REG Limit MW".

Mode of Operation	Description	Max MW <sub>net</sub>		Min MW <sub>net</sub>		AGC LREG Limit		AGC HREG Limit	
		MW	%	MW	%	MW	%	MW	%
Mode 1	One gas turbine simple cycle								
Mode 2	Two gas turbines simple cycle								
Mode 3	1 X 1 Combined cycle								
Mode 4	2 X 1 Combined cycle								
Mode 5	1 X 1 Combined cycle and one gas turbine simple cycle								

5. **Supplemental Spinning Reserve**

Following a Unit startup order from the Energy Control Center, Units will be synchronized approximately in the following amount of time:

Time from ECC order to start until Unit synchronized;

Cold Start	Warm Start	Hot Start

APPENDIX L - NG FUEL MEASUREMENT SCHEMATIC

Fuel Delivery Point





## APPENDIX M – PERFORMANCE TEST PROCEDURES

### Objective

The purpose of the test is to set the Tested Capacity and Tested Heat Rate and to verify the Ramp Rate of the Facility.

### Test Procedure

Seller will contract a qualified third party for the development, revision and implementation of this testing procedure prior to conducting each Performance Test. The application and installation of the Plant or temporary instrumentation will be defined as part of the procedure. The site specific test procedure and parties (seller, buyer and third party) scope and division of responsibilities will be agreed upon and finalized by the parties no later than 30 days before testing implementation.

### Test Duration

#### a. *Tested Capacity*

On the day of testing, the Tested Capacity period shall be four (4) hours and shall be between 10:00 a.m. and 2:00 p.m.

#### b. *Tested Heat Rate*

The average of two one hour test per each load point will be utilized to determine the Tested Heat Rate of the Facility. The number of load points necessary to develop the Fuel Cost Correction Curve for each Mode of Operation will be determined according to Appendix B – Fuel Cost Correction Curve.

### Test Conditions

#### a. *Tested Capacity*

The Facility shall be in its normal base-loaded operation mode with the voltage regulator and governor in service, but not on Automatic Generation Control. The process steam load shall approximate normal operating conditions for the Facility. All major components shall be operated within their design pressures, temperatures, and flow rates. Facility operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by Units operating data. All necessary safety and environmental equipment shall be in service.

#### b. *Tested Heat Rate*

For each Heat Rate test load points the Facility shall be in its normal operation mode with the voltage regulator and governor in service, but not on Automatic Generation Control. The process steam load shall approximate normal operating conditions for the Facility. All major components shall be operated within their design pressures, temperatures, and flow rates. Facility operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by Units operating data. All necessary safety and environmental equipment shall be in service.

### Test Verification

During each Performance Test, critical process pressures, temperatures, and flow rates along with the electrical auxiliary consumption shall be recorded at least hourly and copies of the records provided to PREPA.

### Witnessing

PREPA may provide on-site witnesses at its discretion.

## APPENDIX N- DEGRADATION ADJUSTMENT FACTOR

$$\begin{aligned} \text{AGBLHR}_0 &= \text{GBLHR} / \text{DAF}_1 \\ \text{AGBLHR}_i &= \text{AGBLHR}_{i-1} / \text{DAF}_i \end{aligned}$$

**Periods:**

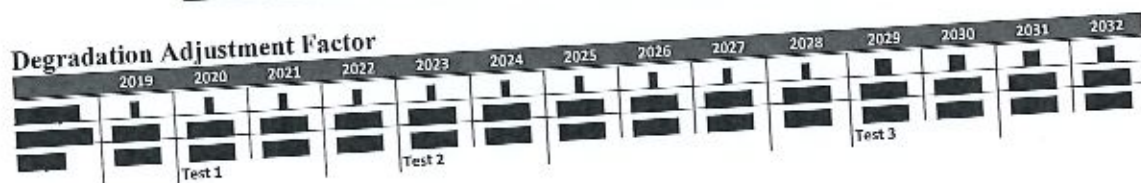


EBH = Average of EcoElectrica Combustion Turbines equivalent base operating hours.

### OEM Degradation Factors



Degradation Adjustment Factor			
	2020	2021	2022



### Sample Calculations

[illegible]



## APPENDIX O – HEAT RATE ADJUSTMENT

Heat Rate Adjustment (HRA): HRA shall be equal to zero for every hour during a Billing Period where the Facility utilizes Backup Fuel. Where the Facility utilizes NG, HRA shall be computed as follows:

$$HRA (\$) = (GFU - AGU) \times GFC$$

Where:

GFU (MMBTU)	=	Guaranteed Fuel Utilization, determined using the formula: $(AGBLHR * ACF) \times \frac{NEO(kWh)}{10^6}$
AGBLHR (BTU/kWhr)	=	Adjusted Guaranteed Base Load Heat Rate, determined per Appendix N
ACF	=	Average Correction Factor, determined using the formula: $\sum_1^n (FCCF_i \times WM\_NEO_i)$
n	=	Total Billing Period Hours
FCCF	=	Fuel Cost Correction Factor
WM_NEO	=	Weighted mean of the Net Electrical Output (NEO), determined using the formula: $WM\_NEO_i = \frac{NEO_i}{\sum_1^n NEO_i}$
DAF	=	Degradation Adjustment Factor
NEO	=	Net Electrical Output
AGU (MMBTU)	=	Actual Gas Utilization
GFC (\$/MMBTU)	=	Gas Fuel Cost





**CONFIDENTIAL**

**Attachment 2**  
*K&S Draft – November 1, 2019*

**AMENDED AND RESTATED  
NATURAL GAS SALE AND PURCHASE AGREEMENT**

**BETWEEN**

**NATURGY APROVISIONAMIENTOS S.A.  
AS SELLER**

**AND**

**PUERTO RICO ELECTRIC POWER AUTHORITY  
AS BUYER**

**DATED AS OF [•], 2019**

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#### **ANNEXES:**

- A DELIVERY POINTS
- B LNG TERMINAL COMPATIBILITY STANDARDS
- C. FORM OF ASSIGNEE GUARANTEE

**THIS AMENDED AND RESTATED NATURAL GAS SALE AND PURCHASE AGREEMENT** is made this [•], 2019 (the "**Effective Date**"),

**BETWEEN:**

- (1) **NATURGY APROVISIONAMIENTOS S.A.**, a company incorporated under the laws of the Kingdom of Spain, with a place of business at Avenida de San Luis 77, Madrid 28033, Spain (the "**Seller**"); and
- (2) **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 2 May 1941, No. 83, as amended, with its principal place of business at P.O. Box 363928, San Juan, Puerto Rico 00936-3928 (the "**Buyer**") (each of Buyer and Seller a "**Party**" and, together, the "**Parties**").

**RECITALS:**

- (A) EcoEléctrica, L.P., a limited partnership organized under the laws of Bermuda (the "**Owner**") owns and operates an LNG terminal consisting of one LNG tank and related marine pier facilities located in the vicinity of Peñuelas, Puerto Rico (the "**LNG Facilities**").
- (B) Seller and Owner are parties to an amendment and restatement of the Tolling Service Agreement dated 31 October 1997 as amended (the "**Restatement TSA**"), which provides the Seller with capacity rights at the LNG Facilities and the right to perform, or cause to be performed, certain LNG Tolling services at the LNG Facilities, subject to the terms established thereof.
- (C) Buyer and Seller entered into the Natural Gas Sale and Purchase Agreement, dated as of March 28, 2012, as amended on March 10, 2014, May 11, 2015, and June 29, 2017 (the "**Pre-Restatement GSPA**") for the supply of Natural Gas to units 5 & 6 of Buyer's generation facility, located at Costa Sur, Puerto Rico (the "**Costa Sur Units**"), which will expire on December 31, 2020.
- (D) Buyer intends to enter into the Amended & Restated Power Purchase and Operating Agreement on or about the date hereof with Owner (the "**Restatement PPOA**") under which (i) Owner will continue selling, and Buyer will continue purchasing, generation capacity, made available at Owner's facility at Peñuelas (the "**ECO Generation Facility**") through an extended term that commences on the "**Effective Date**" (as defined in the Restatement PPOA) and expires on September 30, 2032 (the "**Extended Term**"), and (ii) Buyer will make available Natural Gas to such facility for conversion by the Owner into electric generation capacity and net electric output, during the Extended Term.
- (E) On July 2, 2017, Buyer commenced proceedings under Title III of the Puerto Rico Oversight, Management and Economic Stability Act ("**PROMESA**") before the District Court for the District of Puerto Rico (the "**PROMESA Court**"), administered under Case No. 17-4780 (LTS) (the "**PROMESA Case**").



- (F) Buyer desires to purchase Natural Gas for (i) delivery to the ECO Generation Facility during the Extended Term, and (ii) delivery to the Costa Sur facility until the retirement of such facility.
- (G) As Seller controls the exclusive rights to the existing capacity of the LNG Facilities through the Restatement TSA, Buyer desires to purchase Natural Gas from Seller as the sole source capable of supplying Natural Gas for delivery to the ECO Generation Facility and Costa Sur facility.
- (H) The Parties desire to enter into this Agreement, which amends and restates the Pre-Restatement GSPA in its entirety.

NOW, THEREFORE, THE SELLER AND THE BUYER HEREBY AGREE as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, except where the context otherwise requires, each of the following words or expressions have the following meanings:

**"Acceptable Assignee"** means a Commonwealth Entity or an Acceptable Private Assignee.

**"Acceptable Guarantee"** means an Assignee Guarantee executed by an Acceptable Guarantor.

**"Acceptable Guarantor"** means any Person meeting the Credit Standards that is approved by Seller to provide an Assignee Guarantee; provided that such approval shall not be unreasonably withheld or delayed.

**"Acceptable Letter of Credit"** means an irrevocable, standby letter of credit in form and substance reasonably acceptable to Seller, issued by an Acceptable Letter of Credit Provider with a face value of two (2) *multiplied by* six million (6,000,000) MMBtu *multiplied by* the Max ACQ *divided by* 106 TBtu *multiplied by* the average Contract Price over the [twelve (12)] months preceding the month of calculating such amount.

**"Acceptable Letter of Credit Provider"** means a bank, insurance company, or other financial institution organized or licensed as a branch or agency under the laws of the United States of America that meets the Letter of Credit Issuing Bank Requirements.

**"Acceptable Private Assignee"** means a Non-Commonwealth Entity that, upon a Transfer, satisfies as of the Transfer Date, and covenants to maintain in full force and effect during the remaining of the Term, one of the following: (A) full compliance with the Credit Standards; (B) the delivery to Seller of a legal, valid, binding and enforceable Guarantee from an Acceptable Guarantor; or (C) the delivery of an Acceptable Letter of Credit.

**"Additional LNG Facility"** shall have the meaning given to it in Clause 26.1.

**"Additional LNG Delivery Point"** shall have the meaning given to it in Clause 26.1.

**"Affiliate"** means, in relation to a Party, any company, corporation, partnership or other legal entity (in this definition referred to as a **"Company"**): (a) that is directly or indirectly controlled by such Party; (b) that directly or indirectly controls such Party; or (c) that is directly or indirectly controlled by a Company that also, directly or indirectly, controls such Party. For the purpose of this definition, **"Control"** means the beneficial ownership, either directly or indirectly, of fifty percent (50%) or more of the voting rights in a Company, or (whether alone or acting in concert with others, and whether by the ownership of share capital, the possession of voting power, contract or otherwise) the right to appoint fifty percent (50%) or more of the board of directors or equivalent management body of such Company.

**"Agreement"** means this Agreement and its Annexes, as amended, modified, varied or supplemented from time to time.

**"Annual Contract Quantity"** or **"ACQ"** shall have the meaning given to it in Clause 7.1(a)(i).

**"Annual Delivery Programme"** or **"ADP"** shall have the meaning given to it in Clause 7.1(a).

**"Applicable Law"** means, in relation to any legal Person, property, transaction or event, all applicable provisions of laws, treaties, conventions, statutes, rules, regulations, permits, official directives and orders of, and the terms of all judgments, orders, awards, and decrees issued by, any Competent Authority by which such legal Person is bound or having application to the property, transaction or event in question.

**"Assignee Guarantee"** means a guarantee substantially in the form attached as Annex B to this Agreement (or in such form as is otherwise acceptable to Seller).

**"Assumption Order"** means the order of the PROMESA Court in the form annexed hereto as Appendix N that authorizes the assumption by Buyer of this Agreement.

**"Back-Up Fuel Cover Amount"** means, for each hour (or portion thereof) of a Seller Shortfall Duration, an amount expressed in US Dollars equal to the positive difference between (i) the duly documented cost to Buyer of utilizing the equivalent quantity of fuel oil required to make up for the energy content of the Seller Shortfall Quantity for the operation of the Eco Generation Facility, and (ii) the amount in US Dollars equal to such Seller Shortfall Quantity multiplied by the Contract Price for the month in which such Seller Shortfall Quantity occurs.

**"Binding Monthly Schedule"** shall have the meaning given to it in Clause 7.1(a)(iii).

**"Btu"** means a British thermal unit, being that amount of heat that is equal to 1,055.056 Joules or 0.000293071 kWh.

**"Business Day"** means a Day, other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico) or Madrid (Spain).



**"Buyer"** shall have the meaning given to it in the preamble to this Agreement.

**"Buyer Check Meter"** shall have the meaning given to it in Clause 10.2(b).

**"Buyer's NG Credit"** has the meaning given to it in Clause 6.5.

**"Claims"** shall have the meaning given to it in Clause 11.

**"Commonwealth Assignee"** means a Commonwealth Entity to whom a Transfer was made pursuant to Clause 17.1.

**"Commonwealth Entity"** means a government agency, body, or public corporation that is controlled entirely by the Commonwealth of Puerto Rico.

**"Competent Authority"** means any local, federal, state, regional, provincial, municipal, national or supra-national governmental agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the performance of this Agreement by either Party including, for the avoidance of doubt, any licensing authority and any port authority, in each case acting within its legal authority, but excluding, for the avoidance of doubt, any Party.

**"Conditions Precedent"** shall have the meaning given to it in Clause 3.2.

**"Conditions Precedent Date"** means the date on which the legal counsel for each Party jointly signs a certificate confirming the satisfaction or waiver of all of the Conditions Precedent.

**"Confidential Information"** shall have the meaning given to it in Clause 22.1.

**"Contract Price"** shall have the meaning given to it in Clause 12.1.

**"Contract Quarter"** means each calendar quarter (beginning on the first Day of each of January, April, July and October) during a Contract Year, provided that (i) the first Contract Quarter shall commence on the Conditions Precedent Date and end on the last Day of such calendar quarter, and (ii) the last Contract Quarter shall commence on the first Day of such quarter and end on the expiration of the Contract Term.

**"Contract Term"** shall have the meaning given to it in Clause 3.1(a).

**"Contract Year"** means any calendar year during the Contract Term, provided that (i) the first Contract Year shall commence on the "Firm Supply Conditions Date" under the Pre-Restatement GSPA, and the (ii) last Contract Year shall end on the expiration of the Contract Term.

**"Corporate Tax"** means any and all Taxes based on income, revenues, profits, or net worth and all state and local franchise, license, occupation and similar Taxes required for the maintenance of corporate existence or to maintain good standing that are assessed against a Party.

**"Costa Sur Delivery Point"** means the point of interconnection between the Costa Sur Units and the EcoEléctrica Complex as further detailed in Annex A.

**"Costa Sur Metering Equipment"** means the existing main and a back-up meter and other equipment as necessary to measure the volume of Natural Gas delivered to the Costa Sur Units installed under the Pre-Restatement GSPA.

**"Costa Sur Seller Shortfall Quantity"** shall have the meaning given to it in Clause 9.1.

**"Costa Sur Shortfall Payment"** shall have the meaning given to it in Clause 9.2.

**"Costa Sur Units"** has the meaning defined in Recital (C) of this Agreement.

**"Courts of Competent Jurisdiction"** means the courts of the Commonwealth of Puerto Rico, the United States District Court for the District of Puerto Rico, the PROMESA Court, the United States Court of Appeals for the First Circuit and the United States Supreme Court.

**"Credit Standard Event"** means either (i) with respect to an Acceptable Private Assignee that has not provided an Acceptable Guarantee or an Acceptable Letter of Credit, the failure of such Acceptable Private Assignee to continue to meet the Credit Standards, or (ii) with respect to an Acceptable Guarantor, the failure of the Acceptable Guarantor to meet the Credit Standards, or any other condition imposed by the Seller in order for such guarantor to be considered an Acceptable Guarantor.

**"Credit Standards"** means (i) two credit ratings that are equal to or better than the following, as applicable: (A) BBB- by S&P, (B) Baa3 by Moody's or (C) BBB- by Fitch, or (ii) two long-term unsecured debt ratings that are equal to or better than the following, as applicable: (A) BBB- by S&P, (B) Baa3 by Moody's or (C) BBB- by Fitch; provided that if any of the foregoing agencies ceases to exist or issue credit ratings, such other equivalent ratings of another rating agency of comparable standing that is reasonably acceptable to Seller shall apply.

**"Daily Contract Quantity"** or **"DCQ"** shall have the meaning given to them in Clause 6.3.

**"Daily Programme"** shall have the meaning given to it in Clause 7.1(a)(iv).

**"Day"** means a period of twenty four (24) consecutive hours beginning at 00:00 hours local time in Puerto Rico.

**"Defaulting Party"** shall have the meaning given to it in Clause 18.1(b).

**"Delivery Points"** means the ECO Delivery Point and the Costa Sur Delivery Point and **"Delivery Point"** means either of the foregoing.

**"Disclosing Party"** shall have the meaning given to it in Clause 22.1.

**"Dispute"** shall have the meaning given to it in Clause 20.1(a).



**"ECO Capacity Payment Differential"** means, for each hour (or portion thereof) of a Seller Shortfall Duration, the difference expressed in US Dollars between (i) the capacity payment actually and duly documented as paid by Buyer or as offset by a credit granted by Seller in favour of Buyer, under the Restated PPOA for such hour, based on dependable capacity of the ECO Generation Facility, and (ii) the capacity payment actually and duly documented as paid by Buyer, or as offset by a credit granted by Seller in favour of Buyer, under the Restated PPOA for such hour, based on the reduced capacity of such facility caused by the occurrence of a Seller Shortfall Quantity but upwardly adjusted to reflect Buyer's utilization of back-up fuel (if any) to offset such shortfall.

**"ECO Delivery Point"** means the position of the Metering Equipment located downstream from the connection of the boil-off gas pipe to the main pipeline where Natural Gas enters the ECO Generation Facility as further detailed in Annex A.

**"ECO Generation Facility"** has the meaning given to it in Recital (D).

**"ECO Metering Equipment"** shall have the meaning given to it in Clause 10.2(a)

**"ECO Seller Shortfall Quantity"** has the meaning given to it in Clause 9.3.

**"ECO Shortfall Payment"** has the meaning given to it in Clause 9.4.

**"EcoEléctrica Complex"** means the LNG Facilities, the Existing Pipeline, any LNG terminal improvements and other associated premises, facilities and infrastructure (including property owned or leased or subject to easements) in the vicinity of Peñuelas, Puerto Rico, that are owned and/or operated (directly or through operating contracts with others) by the Owner.

**"Effective Date"** shall have the meaning given to it in the preamble to this Agreement.

**"Environmental Testing Period"** means any testing period during which the Buyer or the Owner removes from service or reduces its generation in any of the Costa Sur Units, respectively in order to comply with the Applicable Law, and which includes the consecutive eight (8) week period during which Buyer removes from service one (1) unit of the Costa Sur Units in order to comply with Applicable Law.

**"Existing Pipeline"** means the pipeline constructed from the LNG Facilities to the Costa Sur Units pursuant to and in accordance with the PPOA.

**"Expert"** means a Person of appropriate industry expertise and experience to whom a Dispute, disagreement or another matter of interpretation is or is to be referred to pursuant to Clause 20.2.

**"Final Order"** means any order or other action of a Court of Competent Jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further

appeal or rehearing thereon and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired, excluding any additional time periods that may begin as a result of United States Federal Rule 60(b).

**"FOMB"** means the Fiscal Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

**"Force Majeure"** shall have the meaning given to it in Clause 15.1.

**"Forced Outage"** means, for any hour, the failure or inability of the ECO Generation Facility or Costa Sur Units to make available net electric output for dispatch to the Grid System at the dependable contracted capacity of such facility during such hour for any reason other than Scheduled Maintenance.

**"Governmental Authority"** means the government of the United States of America, any state thereof, the Commonwealth of Puerto Rico, any local jurisdiction, or any political subdivision of any of the foregoing including, but not limited to courts, administrative bodies, departments, commissions, boards, bureaus, agencies, municipalities or other instrumentalities.

**"Grid System"** means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by Buyer, which transmits / distributes electricity to rate payers in Puerto Rico.

**"Heat Rate"** has the meaning given to "Adjusted Guaranteed Heat Rate" in the Restatement PPOA.

**"Heating Value"** (also known as High Heating Value (HHV)) means the gross heating value on a dry basis, which is the number of Btus produced by the complete combustion at constant pressure of the amount of dry gas that would occupy a volume of one Standard Cubic Foot at a constant pressure of 14.73 psia and a temperature of 60° F with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air and the water formed by combustion condensed to the liquid state.

**"HH"** means (in US\$/MMBtu) the final settlement price for the New York Mercantile Exchange's Henry Hub Natural Gas futures contracts for the month previous to the month of delivery, rounded to two (2) decimal places.

**"Incremental Costs"** shall have the meaning given to it in Clause 12.3.

**"Jones Act"** means (i) currently Section 27 of the United States' Merchant Marine Act of 1920 which requires that all goods transported by water between United States ports be carried on United States-flag ships, constructed in the United States, owned by United States citizens, and crewed by United States citizens and United States permanent residents, or (ii) any Applicable Law enacted or issued to supplement, substitute, amend or rectify Section 27 of the Merchant Marine Act of 1920 that will have the effect of continuing to require that all goods transported by water between United States mainland ports and Puerto Rico be carried on ships constructed



in the United States or owned by United States citizens, or crewed by United States citizens or United States permanent residents.

**"Joule"** means a unit of energy defined in the International System of Units.

**"kWh"** shall mean kilowatt per hour.

**"Large LNG Tanker"** has the meaning given to it in Clause 26.1 as further described in Annex B.

**"Legacy Make-Up Gas"** means the quantity of Make-Up Gas available for nomination by, and scheduling for delivery to, Buyer under the Pre-Restatement GSPA on the Day immediately preceding the Conditions Precedent Date.

**"Letter of Credit Default"** means the occurrence of any of the following events (in each case, to the extent such Letter of Credit has not been replaced):

- (i) A Letter of Credit Issuer Event occurs;
- (ii) a Letter of Credit Issuer fails to honor Seller's request to draw on an Acceptable Letter of Credit when such request is in accordance with the requirements of such Acceptable Letter of Credit;
- (iii) a Letter of Credit Issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, an Acceptable Letter of Credit;
- (iv) an Acceptable Letter of Credit expires or terminates (including expiration or termination in accordance with its terms), or fails or ceases to be in full force and effect at any time after the Transfer Date; or
- (v) an Acceptable Letter of Credit is not renewed or replaced at least fourteen (14) business days prior to the expiration of such Acceptable Letter of Credit.

**"Letter of Credit Issuer"** means an entity that has issued an Acceptable Letter of Credit.

**"Letter of Credit Issuer Event"** means a Letter of Credit Issuer has ceased to satisfy the Letter of Credit Issuing Bank Requirements or is no longer organized or licensed as a branch or agency under the laws of the United States of America.

**"Letter of Credit Issuing Bank Requirements"** means two credit ratings that are equal to or better than the following, as applicable: (i) A3 by Moody's, (ii) A- by S&P, or (iii) A- by Fitch; provided that if more of than one of Moody's, S&P and Fitch ceases to exist or issue credit ratings, an equivalent rating of another rating agency of comparable standing that is reasonably acceptable to Seller shall apply.

**"LIBOR"** means the rate per annum which the British Bankers' Association was offering to prime banks in the London Interbank market for deposits in US\$ for a one (1) year period,

determined at 11:00 am London Time, as quoted on the date when payment was due. Interest should be calculated on the basis of a three hundred sixty (360) Day year, shall accrue daily and be compounded at three (3)-monthly rests.

**"LNG"** means Natural Gas in a liquid state at or below its boiling point and at or near atmospheric pressure.

**"LNG Delivery Plan"** shall have the meaning given to it in Clause 15.1(a).

**"LNG Facilities"** shall have the meaning given to it in Recital (A).

**"LNG Tanker"** shall have the meaning given to it in Annex B.

**"Make-Up Extension Period"** shall have the meaning given to it in Clause 8.6(a).

**"Make-Up Gas"** shall have the meaning given to it in Clause 8.6.

**"Maximum Annual Contract Quantity"** shall have the meaning given to it in Clause 6.1.

**"Maximum DCQ"** shall have the meaning given to it in Clause 6.3.

**"Maximum Hourly Rate"** shall have the meaning given to it in Clause 6.4(a).

**"Metering Equipment"** means the Costa Sur Metering Equipment and the ECO Metering Equipment.

**"Minimum Annual Contract Quantity"** or **"Minimum ACQ"** shall have the meaning given to it in Clause 6.2.

**"MMBtu"** means 1,000,000 Btu.

**"Mmscf"** means one million Standard Cubic Feet.

**"Monthly Adjusted Required Quantity"** shall have the meaning given to it in Clause 8.2.

**"Monthly Deficiency"** shall have the meaning given to it in Clause 8.1.

**"Monthly Invoice"** shall have the meaning given to it in Clause 13.2.

**"Monthly Take or Pay Payment"** shall have the meaning given to it in Clause 8.2.

**"Monthly Take or Pay Quantity"** shall have the meaning given to it in Clause 8.2.

**"Natural Gas"** or **"NG"** means any saturated hydrocarbon or mixture of saturated hydrocarbons consisting essentially of methane and other combustible and non-combustible gases in a gaseous state.

**"Ninety-Day Schedule"** or **"NDS"** shall have the meaning given to them in Clause 7.1(a).



**"Non-Commonwealth Entity"** means a Person that is not, or that ceases to be, a Commonwealth Entity.

**"Off-Spec Natural Gas"** is any Natural Gas that does not conform to the Specifications set forth in Clause 4.1.

**"Owner"** shall have the meaning given to it in Recital (A).

**"P3A"** means the Puerto Rico Public-Private Partnerships Authority.

**"Party"** and **"Parties"** shall have the meaning given to them in the preamble to this Agreement.

**"Permanent Abandonment"** shall have the meaning given to it in the Restatement PPOA.

**"Permanent Closing"** shall have the meaning given to it in the Restatement PPOA.

**"Person"** shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization, or any Governmental Authority.

**"Pre-Restatement GSPA"** has the meaning given to it in Recital (C).

**"PREB"** shall mean the Puerto Rico Energy Bureau.

**"PROMESA"** shall have the meaning set forth in the recitals of this Agreement.

**"PROMESA Case"** shall have the meaning set forth in the recitals of this Agreement.

**"PROMESA Court"** shall have the meaning set forth in the recitals of this Agreement.

**"Prompt Contract Price"** is the result of (in U.S. dollars/MMBtu after converting the original units of U.S. dollars/barrel provided that the energy content of a barrel is set in 6.3 MMBtu), with respect to any month, the unweighted average for the relevant month of the mean dated fuel with zero point five percent (0.5%) sulfur as interpolated from the means of the zero point three percent (0.3%) sulfur LP and zero point seven percent (0.7%) sulfur fuels, as published for such month by Platt's Oilgram Price report PRICE AVERAGE SUPPLEMENT, Estimated New York Spot No. 6 Fuel Oil Cargo column rounded to two (2) decimal places.

**"Prudent Utility Practices"** means practices, methods, conduct and actions (including the practices, methods, conduct and acts engaged in or approved by a significant portion of the power industry in the United States or Puerto Rico) that, at a particular time, in the exercise of reasonable discretion at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with applicable laws and applicable standards for reliability, safety and economy of the electric system operation and its economic dispatch program. Prudent Utility Practice is not limited to the optimum practice, method or act to the

exclusion of all others, but rather is a spectrum of possible practices, methods or acts which can fall within this description.

**"Quarterly Adjusted Required Quantity"** shall have the meaning given to it in Clause 8.4.

**"Quarterly Binding Quantity"** shall have the meaning given to it in Clause 7.1(a)(ii).

**"Quarterly Deficiency"** shall have the meaning given to it in Clause 8.3.

**"Quarterly Take or Pay Payment"** shall have the meaning given to it in Clause 8.5.

**"Quarterly Take or Pay Quantity"** shall have the meaning given to it in Clause 8.5.

**"Reasonable and Prudent Operator"** means a Person seeking in good faith to perform its contractual obligations and comply with Applicable Law, and in so doing, and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced international operator engaged in the same type of undertaking under the same or similar circumstances and conditions.

**"Receiving Party"** shall have the meaning given to it in Clause 22.1.

**"Responsible Party"** shall have the meaning given to it in Clause 3.5.

**"Restatement PPOA"** has the meaning given to it in Recital (D).

**"Restatement TSA"** has the meaning given to it in Recital (B).

**"Routine Maintenance"** means any interruption of service which is not part of any Scheduled Maintenance or an interruption prearranged on a relatively short notice in the ECO Generation Facility or any of the Costa Sur Units.

**"Scheduled Maintenance"** means the maintenance period scheduled to be performed on the Costa Sur Units or at the ECO Generation Facility to occur at the times and for the durations as determined pursuant to Clause 7.1(a).

**"Seller"** shall have the meaning given to it in the preamble to this Agreement.

**"Seller Shortfall Duration"** means, for any month in which a Seller Shortfall Quantity arises, the number of hours during such month where such shortfall either (i) caused a Forced Outage, or (ii) would have caused a Forced Outage but for the Buyer's election to utilize back-up fuel, in each case at the ECO Generation Facility or for supply to the Costa Sur Units.

**"Seller Shortfall Quantity"** means the sum of (i) the Costa Sur Seller Shortfall Quantity, (ii) the ECO Seller Shortfall Quantity, and (iii) any additional quantities as provided in Clause 4.2(f).



**"Shortfall Payment"** means collectively, the Costa Sur Shortfall Payment and the ECO Shortfall Payment.

**"Small LNG Tanker"** has the meaning given to it in Clause 26.2.

**"Small-Scale LNG Delivery Study"** shall have the meaning given to it in Clause 26.2.

**"Specifications"** shall have the meaning given to it in Clause 4.1.

**"Standard Cubic Foot"** means Natural Gas at a base temperature of 60° F and at a pressure of 14.73 psia with correction for deviation from Boyle's Law.

**"Supply Period"** shall have the meaning given to it in Clause 5.1.

**"Taxes"** shall have the meaning given to it in Clause 14.1.

**"TBtu"** means 1,000,000,000,000 Btu.

**"Termination Event"** shall have the meaning given to it in Clause 18.1(b).

**"Third Party"** means any legal Person not a Party to this Agreement.

**"Threshold"** shall have the meaning given to it in Clause 6.2(d).

**"Transfer"** shall have the meaning given to it in Clause 17.1.

**"Transfer Date"** means the date on which Buyer completes a Transfer to a Non-Commonwealth Entity.

**"Unit Limitations"** means any condition or event that affect any facility or equipment other than the ECO Generation Facility or the Costa Sur Units that does not allow any of Costa Sur Units or units at the ECO Generation Facility to generate at their maximum capacity.

**"US"** means the United States of America.

**"US Dollars"** or **"US\$"** means the lawful currency of the United States of America.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) References to Clauses and Annexes are to Clauses and Annexes of this Agreement. The Annexes hereto are incorporated herein as an integral part of this Agreement.
- (b) References to a Person include that Person's successors and permitted assigns.
- (c) Headings of Clauses and Annexes are for convenience only and shall not affect the construction or interpretation of this Agreement.

- (d) Where the context requires, words denoting the singular or masculine or neuter only shall include the plural, feminine, body politic or corporate and vice versa.
- (e) References to "include" and "including" shall be construed as "including without limitation."
- (f) The words "agree," "agrees," and "agreed" refer to a written agreement, executed and delivered by the Parties. Wherever either Party's consent or agreement is expressed to "not be unreasonably withheld," it is acknowledged that such obligation shall include, but not be limited to, the obligation of the Party not unreasonably to delay giving the relevant consent or agreement, and in the foregoing case as well as wherever either Party undertakes "efforts" or "endeavors" to do something, or refrain from doing something, it is acknowledged that such Party shall not be in breach of its obligations to the other Party to the extent that such Party's actions are limited by such Party's need to comply with its contractual obligations to any Person, provided that such Party has used its reasonable efforts to obtain any necessary waiver(s) of such relevant obligations and that such Party has not assumed such obligations subsequent to entering into this Agreement.
- (g) Any law, statute or statutory provision shall be construed as a reference to the same as it may be amended, modified or re-enacted, from time to time, and shall include any subordinate legislation made from time to time under that provision.
- (h) If at any time during the Supply Period a source of information used to determine an index or an index or interest rate itself becomes unavailable or inappropriate then the Parties shall meet as soon as possible thereafter and in good faith discuss and attempt to agree in writing upon a suitable alternative replacement for such source of information or for such index or interest rate.
- (i) For the calendar year 2020, the Parties shall construe "Contract Year" as commencing on the Conditions Precedent Date and expiring on December 31, 2020.

## 2. SALE AND PURCHASE

The Seller shall sell and deliver at the Delivery Points, and the Buyer shall purchase and take delivery of at the Delivery Points, and pay for, or pay for if not taken, NG, in the quantities, of the quality and at the prices determined in accordance with the terms and conditions of this Agreement.

## 3. DURATION AND CONDITIONS

### 3.1 Contract Term

- (a) This Agreement (other than this Clause 3, Clause 7.1 and Clauses 17 through 23, which shall enter into full force and effect on the Effective Date) shall enter into force and effect on the Conditions Precedent Date and shall, subject to the terms hereof, unless earlier terminated, continue in force and effect through September 30, 2032, plus,



- (i) any Make-Up Extension Period; and
    - (ii) any extension agreed to pursuant to Clause 3.1(b)

(collectively, the "**Contract Term**").
  - (b) The Parties may extend the Contract Term on such terms and conditions as they may agree to in writing.
- 3.2 The Parties shall satisfy or waive the following conditions precedent to their performance of this Agreement (the "**Conditions Precedent**"):
- (a) For satisfaction by Buyer:
    - (i) obtaining approval of the P3A to proceed with the finalization of this Agreement;
    - (ii) obtaining approval of each of FOMIB, the governing board of Buyer, and PREB for the execution and delivery by Buyer of this Agreement;
    - (iii) entry of the Assumption Order by the PROMESA Court;
    - (iv) delivery by Buyer of a legal opinion prepared by its external counsel in a form reasonably acceptable to Seller, confirming the legality, validity and enforceability of this Agreement against Buyer in accordance with its terms;
    - (v) full force and effectiveness of the Restatement PPOA; and
  - (b) For satisfaction by Seller:
    - (i) obtaining approval of the relevant corporate authority for the execution and delivery by Seller of this Agreement;
    - (ii) providing each of the documents or certifications described in Clauses 28.1(a) through 28.1(f) and Clause 29.3; and
    - (iii) delivery by Seller of a legal opinion prepared by its external counsel in a form reasonably acceptable to Buyer, confirming (1) the legality, validity and enforceability of this Agreement against Seller in accordance with its terms, and (2) the due authorization of Seller to execute, deliver, and perform the Restatement TSA.
- 3.3 If Buyer reasonably anticipates that the respective Government Authority will withhold its approval of either of the Conditions Precedent in Clauses 3.2(a)(i) or 3.2(a)(ii), then Buyer may notify Seller of the reasons for such anticipated withholding, in which case the Parties will meet to discuss the issue and if they agree that it will be impractical to wait for such approval, then the Parties may agree to terminate this Agreement.

- 3.4 The Parties shall keep each other duly informed of the fulfillment of each of the Conditions Precedent. Each Party shall notify the other Party in writing of the date on which it anticipates that the respective Conditions Precedent for which it is responsible will be satisfied no less than thirty (30) Days prior to such anticipated date. As soon as each Condition Precedent is satisfied, each Party shall confirm in writing the satisfaction of the Conditions Precedent.
- 3.5 Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it is responsible (each, a "**Responsible Party**") prior to February 1, 2020.
- 3.6 Each Party shall furnish the other Party upon request by such other Party with any reasonable assistance in fulfilling each Condition Precedent for which that other Party is the Responsible Party.
- 3.7 Upon the satisfaction of any Condition Precedent, the Responsible Party shall give prompt written notice thereof to the other Party.
- 3.8 The requirement for the satisfaction of any Condition Precedent can only be waived by the written agreement of both Parties.

#### 4. **QUALITY**

- 4.1 The Natural Gas delivered by the Seller to or for the account of the Buyer at the Delivery Point:
- (a) shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the Natural Gas;
  - (b) shall not contain more than three-tenths grains of hydrogen sulfide per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
  - (c) shall not contain more than two grains of total sulfur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
  - (d) shall not contain more than 0.25 grains of mercaptan sulfur per hundred standard cubic feet of Natural Gas volume, as measured by methods in accordance with accepted industry practice;
  - (e) shall not contain more than two percent (2%) by volume of carbon dioxide, as measured by methods in accordance with acceptable industry practice;
  - (f) shall not have a water vapour content in excess of seven pounds per million standard cubic feet of Natural Gas volume, such vapour content to be measured by methods in accordance with accepted industry practice;



- (g) shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than zero point four (0.4%) by volume of oxygen, as measured by methods in accordance with acceptable industry practice;
- (h) shall have a Heating Value of not less than 950 Btu per Standard Cubic Foot and not more than 1165 Btu per Standard Cubic Foot. The Heating Value shall be measured by methods in accordance with accepted industry practice, such as, but not limited to, recording calorimeter(s) or Natural Gas chromatograph(s) located at appropriate points; and
- (i) shall be delivered to the Delivery Point at a temperature of more than 40° F and less than 100° F, and at the maximum pressure available when operating the LNG Facilities' vaporizers at a pressure of 650 pounds per square inch gauge.

The quality specifications set out in paragraphs (a) to (i) above shall be deemed to be the "Specifications." The standard test methods as described in the Owner's operating procedures applicable at the LNG Facilities shall be used to determine compliance with the Specifications.

#### 4.2 Failure of Natural Gas to Conform to Specifications

- (a) Seller shall notify Buyer as soon as reasonably practicable after becoming aware of any existing or anticipated failure of the NG available for delivery to the Delivery Point to conform to the Specifications, giving details of the nature and expected magnitude of the variance, the cause of the non-compliance and the probable duration, including the delivery time of such Off-Spec Natural Gas.
- (b) If at any time, the NG offered for delivery by the Seller is or is expected to be Off-Spec Natural Gas, the Buyer may reject in whole or in part the delivery of such gas as well as any further deliveries of such Off-Spec Natural Gas.
- (c) If at any time, the Seller is unable to deliver NG conforming to the Specifications but is able to deliver Off-Spec Natural Gas, the Seller may withhold deliveries until such time as it is able to deliver NG conforming to the Specifications; provided however, that in such event the Buyer shall be entitled to request delivery of such Off-Spec Natural Gas, unless such delivery in the Seller's opinion, acting as a Reasonable and Prudent Operator, would have a detrimental effect on the LNG Facilities or related facilities upstream of the Delivery Point.
- (d) Unless both (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer waives in writing its right to reject such Off-Spec Natural Gas, the Seller shall be liable for all damages incurred by the Buyer as a result of the acceptance of such Off-Spec Natural Gas, including all the reasonable costs and expenses incurred (over and above those normally incurred in accepting conforming Natural Gas) in receiving and treating such Off-Spec Natural Gas by such means as are appropriate; provided, that the Buyer shall exercise

commercially reasonable practices to minimize the costs and expenses which may occur.

- (c) If both (i) Buyer is notified of the full extent to which Off-Spec Natural Gas actually fails to meet the Specifications, and (ii) Buyer waives in writing its right to reject such Off-Spec Natural Gas, such Off-Spec Natural Gas shall be deemed to have been delivered in accordance with this Agreement and the Seller shall not be liable for any damages to the Buyer for the acceptance of such Off-Spec Natural Gas; provided, however, that said NG shall be paid for at eighty-five percent (85%) of the Contract Price.
  - (f) When NG is not taken by the Buyer due to it being Off-Spec Natural Gas or when Seller withholds NG pursuant to Clause 4.2(c), the Buyer shall not be obliged to pay for such NG not taken, and such NG not taken shall be deemed not to have been made available and shall be considered a "Seller Shortfall Quantity".
  - (g) The Buyer shall have no right or remedy with respect to the Off-Spec Natural Gas other than those stated or referred to in this Clause 4.2.
- 4.3 Any Dispute between the Parties concerning the measurement and/or testing of NG for the purposes of determining the quality thereof at the Delivery Point, shall be settled in accordance with the provisions of Clause 20.2 of this Agreement.

## 5. SUPPLY PERIOD

- 5.1 The supply period for NG commenced on the Firm Supply Conditions Date under the Pre-Restatement GSPA and shall continue in force until and including the last Day of the Contract Term (the "Supply Period").
- 5.2 The Pre-Restatement GSPA shall govern the Parties' rights and obligations performed or to be performed in connection with NG deliveries taking place prior to the Conditions Precedent Date.

## 6. NG QUANTITIES

- 6.1 The "Maximum Annual Contract Quantity" for each Contract Year shall equal [REDACTED] TBtu, provided that (i) the Maximum Annual Contract Quantity shall be prorated downward ratably for each Contract Year of less than three hundred and sixty five (365) Days including 2020 Contract Year, and (ii) provided further that if the Buyer reduces the Minimum Annual Contract Quantity pursuant to any of Clauses 6.2(c), 6.2(d), or 6.2(e), and has not subsequently increased the Minimum Annual Contract Quantity to [REDACTED] TBtu pursuant to Clause 6.2(h), the Maximum Annual Contract Quantity (effective the same date that any reduction of the Minimum ACQ pursuant to any of Clauses 6.2(c), 6.2(d), or 6.2(e)) shall equal the greater of (1) such reduced Minimum Annual Contract Quantity multiplied by a factor of [REDACTED] and (2) [REDACTED] TBtu.



- 6.2 The “Minimum Annual Contract Quantity” or “Minimum ACQ” for each Contract Year shall equal [REDACTED] TBtu; provided, however, that:
- (a) the Minimum ACQ shall be prorated downward for each Contract Year in the Contract Term of less than three hundred and sixty five (365) Days;
  - (b) any Scheduled Maintenance, Forced Outages, Routine Maintenance, Unit Limitations or any Environmental Testing Period will reduce the Minimum ACQ for any Contract Year on a prorated basis;
  - (c) if Buyer retires a Costa Sur Unit, then Buyer shall have the right, but not the obligation, upon six (6) months’ prior notice to Seller, to reduce the Minimum Annual Contract Quantity to an amount between [REDACTED] TBtu and [REDACTED] TBtu, provided that if such reduction takes place on a date other than January 1, the Minimum Annual Contract Quantity for the year in which such reduction occurs shall equal the (i) Minimum ACQ prior to such reduction *multiplied by* the number of Days prior to such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year *plus* (ii) the Minimum ACQ from and after such reduction *multiplied by* the number of Days from such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year;
  - (d) Starting on January 1, 2024, if peak electricity demand in Puerto Rico falls below two [REDACTED] megawatts (the “Threshold”), Buyer shall have the right, but not the obligation, upon six (6) months’ prior notice to Seller, to reduce the Minimum Annual Contract Quantity to an amount between [REDACTED] TBtu and [REDACTED] TBtu, provided that if such reduction takes place on a date other than January 1, the Minimum Annual Contract Quantity for the year in which such reduction occurs shall equal the (i) Minimum ACQ prior to such reduction *multiplied by* the number of Days prior to such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year *plus* (ii) the Minimum ACQ from and after such reduction *multiplied by* the number of Days from such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year;
  - (e) Starting on January 1, 2024 through the expiration of the Contract Term, in the event that the proportion of renewable generation sources available in Puerto Rico exceeds [REDACTED] of the total power generated by sources connected to the Grid System, Buyer shall have the right, but not the obligation, upon six (6) months’ prior notice to Seller, to reduce the Minimum Annual Contract Quantity to an amount between [REDACTED] TBtu and [REDACTED] TBtu, provided that if such reduction takes place on a date other than January 1, the Minimum Annual Contract Quantity for the year in which such reduction occurs shall equal the (i) Minimum ACQ prior to such reduction *multiplied by* the number of Days prior to such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year *plus* (ii) the Minimum ACQ from and after such reduction *multiplied by* the number of Days from such reduction in the relevant Contract Year *divided by* the number of Days in such Contract Year;

- (f) In the event that Buyer terminates the Restatement PPOA for Owner's default, Buyer shall have the right, but not the obligation, to reduce the Minimum ACQ (i) prior to the date when Buyer exercises the right to reduce the Minimum ACQ pursuant to Clause 6.2(c), to a quantity between ■ TBtu and ■ TBtu, and (ii) thereafter, to a quantity between ■ TBtu and ■ TBtu, in each case effective on the date of such termination;
- (g) For the avoidance of doubt, in no event shall the cumulative reduction of the Minimum ACQ pursuant to any of Clauses 6.2(c), 6.2(d), or 6.2(e) reduce the Minimum ACQ below ■ TBtu;
- (h) If Buyer elects to reduce the Minimum ACQ pursuant to any of Clauses 6.2(c), 6.2(d), or 6.2(e), Buyer has the right, but not the obligation subsequently, to increase the Minimum ACQ up to a quantity that shall not exceed ■ TBtu, provided that:
- (i) Buyer must provide at least six (6) Month's prior written notice to Seller of its election to increase the Minimum ACQ;
  - (ii) Upon its receipt of the notice described in Clause 6.2(h)(i) and if so requested by Buyer, Seller shall exercise its best efforts to deliver quantities of NG in excess of nominated quantities applicable during the notice period in accordance with such request;
  - (iii) Such increase shall take effect on the date indicated in Buyer's notice, subject to Clause 6.2(h)(ii); and
  - (iv) Following any such increase of the Minimum ACQ, Buyer shall cease to have the right to decrease the Minimum ACQ pursuant to Clauses 6.2(c), 6.2(d), or 6.2(e).
- 6.3 In respect of each Day of each Contract Year, the Daily Contract Quantity ("DCQ") shall be the daily nomination for each Day of the Binding Monthly Schedule. The "Maximum DCQ" that Buyer may nominate for any Day shall be calculated as provided in the formula below provided, however, that Seller shall use reasonable efforts to comply with Buyer's request to deliver a Maximum DCQ in excess of the applicable Maximum DCQ:
- $$\text{Maximum DCQ (in Mmscf/Day)} = [\text{ACQ (in TBtu)} \times \text{■ Mmscf/Day}] / \text{■ TBtu.}$$
- 6.4 Maximum Hourly Rate
- (a) Notwithstanding any other provision of this Agreement, Seller shall have no obligation to deliver the DCQ at an hourly rate that exceeds ■ Mmscf/hour ("Maximum Hourly Rate"); provided, however, that Seller shall use reasonable efforts to comply with the Buyer's requests to exceed such Maximum Hourly Rate to the extent necessary for the operation of the Costa Sur Units and the ECO Generation Facility, subject to the operation of the LNG Facilities.



- (b) The Buyer shall not be obliged, notwithstanding any other provision of this Agreement, to receive the DCQ at an hourly rate over the Maximum Hourly Rate; provided, however, that the Buyer shall use reasonable efforts to comply with the Seller's exceptional requests to exceed such Maximum Hourly Rate to the extent necessary for the performance of this Agreement.

#### 6.5 Use of NG by Owner.

- (a) The Parties acknowledge and agree that Owner, in its operation of the EcoEléctrica Complex, uses NG to generate electricity for the EcoEléctrica Complex's own operations. In order to compensate Buyer for NG used by Owner, Seller agrees to credit Buyer (the "**Buyer's NG Credit**") for the amount of NG used by Owner in each Monthly Invoice calculated as follows:

$$\text{Buyer's NG Credit} = \text{PC} \times \text{HR} \times \text{CP}$$

Where:

PC = For any Month, the amount of electric power consumed by the EcoEléctrica Complex in the prior Month (in kWh);

HR = Heat Rate of the ECO Generation Facility in the prior Month (in MMBtu/kWh); and

CP = the Contract Price applicable to the prior Month.

- (b) The Buyer's NG Credit shall be evidenced by an Owner's statement that Buyer shall cause the Owner to produce in each month and shall promptly deliver to Seller.

- 6.6 Seller shall not amend, or agree to any amendment, to the Restatement TSA that would prevent the delivery of NG to Buyer of the volumes contemplated under this Agreement.

### 7. SCHEDULING

- 7.1 For each Contract Year, the following provisions shall apply:

- (a) The Annual Delivery Programme ("**ADP**"), Ninety-Day Schedule ("**NDS**") and Weekly Schedules for such Contract Year shall be established according to the following conditions:

- (i) On or before each June 1, the Buyer shall nominate the "**Annual Contract Quantity**" or "**ACQ**" for the upcoming Contract Year, which ACQ must be between the Minimum Annual Contract Quantity and the Maximum Annual Contract Quantity for such Contract Year. The ACQ shall be final and binding.

In addition to the ACQ, the Buyer shall provide:

1. an estimate of its consumption for each Contract Quarter of such Contract Year and the allocation between each Delivery Point;
2. its non-binding estimate of the dates of any Scheduled Maintenance or any Environmental Testing Period expected to occur during such Contract Year. Buyer shall be entitled to conduct two (2) Environmental Testing Periods in each calendar year; and
3. any Make-Up Gas quantities requested by the Buyer to be delivered during such Contract Year. Provided Buyer has at least nominated the Minimum Annual Contract Quantity, Buyer may, at Buyer's option, elect to schedule all or any then outstanding Make-Up Gas for delivery to Buyer.

No later than fifteen (15) days prior to the day of Seller's reasonable estimation of the day on which the Conditions Precedent Date will occur, the Buyer shall modify the ADP and the Quarterly Binding Quantity for Contract Year 2020 to take into account the volumes that will be delivered at the Eco Delivery Point and any other changes required upon the entering into force of this Agreement.

- (ii) Except for the first Contract Year, on or before October 1 of each year thereafter, the Buyer shall provide to the Seller an ADP for the ACQ informed by the Buyer in accordance with Clause 7.1(a)(i), for the following Contract Year on a monthly basis and including the monthly detail of any Make-Up Gas (if any), for each Delivery Point; the sum of the quantities of the months of each calendar quarter ("**Quarterly Binding Quantity**") being binding. The sum of the Quarterly Binding Quantities for any Contract Year shall equal the ACQ. This ADP shall include the final dates of any Scheduled Maintenance or any Environmental Testing Period to occur during such Contract Year. Should Buyer fail to include the ACQ within the four Quarterly Binding Quantities in the notice provided pursuant to this Clause 7.1(a)(ii), Seller may elect to include the NG volumes required to equal the ACQ in any Quarterly Binding Quantity by providing notice of such election to Buyer no later than October 15 of the relevant Contract Year.
- (iii) On or before the [REDACTED] Day of month M-1 the Buyer shall provide to the Seller its NG requirements for the next [REDACTED] months for each Delivery Point (the "**NDS**"). On or before the [REDACTED] Day of month M-1 and in accordance with Clause 7.1(b), the Seller shall confirm the NDS. The NDS shall [REDACTED]. Such NDS shall include the monthly quantities to be delivered to each Delivery Point in each of the [REDACTED] [REDACTED] as well as the daily requirements for month M for each Delivery Point. Further, Buyer shall use commercially reasonable efforts to include in each NDS estimated, non-binding daily requirements for months [REDACTED].



(iv) On or before [REDACTED]

[REDACTED] the Buyer shall provide to the Seller a daily estimate of its NG requirements for the next Day for each Delivery Point, to be provided on a daily basis with hourly detail. This daily programme ("**Daily Programme**") shall be reasonably adjusted to the original NDS for the applicable month. For the purpose of this Clause each Daily Programme shall contain consumption details beginning 00:00 hours on each Day until 23:59 hours the same Day. If Buyer fails to provide such a daily estimate for any Day, Seller may rely upon the Binding Monthly Schedule for Buyer's nomination of NG for such Day.

- (b) The Parties shall cooperate in the scheduling to ensure that the Seller supplies NG to each Delivery Point reasonably ratably for each Day in a Contract Year (subject to the Buyer's Scheduled Maintenances and Environmental Testing Periods) in a manner that is consistent with the Seller's projected deliveries and use of LNG, as such projected deliveries or requirements may be adjusted or exist from time to time, and in a manner that permits the Seller to fulfill its obligations under the Restatement TSA.
- (c) The Buyer designates the Operational Manager as specified in Clause 24 to make all the notifications required under this Clause 7.1.

7.2 In accordance with the previous cooperation principle, to the extent a Monthly Deficiency, Quarterly Deficiency or a Seller Shortfall Quantity can reasonably be anticipated to arise, the Parties will exercise commercially reasonable efforts to avoid such circumstances by cooperating in good faith to attempt to resolve such circumstances by rescheduling delivery of NG.

## 8. TAKE OR PAY AND MAKE UP

8.1 During each month of the Contract Year, Buyer shall take and pay for, or pay for if not taken, a quantity of NG equal to at least [REDACTED] of the Monthly Adjusted Required Quantity. To the extent Buyer fails to take such quantity, a "**Monthly Deficiency**" shall arise equal to the Monthly Adjusted Required Quantity less the quantity of NG actually taken by the Buyer.

8.2 In respect of each month during a Contract Year, the "**Monthly Adjusted Required Quantity**" shall be the quantity of NG nominated by the Buyer in the Binding Monthly Schedule, reduced by:

- (a) all Seller Shortfall Quantities occurring during such month;
- (b) (i) all quantities of NG not delivered by the Seller or which the Buyer does not take delivery of during such month due to an event of Force Majeure affecting Seller or Buyer, or (ii) all quantities of NG not taken by Buyer due to a Forced Outage; and
- (c) all Make-Up Gas scheduled quantities included in the Binding Monthly Schedule.

In respect of each month in a Contract Year in which a Monthly Deficiency arises, the quantity equal to the difference between the Monthly Deficiency and [REDACTED] of the Monthly Adjusted Required Quantity will be the "Monthly Take or Pay Quantity". Buyer shall pay Seller, in accordance with Clause 13, a "Monthly Take or Pay Payment" equal to [REDACTED] of the Contract Price applicable to such month multiplied by such Monthly Take or Pay Quantity.

- 8.3 During each Contract Quarter, Buyer shall take and pay for, or pay for if not taken, a quantity of NG equal to [REDACTED] the Quarterly Adjusted Required Quantity. To the extent Buyer fails to take such quantity, a "Quarterly Deficiency" shall arise equal to the Quarterly Adjusted Required Quantity less the quantity of NG actually taken by the Buyer during such Contract Quarter.
- 8.4 In respect of each Contract Quarter the "Quarterly Adjusted Required Quantity" shall be the Quarterly Binding Quantity as per Clause 7.1(a)(ii) reduced by:
- (a) all Seller Shortfall Quantities occurring during such Contract Quarter;
  - (b) all quantities of NG not delivered by the Seller or which the Buyer does not take delivery of at the Delivery Point during such Contract Quarter due to an event of Force Majeure affecting the Seller or the Buyer;
  - (c) all Make-Up Gas scheduled quantities included in the Quarterly Binding Quantity;
  - (d) all quantities of NG for which Buyer incurred a Monthly Take or Pay Payment during such Contract Quarter; and
  - (e) all quantities of NG not taken by Buyer due to a Forced Outage, a Permanent Abandonment or a Permanent Closing.
- 8.5 In respect of each Contract Quarter in which a Quarterly Deficiency arises, the Quarterly Deficiency [REDACTED] will be the "Quarterly Take or Pay Quantity". The Buyer shall pay to the Seller the "Quarterly Take or Pay Payment", equal to the [REDACTED] of the average Contract Price during such Contract Quarter multiplied by such Quarterly Take or Pay Quantity applicable to such Contract Quarter. Any Quarterly Take or Pay Payment shall be due and payable by the Buyer to the Seller in accordance with Clause 13.
- 8.6 If pursuant to Clauses 8.2 or 8.5 the Buyer has paid any Monthly Take or Pay Payment or Quarterly Take or Pay Payment or if there is any Legacy Make-Up Gas, then the Buyer shall be entitled to receive from Seller a quantity of "Make-Up Gas" equal to (i) the amount of the Legacy Make-Up Gas, plus (ii) [REDACTED] of all NG paid for but not received as a result of a Monthly Take or Pay Payment, plus (iii) [REDACTED] of all NG paid for but not received as a result of a Quarterly Take or Pay Payment, subject in each case to the following conditions:
- (a) The Buyer shall be entitled to nominate and schedule for delivery the Make-Up Gas during any following Contract Year or thereafter during the period of time needed to



take the Make-Up Gas and up to a maximum of [REDACTED] following termination of the Contract Term (the "Make-Up Extension Period"). However, if at the time of the termination of the Contract Term Seller reasonably determines that the maximum Make-Up Extension Period is insufficient for Buyer to take the Make-Up Gas in accordance with the terms of this Agreement, then, at Seller's option exercised no later than the end of the Contract Term, (i) [REDACTED]

[REDACTED]; or (ii) [REDACTED]

[REDACTED]. For the avoidance of doubt, except to the extent Seller elects, in accordance with the preceding subclause (i) to [REDACTED] Seller shall schedule and deliver on a firm basis according to the terms of this Agreement during the Make-Up Extension Period all Make-Up Gas that is owed to Buyer as of the end of the Contract Term.

- (b) The Seller shall deliver the Make-Up Gas scheduled by the Buyer subject to the terms and conditions of this Agreement.
- (c) During the Supply Period, the scheduling of the Make-Up Gas shall be performed in accordance with Clause 7.1 and the following rules will apply:
  - (i) To the extent Buyer schedules Make-Up Gas to be delivered during any Contract Year, such Make-Up Gas shall be deemed to [REDACTED].
  - (ii) During each month, the Make-Up Gas shall only be consumed if [REDACTED].
  - (iii) If for any reason, other than Buyer's unexcused failure to take, Seller fails to deliver any Make-Up Gas that Buyer has scheduled (other than Seller's excused failure to deliver), Buyer shall have the right to reschedule such Make-Up Gas for delivery at a later time.
  - (iv) If Buyer fails, due to Buyer's unexcused failure to take, to receive any Make-Up Gas that it has scheduled, [REDACTED], provided that [REDACTED].
  - (v) If Seller does not deliver any Make-Up Gas that it has scheduled except due to Seller's excused failure to deliver, then such quantity shall be a Seller Shortfall Quantity and, in addition to any damages Seller may owe pursuant to Clause 9, Seller will [REDACTED].

- (d) If Buyer is unable to schedule or take any Make-Up Gas prior to the end of the Contract Term due to Force Majeure events, Seller will [REDACTED].
- (e) The following specific rules shall apply during the supply of the pending Make-Up Gas during the Make-Up Extension Period:
- (i) The supply during the Make-Up Extension Period shall be [REDACTED].
- (ii) The Parties will schedule an ADP for such Make-Up Extension Period under Clause 7 above as if it were a Contract Year, provided that [REDACTED].
- (f) The price to be paid by the Buyer for any Make-Up Gas shall be the higher of: (i) [REDACTED]; or (ii) [REDACTED]. The sum to be paid for this Make-Up Gas shall be the applicable price as calculated hereunder *multiplied* by the quantity of Make-Up Gas *less* the Quarterly Take or Pay Payment or the Monthly Take or Pay Payment already paid by the Buyer for the corresponding quantity.
- (g) Only for the purpose of this Clause 8.6, Buyer shall take the Make-Up Gas [REDACTED].

## 9. SELLER'S SHORTFALL

- 9.1 If, for any reason other than the occurrence of (a) an event of Force Majeure or (b) reasons attributable to the Buyer, the Seller fails to deliver the scheduled quantity in the Binding Monthly Schedule for delivery to the Buyer at the Costa Sur Delivery Point (including scheduled Make-Up Gas) for the applicable months of any Contract Quarter (the "**Costa Sur Seller Shortfall Quantity**"), the Seller shall be liable to the Buyer in accordance with this Clause 9.
- 9.2 If a Costa Sur Seller Shortfall Quantity occurs during any Contract Quarter, Seller shall pay liquidated damages to the Buyer in an amount (each, a "**Costa Sur Shortfall Payment**") equal to such Costa Sur Seller Shortfall Quantity multiplied by [REDACTED] of the average of the Prompt Contract Price for the Contract Quarter during which the Costa Sur Seller Shortfall Quantity has occurred.
- 9.3 If, for any reason other than the occurrence of (a) an event of Force Majeure or (b) reasons attributable to the Buyer, the Seller fails to deliver the scheduled quantity in the Binding Monthly Schedule for delivery to the Buyer at the ECO Delivery Point (including scheduled



Make-Up Gas) for the applicable months of any Contract Quarter (the "ECO Seller Shortfall Quantity"), the Seller shall be liable to the Buyer in accordance with this Clause 9.

- 9.4 If an ECO Seller Shortfall Quantity occurs during any Contract Quarter, prior to the Transfer Date, Seller shall pay the Buyer in an amount (a "ECO Shortfall Payment") equal to the sum of the [REDACTED] and the [REDACTED], calculated for each hour of the Seller Shortfall Duration, each as duly documented by Buyer.
- 9.5 If an ECO Shortfall Quantity occurs on or after the Transfer Date, the Seller shall pay liquidated damages to the Buyer in an amount equal to the [REDACTED] multiplied by [REDACTED] of the average of the Prompt Contract Price for the Contract Quarter during which the ECO Seller Shortfall Quantity has occurred.
- 9.6 Seller agrees that Buyer's damages associated with Seller's failure to deliver NG hereunder would be difficult to estimate, and that Clauses 9.2 and 9.5 represent reasonable estimates of such damages.
- 9.7 Any Shortfall Payment shall be due and payable by the Seller to the Buyer in accordance with Clause 13 following the expiration of the Contract Quarter in which such Shortfall Payment arose.

## 10. MEASUREMENT AND TESTING

### 10.1 Unit of Measurement

The following guidelines shall be followed with regard to the units of measurement to be used by either Party to comply, as appropriate, with the provisions of this Agreement:

- (a) The unit for the purpose of measuring volume shall be one cubic foot of Natural Gas at a base temperature of sixty degrees (60°) F and at a pressure of 14.73 psia with correction for deviation from Boyle's Law. Computation of volumes, including any deviation from Boyle's Law, shall comply with applicable rules, regulations, and orders promulgated by the appropriate regulatory authorities having jurisdiction. For payment purposes, the volume of Natural Gas delivered hereunder will be determined at the pressure reported by the Metering Equipment, or based on fifteen (15) Day average flowing pressure corrected, if necessary, in the event that the Metering Equipment is inoperable or not measuring accurately, as applicable, and will be multiplied by the Btu content per cubic foot to obtain the total Btu contained within such volume of Natural Gas.
- (b) For purposes of measurement and meter calibration, the atmospheric pressure shall be assumed to be 14.73 psia, irrespective of actual elevation or location of the Delivery Point above sea level, or variations in such atmospheric pressure from time to time.
- (c) The static pressure of the Natural Gas passing through the Metering Equipment shall be determined by the use of electronic measurement equipment or by the use of another pressure recording device reasonably acceptable to both Parties. The instantaneous



static pressure measurements from the electronic measurement equipment or the arithmetic average of the temperature recorded each Day shall be used in computing Natural Gas volumes.

- (d) If Metering Equipment requiring the use of specific gravity is used, then the specific gravity of the Natural Gas delivered hereunder shall be determined by a method according to accepted industry practice. If a recording gravitometer is used, then the arithmetic average of the specific gravity of the Natural Gas flowing through the meters shall be used in computing Natural Gas volumes. If a spot test method is used, then the specific gravity of the Natural Gas delivery hereunder shall be determined as often as found necessary in practice. Any such test shall determine the specific gravity to be used in computation of volumes values effective the first Day of the following month and shall continue to be used until changed in a like manner by a subsequent test.
- (e) The temperature of the Natural Gas shall be determined by a recording thermometer installed so that it will record the temperature of the Natural Gas flowing through the meters, and such flowing temperature shall be corrected to Fahrenheit.
- (f) Heating Value and energy content will be measured by the Seller as described in "Appendix F-Heating Value Calculation of API MPMS, Chapter 14.3." The determination of Natural Gas composition shall be in accordance with the GPA Standard 2261 "Analysis for Natural Gas Chromatography" and GPA Standard 2172 "Calculation of Gross Heating Value relative density and compressibility factor for Natural Gas Mixtures from compositional analysis." The composition of the NG shall be continuously measured by on-line chromatographs installed and maintained (or caused to be installed and maintained) by Seller at Seller's sole expense. The Heating Value of the NG shall be calculated using results from the on-line chromatograph. In the event of failure of the on-line NG chromatograph, chromatograph analysis of samples collected proportional to the flow through the meters shall be used. All electronic metering shall comply with the API Manual of Petroleum Standards, Chapter 21, Flow Measurement Using Electronic Metering Systems, First Edition, dated September, 1993, and any subsequent modification and amendment thereof. Prior to the installation of the Metering Equipment as provided in Clause 10.2, the Heating Value at the ECO Generation Facility shall be deemed to be the same as the Heating Value for the Costa Sur Units pursuant to this Clause 10.1(f).
- (g) The energy content of all NG delivered hereunder shall be in Btu and shall equal the Standard Cubic Feet of such NG multiplied by the Heating Value of such NG.

## 10.2 Metering Equipment

- (a) Prior to February 29, 2020, the Seller shall use commercially reasonable efforts to install or cause to be installed, at Seller's expense, a main and a back-up meter and other equipment as necessary to measure the volume of Natural Gas delivered to the ECO Generation Facility hereunder (the "ECO Metering Equipment"). The ECO Metering Equipment will be installed at the point identified as "EcoEléctrica Metering



Station" on the schematic attached as Annex A. The ECO Metering Equipment shall be designed and installed in accordance with the current recommendations of the American Gas Association. If the Metering Equipment (or component(s) thereof) is out of service or registering inaccurately, the volumes of Natural Gas delivered hereunder shall be estimated as follows, in descending order of priority:

- (i) by using the registration of the Buyer Check Meter;
  - (ii) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or
  - (iii) by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.
- (b) Buyer has the meter equipment necessary to measure the volume of Natural Gas delivered hereunder (the "**Buyer Check Meters**"). The Buyer Check Meters are installed at the points identified as "Costa Sur Metering Station" and "ECO Metering Station" on the schematic attached in Annex A. The Buyer Check Meters are designed and installed in accordance with the current recommendations of the American Gas Association. In the event that Buyer notifies Seller of a material discrepancy between the quantity of Natural Gas delivered at the Delivery Point by Seller according to the Buyer Check Meter, and the quantity of Natural Gas measured by the Metering Equipment, the Parties will resolve and correct such discrepancy (including with respect to adjustments for prior Natural Gas deliveries).
- (c) For the avoidance of doubt, it is the intent of the Parties that Natural Gas will only be considered delivered when it reaches the Delivery Point, and that any Natural Gas measured at the Metering Equipment that is not actually delivered to the Delivery Point will not be considered delivered and will not be charged to Buyer. In this regard, Buyer will not be charged for line fill or any losses or fuel used on the pipeline between the Metering Equipment and the Delivery Point. Also, if Owner informs Seller about its intention to consume, due to any operational event, any quantity of Natural Gas stored in the pipeline that was not delivered to Buyer at the Delivery Point and, consequently, that was already measured by the Metering Equipment at the Owner Metering Station, Seller shall notify Buyer in writing of such circumstance. The Parties will resolve any material discrepancies resulting from Seller's consumption of Natural Gas under this clause in accordance with Clause 10.2(b).
- (d) Prior to installation of the ECO Metering Equipment, quantities of NG delivered to the ECO Generation Facility will be assumed to be the quantity of regasified LNG delivered from the LNG Facilities *minus* the amount measured at the Costa Sur Metering Equipment.

### 10.3 Verification

The following guidelines shall be followed with regard to the verification of the Metering Equipment to be used in accordance with this Agreement:

- (a) At least once each month, and from time to time upon at least two (2) weeks prior written notice by either Party to the other, the Seller shall verify or cause to be verified the accuracy of the Metering Equipment. When as a result of such test the Metering Equipment is found to be out of calibration by no more than one percent (1%) when compared to the manufacturer's specifications for such equipment, no adjustment shall be made in the amount paid by the Buyer to the Seller.
- (b) If the testing of the Metering Equipment demonstrates that a meter is out of calibration by more than one percent (1%) when compared to the manufacturer's specifications for such equipment, the applicable Metering Equipment reading for the actual period during which out of calibration measurements were made shall be adjusted based on the methods stated in Clause 10.2 above.
- (c) If the actual period that such equipment has been out of calibration cannot be determined to the mutual satisfaction of the Seller and the Buyer, the adjustment shall be for a period equal to one-half of the time elapsed since the most recent test. The previous payments made by the Buyer to the Seller for this period shall be subtracted from the amount of payments that are calculated to have been owed under this Agreement. The difference in US Dollars (which may be a positive or negative amount) shall be added to the next Monthly Invoices pursuant to Clause 13.
- (d) The cost of the monthly testing and calibration of the Metering Equipment described in this Clause 10.3 shall be the responsibility of the Seller. The cost of any testing and calibration of the Metering Equipment beyond the monthly test permitted in this Clause 10.3 shall also be the responsibility of the Seller, unless the request to test any of the Metering Equipment is made by the Buyer and the results of such test requested by the Buyer demonstrate that the Metering Equipment is less than one percent (1%) out of calibration, in which case the cost of such testing and calibration shall be for the Buyer's account.
- (e) Each Party shall comply with any reasonable request of the other concerning the sealing of the Metering Equipment, the presence of a representative of the Buyer when the seals are broken and tests are conducted, and other matters affecting the accuracy, testing and calibration of the Metering Equipment.
- (f) If either the Seller or the Buyer believes that there has been a failure or stoppage of any of the Metering Equipment, it shall immediately notify the other Party.

### 10.4 Availability of Readings

At the end of each Month, the Seller shall make available to the Buyer all readings of the Metering Equipment as referenced in Clause 10.2(a).



10.5 Preservation of Records

The Seller shall preserve or cause to be preserved for a period of at least three (3) years following the expiration of this Agreement all test data, charts, and other similar records regarding the measurement of Natural Gas delivered in accordance with this Agreement.

11. **TRANSFER OF TITLE AND RISK; INDEMNITY**

The NG to be sold by the Seller and purchased by the Buyer in accordance with this Agreement shall be delivered to the Buyer at the Delivery Point. Title and risk in NG, including the risk of loss or (without prejudice to Clause 4 above) contamination, shall pass from the Seller to the Buyer at the Delivery Point (irrespective of the location of the Metering Equipment). Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all Persons, arising from or out of claims of title, personal injury (including death) or property damage from said Natural Gas or other charges thereon which attach before title passes to the Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all Persons, arising from or out of Claims regarding payment, personal injury (including death) or property damage from said Natural Gas or other charges thereon which attach after title passes to the Buyer.

12. **CONTRACT PRICE**

- 12.1 Without prejudice to Clause 26, the contract price applicable to the quantities of NG to be sold, purchased and delivered in any month during the Contract Term expressed in US Dollars/MMBtu ("**Contract Price**") shall be calculated as follows:

Dates	Contract Price
Conditions Precedent Date until December 31, 2020	
January 1, 2021 until December 31, 2021	
January 1, 2022 until December 31, 2022	
January 1, 2023 until September 2032	

Notwithstanding anything to the contrary in this Clause 12.1, from the date on which (x) the Jones Act is repealed or amended such that it no longer applies to the transportation by water of LNG between United States mainland ports and Puerto Rico or (y) a waiver of the Jones Act is granted that permits, for a period of not less than [REDACTED], the transportation by water of LNG between United States mainland ports and Puerto Rico by means of vessels that do not meet Jones Act requirements, the applicable Contract Price ("**CP**") for any quarter starting after the date the Jones Act ceases to be applicable for such traffic, shall be calculated as follows:

CP= [REDACTED]

12.2 If the Parties are unable to so agree upon a suitable alternative replacement for such source of information or for such index then either Party may refer the matter to an Expert for determination in accordance with Clause 20.2.

12.3 The Seller shall maintain a current accounting of, and shall invoice the Buyer on a monthly basis in accordance with Clause 13 the following (collectively the "**Incremental Costs**");

- (a) any cost originated by the demurrage in the Seller's projected deliveries and use of the Owner's LNG terminal under the Existing TSA caused by reasons attributable to the Buyer; and
- (b) any sums as a result of indemnification obligations paid by the Seller to the Owner related to the payment of liquidated damages under the PPOA and passed through under the Existing TSA, so long as such sums were ultimately caused by the Buyer's breach of its obligations to take and receive NG hereunder.

In any case, the Incremental Costs shall be duly justified and documented costs, effectively charged by Owner to the Seller. Any incremental Costs arising pursuant to this Clause 12.3 shall not constitute incidental, consequential, indirect, special, punitive or exemplary damages.

### 13. INVOICING, PAYMENT AND CREDIT REQUIREMENT

13.1 Every month the Seller shall invoice the consumption of the Costa Sur Units and the ECO Generation Facility corresponding to the previous calendar month, and whatsoever other amounts that are owed for those items regulated in accordance with this Agreement and current regulations governing the provision of the services at any given time.

13.2 The Seller shall prepare and shall give to the Buyer by not later than the tenth (10<sup>th</sup>) Day after the end of each calendar month an invoice (the "**Monthly Invoice**") which shall show in respect of the preceding calendar month the following information:

- (a) the applicable Contract Price;
- (b) the total quantity of NG delivered to the Buyer at the Delivery Point;
- (c) the Buyer's NG Credit for such month;
- (d) any applicable Taxes due for payment by the Buyer; and
- (e) the net amount payable by the Buyer to the Seller shall be the Contract Price multiplied by the quantities set down in (b) (reduced by the Buyer's NG Credit), plus the Applicable Taxes amounts under (d).

13.3 The Buyer shall pay the net amount to the Seller as due in accordance with such Monthly Invoice.



- 13.4 If Buyer incurs a liability to the Seller pursuant to Clause 8 for a Monthly Take or Pay Payment or a Quarterly Take or Pay Payment, then Seller shall send to the Buyer (following the end of the applicable month or Contract Quarter) an invoice and reasonable supporting documentation showing the amount payable by the Buyer pursuant to Clause 8.
- 13.5 If Seller incurs a liability to the Buyer for failing to deliver NG pursuant to Clause 9, then the Buyer shall send to the Seller (following the end of the applicable month) an invoice and the supporting documentation showing the amount payable by the Seller in accordance with Clause 9.
- 13.6 If any sums are due from one Party to the other Party, except for reasons addressed in Clauses 13.2, 13.4. and 13.5, then the Party to whom such sums are owed shall furnish to the other an invoice describing in reasonable detail the basis for the invoice and providing relevant supporting documentation.
- 13.7 In respect of any invoice issued pursuant to this Clause 13, the Buyer or the Seller as the case may be, shall pay the amount due within thirty (30) Days after receipt of such invoice.
- 13.8 Payment of amounts due to one Party from the other Party shall be made by wire transfer in immediately available funds into the bank account nominated from time to time by the Party to which the funds are owed. Each payment of any amount owing hereunder shall be for the full amount due, without reduction, withholding or offset for any reason (including any exchange charges, bank transfer charges or other fees or Taxes). Until further notice, the bank account for each Party is as follows:

**Seller: Bank Name: Banco Santander Puerto Rico**

**Bank Account #3004696629**

**Buyer: [Bank Name: Citibank**

**Bank Account #0-400015-074]<sup>1</sup>**

Notwithstanding the foregoing, Seller shall request from Buyer wire instructions prior to transferring any funds to Buyer and shall provide Buyer bank confirmation upon completion of each such transfer.

- 13.9 If any Party fails to pay the other Party the full amount of any invoice due by the due date, such Party shall also pay interest thereon to the other Party for the period commencing from and including the due date until and including the Day when payment is made. Interest shall be calculated at the rate of [REDACTED] but no greater than the maximum amount allowable by Applicable Law.
- 13.10 If a Party disagrees in good faith with any invoice, such Party shall pay the full amount invoiced or so stated by the due date thereof and shall immediately notify the other Party of

<sup>1</sup> NTD: Bank information to be confirmed by PREPA.

the reasons for its disagreement. An invoice may be contested by the Party that received it, or modified by the Party that sent it, by written notice delivered to the other Party within a period of one hundred and eighty (180) Days after such receipt or sending, as the case may be. If no such notice is served within such period of one hundred and eighty (180) Days, such invoice shall be deemed correct and accepted by both Parties. Promptly after resolution of any Dispute as to an invoice, the amount of any overpayment or underpayment shall be paid by the Seller or the Buyer, as the case may be, to the other Party, together with interest thereon at the rate provided in Clause 13.9 from the date payment was due to the date of payment.

13.11 If, at any time during the Term, Buyer becomes a Non-Commonwealth Entity, Seller will have the right to terminate the Agreement pursuant to Clause 18.1(b)(ii), unless effective on the date on which Buyer becomes a Non-Commonwealth Entity, Buyer satisfies, and covenants to maintain in full force and effect during the Term, one of the following:

- (i) full compliance with the Credit Standards;
- (ii) the delivery to Seller of a legal, valid, binding and enforceable Guarantee from an Acceptable Guarantor; or
- (iii) the delivery of a Letter of Credit.

13.12 Any Letter of Credit provided by an Acceptable Private Assignee pursuant to this Agreement shall be subject to the following provisions:

- (i) Unless otherwise agreed in writing by the Parties, each Letter of Credit shall be maintained for the benefit of Seller. The Acceptable Private Assignee shall renew or cause the renewal of any Letter of Credit on a timely basis as provided in the relevant Letter of Credit. If a Letter of Credit Default occurs Seller shall have the right to make a drawing on the Letter of Credit in full unless such assignee shall have provided for the benefit of Seller a substitute Letter of Credit (meeting the conditions of Clause 13.12) in equal amount to the Letter of Credit being replaced by the close of business on the date that is five (5) Business Days following the occurrence of such Letter of Credit Default.
- (ii) Each Letter of Credit shall provide that Seller may draw upon the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to any or all amount(s) that are due and owing from such assignee under this Agreement, but have not been paid to Seller when due, upon presentation to the issuing bank of one or more statements certified by Seller that the amount(s) drawn under the Letter of Credit represent amounts due and owing under the Agreement.
- (iii) Each Letter of Credit shall provide that Seller may draw the full amount due and owing by such assignee to Seller on the date thereof pursuant to this Agreement (up to the entire undrawn amount of the Letter of Credit) if any event giving Seller the right to terminate this Agreement pursuant to



Clause 18.1(b)(ii) has occurred and is continuing, upon presentation to the issuing bank of one or more statements certified by Seller that such an event has occurred and is continuing with respect to the Acceptable Private Assignee.

- (iv) Each Letter of Credit shall provide that Seller may draw the full amount of such Letter of Credit in case of any default by such assignee under the Agreement.
- (v) Buyer shall have the right, but not the obligation, to cause the reissuance of a new Acceptable Letter of Credit at any time.

13.13 An Acceptable Private Assignee, other than an Acceptable Private Assignee that has provided an Acceptable Letter of Credit to Seller, shall (i) notify Seller promptly, but in no event more than fourteen (14) days after the date on which such assignee becomes aware of the occurrence of a Credit Standard Event and (ii) within thirty (30) days of such Credit Standard Event, provide replacement credit support in the form of an Acceptable Guarantee or an Acceptable Letter of Credit. If the Acceptable Private Assignee fails to deliver such Acceptable Letter of Credit or Acceptable Guarantee in accordance with of the previous sentence, Seller may terminate this Agreement upon notice with immediate effect.

13.14 An Acceptable Private Assignee that has provided an Acceptable Letter of Credit to Seller shall (i) notify Seller promptly, but in no event more than fourteen (14) days after the date on which such assignee becomes aware of the occurrence of a Letter of Credit Issue Event and (ii) within thirty (30) days of such Letter of Credit Issue Event, provide replacement credit support in the form of an Acceptable Guarantee or an Acceptable Letter of Credit. If the Acceptable Private Assignee fails to deliver such Acceptable Letter of Credit or Acceptable Guarantee in accordance the previous sentence, Seller may terminate this Agreement upon notice with immediate effect.

#### **14. DUTIES, TAXES AND CHARGES**

14.1 Each of the Seller and the Buyer shall be responsible for the payment of all taxes, fees, levies, royalties, duties, penalties, licenses, and other charges imposed by any Governmental Authority ("Taxes") which it incurs and for which it is legally responsible for as a result of complying with this Agreement and which correspond to such Party under all applicable tax regulations and laws in force at the "Effective Date" (as defined in the Pre-Restatement GSPA) and throughout the Contract Term in each of the jurisdictions relevant to this Agreement connected to the Parties. If Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

14.2 For the avoidance of doubt and notwithstanding the above:

- (a) Seller represents and warrants that it is the importer of record for all Natural Gas delivered hereunder, and shall be responsible for entry and entry summary filings as

well as the payment of associated duties, Taxes and fees, if any, and all applicable record keeping requirements;

- (b) Buyer shall pay or cause to be paid all Taxes imposed by any Governmental Authority after the Delivery Point on the sale, use, or purchase Natural Gas delivered to the Buyer under this Agreement (and on any LNG from which such Natural Gas is derived) and its transportation within the territory of Puerto Rico after the Delivery Point; provided that at all times the Seller shall be responsible for the payment of all and any Corporate Tax payable in Puerto Rico in connection with this Agreement; and
- (c) Seller shall pay or cause to be paid all Taxes imposed by any Government Authority on or with respect to Natural Gas delivered to the Buyer under this Agreement (and on any LNG from which such, Natural Gas is derived) prior to the Delivery Point and all Taxes at the Delivery Point.

## 15. FORCE MAJEURE

- 15.1 Neither the Seller nor the Buyer shall be liable for any failure to perform or for omission or delay in the performance of any of its obligations under this Agreement, other than the obligation to make payments of money when due, if and to the extent that the affected Party's performance is prevented, delayed or interfered with by an act, event or circumstance, or combinations of events or circumstances, whether of the kind described herein or otherwise, that is not reasonably within its control, such Party having acted as a Reasonable and Prudent Operator and which effects could not be prevented or overcome by the exercise of due diligence ("Force Majeure").

For the avoidance of doubt, provided that the requirements set out in the preceding paragraph are met, events of Force Majeure shall include but not be limited to the following:

- (a) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the relevant loading terminal or upstream facilities affecting an LNG cargo and source indicated in the LNG Delivery Plan. The "LNG Delivery Plan" shall mean the indicative LNG cargo scheduling program submitted by the Seller to the Buyer, solely for the purposes of this Clause, not later than thirty (30) Days prior to the commencement of each Contract Year and which shall include for each LNG cargo the expected source. The Seller shall inform Buyer of any modifications to the sources indicated in the LNG Delivery Plan, provided that Seller shall not, at any time nominate any source that is affected by Force Majeure or that is affected by any event that could reasonably lead to a claim of Force Majeure relief under this Agreement;
- (b) Loss of, serious accidental damage to, inaccessibility or incapacity of, or mechanical breakdown or inoperability of an LNG ship requiring her removal from service;
- (c) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the LNG Facilities;



- (d) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of any of the Costa Sur Units or any of the generation units at the ECO Generation Facility that prevents the operation or dispatch of such unit; provided that if an event of Force Majeure affects just one such unit but not any other, the affected Party shall only be released from its obligations under this Agreement with regard to the unit affected by the event of Force Majeure;
  - (e) Acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemic, shipwreck, navigational and maritime perils, acts of any Competent Authority or compliance with such acts; explosions, acts of the public enemy, wars (whether declared or undeclared), terrorism or threat thereof, civil war, piracy, civil and military disturbances, strikes, blockades, insurrections, riots, epidemics and quarantine restrictions; strike, lockout or other industrial disturbances involving an enterprise other than a Party, its transporter or its agents or sub-contractors in connection with the Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
  - (f) Loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the Grid System that prevents the normal dispatch of any of the Costa Sur Units or any of the generation units at the ECO Generation Facility.
- 15.2 Notwithstanding the foregoing provisions of Clause 15.1, the following shall not be events of Force Majeure:
- (a) events arising out of market decline, market failure, industry economic conditions, or general economic conditions;
  - (b) the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Competent Authority, of which the Party claiming Force Majeure was aware, or should have been aware, acting as a Reasonable and Prudent Operator, to the extent such Party could have applied for, obtained, maintained, or extended any such authorization, approval, permit, or permission;
- provided, however, that the failure to obtain any authorization, approval, permit or permission of any Competent Authority that is required in order to satisfy the Conditions Precedent shall under no circumstances be considered Force Majeure.
- 15.3 In the event of any failure or delay of a Party's performance due to the occurrence of a Force Majeure event, the affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume as soon as possible full performance of its obligations under this Agreement, provided that the settlement of strikes or boycotts, lockouts or other industrial disputes, or obstructive action by organisations or local inhabitants, shall be entirely within the discretion of the Party concerned.

15.4 A Party intending to seek relief under this Clause 15 shall as soon as reasonably practicable after it becomes aware of the occurrence of a Force Majeure event:

- (a) notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim Force Majeure relief under this Agreement, describing such event, in as much detail as is then reasonably available, and the obligations, the performance of which has been or could be delayed, hindered or prevented thereby, and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance; the obligations which could or have been actually delayed or prevented in performance and the estimated period during which such performance may be suspended or reduced, including (to the extent known or ascertainable) the estimated extent of such suspension or reduction in performance;
- (b) give a bona-fide good faith estimate of when it shall be able to resume full performance of its obligations; and
- (c) give the particulars of the programme to be implemented, if any, to resume full performance hereunder subject to any Third Party confidentiality obligations.

Such notices shall thereafter be supplemented and updated at reasonable intervals during the period of such Force Majeure, specifying the actions being taken to remedy the circumstances causing such Force Majeure and the date on which such Force Majeure is expected to terminate.

15.5 If any Party claims relief under this Clause 15, it shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of such event or circumstance which gave rise to the Force Majeure claim, provided that the Party not claiming relief under this Clause 15 shall bear the cost, expense and risk of examining such site.

15.6 Where an act, event or circumstance prevents, impedes or delays a Party's performance hereunder, even if such act, event or circumstance primarily affects a Third Party or Third Parties, it shall constitute Force Majeure hereunder as to the Seller or the Buyer, as appropriate, if and to the extent that it is of a kind or character that, if it had happened to a Party, would have come within the definition of Force Majeure under this Clause 15.

15.7 Force Majeure takes effect at the moment a Force Majeure event occurs, not upon giving notice. A Party whose performance is excused by Force Majeure shall not be required, during the period in which the circumstances of the Force Majeure event are continuing, to incur uneconomic costs, make additional investments in new facilities, or bring into production existing or potential reserves not already flowing in support of this Agreement.

15.8 If Seller is rendered wholly or partially unable to deliver NG under this Agreement as a result of a Force Majeure event claimed only by the Buyer, Seller shall have the right to enter into binding contracts with Third Parties to sell and deliver LNG that is not reasonably expected to



be needed by the Seller to meet its obligations to the Buyer hereunder based on the expected extent and duration of such Force Majeure as notified by the Buyer.

- 15.9 If the Force Majeure event is forecast to last (or actually lasts) for a period such that the affected Party shall be prevented from or delayed in performing its obligations hereunder for a period of [REDACTED] or more from the date on which the Force Majeure event first occurred, the Party not claiming Force Majeure shall have the right to terminate this Agreement without liability to either Party by giving written notice to the other Party.

## **16. REPRESENTATIONS, WARRANTIES, LIABILITIES AND INDEMNITIES**

- 16.1 Each Party hereby represents and warrants to the other Party that, as of the Conditions Precedent Date, to the actual knowledge of its officers and directors:
- (a) With regard to Seller, that the Restatement TSA is in full force and effect and contains provisions that provide that during the Contract Term Seller has the exclusive right to use the existing capacity of the LNG Facilities.
  - (b) With regard to Seller it is a corporation or limited liability company duly formed, validly existing and in good standing under the laws of the state and/or country of its incorporation or organization, and is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.
  - (c) With regard to Buyer it is a Puerto Rico public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, duly organized, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico and is duly qualified to do business in, and is in good standing in the jurisdictions where the nature of its business or nature of property owned by it makes such qualification necessary.
  - (d) Each Party has all requisite power and authority to conduct its business, to own or lease and operate its properties, and to execute, deliver, and perform its obligations under this Agreement.
  - (c) The execution, delivery and performance by such Party of this Agreement has been duly authorized by all necessary corporate action on the part of such Party and do not (i) require any consent or approval of any Competent Authority, such Party's governing body or any other Person, other than those that have been obtained, or the failure to obtain, of which would not have, or could not reasonably be expected to have, a material adverse effect on each Party's ability to perform its obligations hereunder, (ii) violate any provision of such Party's articles of incorporation or by-laws, or other organizational documents, or any Applicable Law in effect, or (iii) result in a breach of or constitute a default under such Party's organizational documents or other material indentures, contracts or agreements to which it is a party or by which it or its properties may be bound.

- (f) This Agreement is a legal, valid, and binding obligation of the Seller and the Buyer enforceable against the Seller and the Buyer, as appropriate, in accordance with its terms.

- 16.2 The Seller warrants that it has good title to or good right to all NG delivered hereunder and that all NG delivered to the Buyer at the Delivery Point shall be free and clear of all liens, security interests, charges, assessments, privileges, encumbrances and adverse claims whatsoever. The Seller makes no other representation or warranty, written or oral, express or implied that the NG will be fit for a particular purpose, or will be of merchantable quality, and all such representations and warranties are expressly excluded to the fullest extent permitted by law, but nothing in this Clause 16.2 affects the requirement that all NG delivered to the Buyer under this Agreement will meet the Specifications of Clause 4.
- 16.3 The Seller represents and warrants that it will take or cause to be taken all necessary actions to start NG deliveries after the date that all of the Conditions Precedent are satisfied or waived and that to that end it will obtain or cause to be obtained all required approvals, consents or authorizations from the relevant Competent Authority.
- 16.4 The Buyer represents and warrants that it will take or cause to be taken all necessary actions to commence taking delivery of NG from the date that all of the Conditions Precedent are satisfied or waived including the design and construction of any facility or its elements situated downstream of the Delivery Point and that to that end it will obtain or cause to be obtained all required approvals, consents or authorizations from the relevant Competent Authority.
- 16.5 Except as provided elsewhere in this Agreement, a Party shall not be liable to the other Party under this Agreement, or in tort or otherwise howsoever as a result of any act or omission in the course of or in connection with the carrying out of this Agreement, for or in respect of:
- (a) any consequential, special or punitive loss or damage suffered or incurred by the other Party or its Affiliates;
  - (b) any loss of income, profits, production or revenue suffered or incurred by the other Party or its Affiliates;
  - (c) any business interruption suffered or incurred by the other Party or its Affiliates; or
  - (d) any Claim, demand or action made or brought against that other Party by a Third Party.
- 16.6 Except for the provisions of Clause 12.3, the Buyer's liability arising out of or in connection with any failure to take delivery of NG under this Agreement shall be limited to the amounts payable pursuant to Clause 8 which shall be the Seller's sole and exclusive remedy in such event.
- 16.7 The Seller's liability for failure to deliver will be limited to the payment of the amounts detailed in Clause 9, which shall be the Buyer's sole and exclusive remedies in such event.



## 17. ASSIGNMENT

- 17.1 The Parties acknowledge that Buyer is undergoing a transformation process, and therefore, both Parties agree that in the eventuality of the execution of a Partnership Contract, Sale Contract or any other PREPA Transaction (as these terms are defined in Act No. 120-2018, otherwise known as Puerto Rico Electric System Transformation Act, as amended), Buyer may sell, assign, convey, transfer, pledge, mortgage, sublease, delegate, hypothecate, or otherwise dispose (each, a "**Transfer**") any of its rights, title, or interest (by novation or other instrument) in this Agreement as permitted by Applicable Law and at any time, and without Seller's consent or cost, expense or incremental liability to Buyer, to either a Commonwealth Entity or a Non-Commonwealth Entity. Buyer shall provide notice to Seller of its intent to Transfer this Agreement no later than thirty (30) days prior to the anticipated date of the Transfer.
- 17.2 On the Transfer Date, Clauses 17.1 and 26 shall cease having any force or effect under this Agreement.
- 17.3 Except as provided in Clauses 17.1, 17.4 and 17.5, neither Party may assign any of its rights or delegate any of its obligations under this Agreement to a Third Party without the prior written consent of the other Party. Any purported assignment of a Party's rights or obligations hereunder in contravention of this Clause 17 shall be null and void and shall have no force or effect.
- 17.4 Notwithstanding the foregoing, either Party shall be entitled to assign, or as appropriate, delegate, all, but not part, of its rights and obligations under this Agreement to an Affiliate by providing notice to the other Party, provided that subsequent to any assignment or delegation made pursuant to this Clause 17.4, the original Party and each subsequent assignee or delegatee, having itself assigned or delegated to an Affiliate, shall be fully liable under this Agreement in the event of non-fulfilment of its obligations under this Agreement by an assignee or delegatee.
- 17.5 Notwithstanding the foregoing provisions of this Clause 17, and without the prior written consent of the Buyer but subject to the Seller's written notification to the Buyer, the Seller may assign (a) its rights to payment under this Agreement to a trust, trustee, bank, paying agent, financial entity or other Person or company for the purposes of any bona fide financing or in order to facilitate the making of any such payment, and (b) any of the Seller's rights under this Agreement to any lender or lender's agent as security for its obligations to any such lender under any such financing.

## 18. TERMINATION

- 18.1 This Agreement may be terminated if any of the following circumstances occur:
- (a) the mutual agreement of the Parties;
  - (b) in the event that a Termination Event on the part of either Party (the "**Defaulting Party**") has occurred, the other Party may at any time after which such Termination Event has occurred or during which such Termination Event is otherwise continuing,

terminate this Agreement by giving written notice of termination to the Defaulting Party in accordance with this Clause 18, with such termination to take effect as from and including the date of such notice. In relation to either Party each of the following shall constitute a termination event (a "Termination Event"):

- (i) if any amount payable by that Party under this Agreement has not been paid in full by the due date for the payment of the relevant invoice and the other Party has (after such due date) given notice to the Party requiring payment of such amount and the amount has not been paid in full within ten (10) Business Days after the date of such notice;
- (ii) If a Buyer that is a Non-Commonwealth Entity fails to comply with Clause 13.11;
- (iii) If a Credit Standard Event or a Letter of Credit Issuer Event or a Letter of Credit default occurs and such events are not remedied in accordance with Clause 13.13 or 13.14;
- (iv) if that Party is unable to pay, suspends payment of, or agrees to a moratorium (or threatens any of the foregoing) with respect to all or a substantial part of its debts, makes a general assignment or any composition or compromise with or for the benefit of its creditors except to the extent otherwise permitted by this Agreement, takes any proceedings with view to a readjustment, rescheduling or deferral of all or a substantial part of its indebtedness (other than in the case of a refinancing);
- (v) if any order is made, or a petition is presented and not withdrawn within a period of twenty-one (21) Days, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of that Party;
- (vi) in the case of the Buyer (other than for reasons of Force Majeure or the fault of the Seller), if the Buyer fails to take delivery of a Take or Pay Quantity greater than [REDACTED] of the sum of the DCQs for any period of [REDACTED] consecutive months;
- (vii) in the case of the Seller, if there is a Seller Shortfall Quantity greater than [REDACTED] of the sum of the DCQs for any [REDACTED] month period;
- (viii) if a Party fails to perform or comply with any material obligation or representation contained in this Agreement other than the Buyer's failure to take delivery as referred to in Clause 16.6 and the Seller's failure to deliver referred to in Clause 16.7 and such failure continues unremedied for a period of [REDACTED] Business Days following receipt of written notice of such default from the other Party;
- (ix) the occurrence of an event of Force Majeure, where the conditions of Clause 15.9 have been met;



- (x) if Buyer has retired both Costa Sur Units and Buyer terminates the Restatement PPOA for Owner's default;
- (xi) if Buyer retires both of the Costa Sur Units after Buyer has terminated the Restatement PPOA for Owner's default; or
- (xii) pursuant to Clauses 3.3, 29.4 or 30.2.

18.2 On and at any time after the occurrence of a Termination Event, any Party not subject to such Termination Event may, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, suspend performance of its obligations under this Agreement. Where the Defaulting Party is the Buyer, any such suspension by the Seller shall not constitute a failure by the Seller to make such quantities of NG available for sale and delivery pursuant to the terms of this Agreement during such period of suspension, and the Buyer shall have no rights in respect of such suspended deliveries during such period of suspension. Where the Defaulting Party is the Seller, any such suspension by the Buyer shall not constitute a failure by the Buyer to take delivery of such quantities of NG pursuant to the terms of this Agreement during such period of suspension, and the Seller shall have no rights in respect of such suspended deliveries during such period of suspension. If such Termination Event is remedied thereafter (including, with respect to any late payments, payment in full of any such outstanding invoice together with interest thereon), prior to the exercise of rights under Clause 18.3, the notice of suspension served under this Clause 18.2 shall be deemed to be revoked automatically.

18.3 The termination of this Agreement under this Clause 18 for any reason shall be without prejudice to the rights and remedies of the terminating Party accrued prior to such termination under this Agreement, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. For the avoidance of doubt, neither Party will be liable to pay any termination payment upon termination of this Agreement other than in respect of liabilities accrued prior to the date of termination.

## 19. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico and, to the extent applicable, the laws of the United States of America, excluding any choice-of-law provisions that would require application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention 1980) and the Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement or to the performance thereof or to any aspect of any Dispute arising therefrom.

## 20. SETTLEMENT OF DISPUTES

### 20.1 Exclusive Jurisdiction

- (a) Any claim, dispute, disagreement or controversy (each, a "Dispute") that arises between the Parties under this Agreement or that is otherwise related to the subject

matter of this Agreement, except for those Disputes to be resolved through Expert determination pursuant to Clause below, shall be resolved exclusively in the Federal District Court for the District of Puerto Rico.

- (b) In the event of such Dispute, each Party shall continue performing its obligations hereunder except to the extent such obligations have been properly suspended pursuant to the terms hereof. For the avoidance of doubt, the Buyer shall continue paying amounts due under Clause 13.

## 20.2 Expert Determination

Any Dispute that arises between the Parties with respect to (a) the determination of quality under Clause 4, or (b) Clause 10 may be referred by either Party to an Expert for such Expert's determination of such Dispute, disagreement or other matter of interpretation in accordance with the following guidelines:

- (a) The Parties hereby agree that such determination shall be conducted expeditiously by an Expert selected unanimously by the Parties.
- (b) The Expert shall not be deemed to be acting in an arbitral capacity.
- (c) The Party requesting that any matter arising under Clauses 4 or 10 of this Agreement is referred to an Expert shall give the other Party notice of such request. If the Parties are unable to agree on the identity of an Expert within ten (10) Days after receipt of the notice of request for an Expert determination, then, upon the request of any of the Parties, the International Centre for Expertise of the International Chamber of Commerce shall appoint such Expert and shall administer such Expert determination through the ICC's Rules for Expertise.
- (d) The Expert shall be and remain at all times wholly impartial as between the Parties, and, once appointed, the Expert shall have no ex parte communications with either of the Parties concerning the Expert determination or the underlying Dispute.
- (e) The Expert procedure shall take place in San Juan, Puerto Rico in English.
- (f) Both Parties agree to cooperate fully in the expeditious conduct of such Expert determination and to provide the Expert with access to all facilities, books, records, documents, information and personnel necessary to make a fully informed decision in an expeditious manner.
- (g) Before issuing a final decision, the Expert shall issue a draft report and allow the Parties to comment on it.
- (h) The Expert shall endeavor to resolve the Dispute within thirty (30) Days (but no later than sixty (60) Days) after his appointment, taking into account the circumstances requiring an expeditious resolution of the Dispute.



- (i) The Expert's decision shall be final and binding on the Parties.

### 20.3 Qualification of Experts

- (a) No Person, without the prior written agreement of the Parties, shall be appointed as an Expert pursuant to Clause 20.2, if such Person:
  - (i) is (or has been at any time within ten (10) years preceding notice of the Dispute) an employee of a Party or of an Affiliate of a Party;
  - (ii) is (or has been at any time within five (5) years preceding notice of the Dispute) a consultant or contractor of a Party or of an Affiliate of a Party;
  - (iii) holds any significant financial interest in a Party; or
  - (iv) does not have at least ten (10) years' experience advising or working in the North American NG industry with respect to the subject matters subject to the Expert's determination under Clause 20.2.
- (b) The Parties shall, within two (2) months after the execution of this Agreement, agree on a list of possible Experts for purposes of Clause 20.2; provided, however, that in the event that the Parties are unable to agree on a list of acceptable Experts, then in the event of a Dispute subject to Expert determination pursuant to Clause 20.2, the Expert shall be appointed by the International Centre for Expertise of the International Chamber of Commerce in accordance with Clause 20.2.

## 21. NON-WAIVER

Delay or failure to exercise any right, power or remedy accruing to any Party as the result of any breach or default hereunder shall not impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default.

## 22. CONFIDENTIALITY

- 22.1 The existence and terms of this Agreement and any information directly or indirectly disclosed or furnished, whether orally, in writing or in electronic, digital or any other form, by either Party (or its representatives, employees, directors, officers, agents or Affiliates) (the "**Disclosing Party**") to the other Party (or its representatives, employees, directors, officers, agents or Affiliates) (the "**Receiving Party**") in connection with this Agreement (or in connection with the terms and conditions or the negotiation of any other agreement or document related to this Agreement or to is subject matter either between the Parties or otherwise) which is not:

- (a) already known to the Receiving Party; or
- (b) already in the public domain (other than as a result of a breach of the terms of this Clause 22.1),

such information being "**Confidential Information**" shall, unless otherwise agreed in writing by the Parties, be kept confidential and shall not be sold, traded, published or otherwise disclosed to any Third Party in any manner whatsoever (except as provided in Clause 22.2) by the Receiving Party.

22.2 The Receiving Party may disclose Confidential Information to the following Persons without the consent of the Disclosing Party:

- (a) to the Receiving Party's and its Affiliates' directors, agents and employees;
- (b) to the Receiving Party's lenders and prospective lenders for the sole purpose of obtaining financing based on this Agreement;
- (c) to the Receiving Party's advisors and consultants, including legal counsel, accountants and other agents of the Receiving Party for purposes connected with this Agreement;
- (d) to the operator(s) of electricity transmission and distribution facilities in Puerto Rico;
- (e) to Third Parties on an aggregated basis to the extent such information is delivered to such Third Party for the sole purpose of calculating a published index;
- (f) to Experts and any court in connection with the resolution of a Dispute; and
- (g) to co-shareholders and partners in upstream and downstream projects, any operator of the Seller's facilities and any other relevant Third Parties, in all cases limited (i) only to operational information; and to the extent strictly necessary to implement this Agreement.

22.3 The Receiving Party disclosing Confidential Information pursuant to Clause 22.2 to a Person identified in Clause 22.2(b) to 22.2(g) shall ensure that such Person undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to those set out in Clause 22.1 (excluding legal counsel). Each Party understands that the Receiving Party, and Persons listed in Clause 22.2(a), (b) or (c) may now or in the future work on similar projects, and the Parties agree that, without prejudice to the other provisions in this Clause 22, such Persons shall not be precluded from working on such other projects because they have reviewed any Confidential Information.

22.4 In the event that disclosure is required by any Competent Authority or Applicable Law, the Receiving Party subject to such requirement may disclose the Confidential Information to the extent so required, but shall promptly notify the Disclosing Party of such disclosure prior to so doing, and shall cooperate (consistent with the Receiving Party's legal obligations) with the Disclosing Party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the Disclosing Party. Notwithstanding the foregoing, Seller acknowledges that the foregoing shall not apply to any requirements applicable to the Buyer to disclose any Confidential Information that Buyer is required to disclose as a public entity under Applicable Law.



22.5 No press release or public statement concerning the existence, execution of, or other matters directly related to, this Agreement, or the transactions contemplated hereby, shall be issued by the representatives, directors, officers, agents or employees of either Party or its Affiliates unless otherwise agreed by the Parties in writing. In the case of any such press release or public statement, the Parties shall first consult and agree to the specific contents and the manner or timing of presentation or publication thereof. The foregoing shall not apply to any announcement by a Party required in order to comply with any Applicable Law, provided that in this case the relevant Party making such announcement notifies the other Party of the details of such announcement, the relevant Applicable Law to be complied with and, where applicable, the addressee or addressees of such announcement.

22.6 The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with the breach of the confidentiality obligation set out in this Clause 22.

### 23. NOTICES

All notices, to be given under this Agreement by one Party to the other shall be in writing, sent to the attention of the person indicated in Clause 24 either at (i) the address specified in Clause 24 or (ii) the e-mail address specified in Clause 24 which must be followed with a physical mailing confirming such e-mail and, unless otherwise agreed, in either English or Spanish.

### 24. ADDRESSES

SELLER:

Naturgy Aprovisionamientos S.A.  
Av. de San Luis 77  
28033 Madrid  
Spain

Attention:

Emilio Guerra Soriano  
LNG Portfolio Management  
+34 91 589 2812

Telephone:

[eguerra@naturgy.com](mailto:eguerra@naturgy.com)

Email:

With *copy* to:

Daniel Martín Gómez  
LNG Portfolio Management  
+34 91 201 5761  
[dmarting@naturgy.com](mailto:dmarting@naturgy.com)

Telephone:

Email:

**BUYER:**

Puerto Rico Electric Power Authority  
Apartado 363928  
San Juan, Puerto Rico 00936-3928  
Attn: Fuels Office Manager  
Fuels Office Manager  
[•]  
[•]  
[[•]@prepa.com]<sup>2</sup>

Attention:

Telephone:

Facsimile:

Email:

With Copies to:

Attn: Operational Manager  
Power Purchase Contracts

Telephone:

Facsimile:

Email:

and

[•]

[•]

[[•]@prepa.com]<sup>3</sup>

Attention:

Telephone:

Facsimile:

Email:

Attn: Chief Financial Officer

[•]

[•]

[[•]@prepa.com]<sup>4</sup>

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

**25. BUSINESS PRACTICES AND FOREIGN CORRUPT PRACTICES ACT**

25.1 Each Party agrees that in connection with its activities conducted pursuant to this Agreement, neither it nor any of its directors, officers, employees, agents, contractors, or Affiliates shall (a) take any action, or omit to take any action that would violate any Applicable Law applicable to that Party, (b) make, promise to make, or authorize, the making of any payment, gift or transfer of anything of value, directly or indirectly, to any official or employee of any government or instrumentality of any government or to any political party or official thereof or any candidate of any political party for the purpose of influencing the action or inaction of such official, employee, political party or candidate, or (c) otherwise take any action, or omit to take any action that would cause the other Party to be in violation of any Applicable Law related to the business practices of such other Party, including the United States Foreign Corrupt Practices Act, the laws of the European Union and the Spanish anti-bribery and corruption laws.

25.2 Each Party agrees and undertakes, on behalf of itself, its directors, officers, employees, agents, contractors or Affiliates, not to pay any fees, commissions or rebates to any employee, officer

<sup>2</sup> NTD: To be confirmed.

<sup>3</sup> NTD: To be confirmed.

<sup>4</sup> NTD: To be confirmed.



or agent of the other Party or its Affiliates or shareholders nor provide or cause to be provided to any of them any gifts or entertainment of significant cost or value in connection with their activities conducted pursuant to this Agreement or in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties under this Agreement.

25.3 Without prejudice to Clause 27.5, neither Party shall use any broker, agent, or other intermediary in connection with soliciting, obtaining, negotiating, structuring or performing this Agreement or in connection with the subject matter to which it applies.

25.4 Each Party shall indemnify and hold the other Party harmless from and against any and all losses, damages, liabilities, costs, expenses and claims which arise out of, are incident to, or result from any breach by such Party of this Clause 25.

## 26. **ADDITIONAL LNG DELIVERY POINT.**

26.1 Buyer shall have the right to require Seller to deliver LNG cargos to an Additional LNG Delivery Point in lieu of delivery to the LNG Facilities, subject to the requirements of this Clause 26.

26.2 Seller acknowledges that Buyer has undertaken / will commence studies of the commercial and technical feasibility of developing LNG receiving terminal projects at several locations in Puerto Rico. At Buyer's request, Seller shall (i) commence and complete a study (each, a "**Small-Scale LNG Delivery Study**") of the feasibility of transporting and discharging LNG cargos of less than 125,000 m<sup>3</sup> by water-borne vessel to an existing or planned LNG facility (each, a "**Small-Scale LNG Facility**") to determine the most cost-efficient proposal for delivering LNG to such location, and (ii) inform Buyer of its determination whether such facility qualifies as an additional delivery point for LNG under this Agreement (each, a "**Small-Scale LNG Delivery Point**"), based on such study, and, if Seller accepts such Small-Scale LNG Facility as a Small-Scale LNG Delivery Point, recommend a compatible LNG vessel (each, a "**Small LNG Tanker**") for the delivery of LNG to such location, in each case within ninety (90) days of its receipt of such request.

26.3 If any new onshore or conventional FSRU LNG facilities are commissioned in Puerto Rico (each, a "**Conventional LNG Facility**") that are capable of receiving an LNG Tanker, Buyer may request that Seller evaluate such Conventional LNG Facility for designation as an additional delivery point for LNG under this Agreement (each, a "**Conventional LNG Delivery Point**"). Upon the its receipt of such request, Seller shall (i) undertake an assessment of the compatibility of such Conventional LNG Facility with an LNG Tanker in accordance with the compatibility standards set forth in Annex B, and (ii) inform Buyer of its determination whether such Conventional LNG Facility qualifies as a Conventional LNG Delivery Point, based on such assessment, in each case within sixty (60) days of Seller's receipt of such request.

26.4 In each instance where Seller confirms its acceptance of a Small-Scale Delivery Point or a Conventional LNG Delivery Point under Clause 26.2 and Clause 26.3, respectively (each, an "**Additional LNG Delivery Point**"), the Parties shall as soon as reasonably practicable, but in



any event within ninety (90) Days of such confirmation, exercise their best efforts to negotiate in good faith, and agree upon, terms for the delivery of LNG to such Additional LNG Delivery Point (the "**LNG Delivery Terms**"), which shall consist of LNG industry standard provisions addressing: (i) Seller's obligation to transport LNG in LNG Tankers or Small LNG Tankers, (ii) Buyer's obligation to ensure that the Small-Scale LNG Facility or Conventional LNG Facility (each, an "**Additional LNG Facility**") (as applicable) satisfies certain specifications, (iii) Buyer's obligation to provide or cause to be provided to Seller (and allocation to Seller of such port costs) berthing, mooring, docking and tug escort services, including pilot services and those related to tug vessels, service vessels and firefighting required during an LNG ship's presence in port, (iv) scheduling of cargo deliveries, (v) modified provisions related to deficiency and shortfall payment, (vi) additional Force Majeure events regarding delivery of LNG, (vii) quality and measurement provisions, (viii) the minimum LNG volume per delivery, (ix) the maximum annual LNG volume, which shall not exceed the Maximum Annual Contract Quantity less 36 TBtu, and (x) for delivery by a Small-Scale LNG Tanker, any other reasonable terms that Seller may identify, including a revision to the Contract Price.

26.5 Upon the signing of the LNG Delivery Terms (i) Seller shall commence the delivery of LNG to the Additional LNG Delivery Point in accordance with the LNG Delivery Terms, and (ii) the Parties shall revise the schedule for LNG deliveries to each Delivery Point to take into account the deliveries to the Additional LNG Delivery Point in accordance with Clause 7.1.

26.6 For each delivery of LNG to an Additional LNG Delivery Point in accordance with the LNG Delivery Terms, Buyer shall pay to Seller [REDACTED]

## 27. GENERAL

27.1 If any inconsistency appears between the provisions contained in the body of this Agreement and any Annex to this Agreement then the provisions of the body of this Agreement shall prevail.

27.2 If any one or more of the provisions, obligations, or terms herein or part thereof shall be determined by a court of competent jurisdiction to be wholly or partially invalid, void, illegal or unenforceable in any respect by operation of Applicable Law or otherwise, the validity, legality, or enforceability of the remaining provisions, obligations, or terms or part thereof in any other jurisdiction shall not in any way whatsoever be affected or impaired thereby and all provisions of this Agreement shall, if alternative interpretations are applicable, be construed so as to preserve the validity and enforceability hereof to the extent that the essential purposes of this Agreement can be determined and effectuated.

27.3 The Parties do not intend any term of this Agreement to be enforceable by any Third Party. The Parties may rescind or vary this Agreement, in whole or in part, without the consent of any Third Party.



27.4 Nothing in this Agreement shall be deemed to create a partnership, joint venture or association establish a principal and agent relationship or any other relationship of a similar nature, including employment, between the Parties or create any joint and several liability. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

27.5 The Parties acknowledge that this Agreement may have been negotiated and prepared by the Parties with the advice of legal counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement and none of the provisions of this Agreement shall be construed against one Party on the ground that such Party is the author of this Agreement or any part of this Agreement.

27.6 This Agreement may not be amended except by an instrument in writing signed by a duly authorized representative of each Party.

27.7 This Agreement amends and restates the Pre-Restatement GSPA in its entirety.

**28. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO  
CONTRACTING REQUIREMENTS**

The Parties will comply with all Applicable Law, regulations and executive orders that regulate the contracting process and requirements for governmental contracting in the Commonwealth of Puerto Rico.

28.1 Seller shall provide, before the Conditions Precedent Date, or as otherwise required below, the following documents and certifications:

- (a) In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Seller shall, before the Conditions Precedent Date and whenever requested by Buyer during the term of this Agreement, certify that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. As evidence thereof, Seller shall deliver to Buyer an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Seller has filed its Income Tax Return for the last five (5) tax years (Form SC 6088).
- (b) In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Seller shall, before the Conditions Precedent Date and whenever requested by Buyer during the term of this Agreement, certify that it has complied and is current with the payment of all income taxes that are, or were due, to the Government of Puerto Rico. As evidence thereof, Seller will deliver to Buyer a certification issued by the Treasury Department of Puerto Rico indicating that Seller (i) does not owe taxes to the Commonwealth of Puerto Rico or (ii) is paying such taxes by an installment plan in full compliance with the terms of such plan (Form SC 6096).
- (c) Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Seller shall, before the Conditions Precedent Date and whenever requested

by Buyer during the term of this Agreement, certify that it has made (x) all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or (y) that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms of such plan. As evidence thereof, Seller shall deliver to Buyer:

- (i) A certification issued by the Bureau of Employment Security (*Negociado de Seguridad de Empleo*) of the Puerto Rico Department of Labor and Human Resources certifying that Seller does not owe taxes regarding Unemployment or Disability Insurance.
  - (ii) A certification issued by the Program for Social Security for Chauffeurs and Other Employees of the Puerto Rico Department of Labor and Human Resources certifying that Seller has no debt with respect to such program.
- (d) Seller shall, before the Conditions Precedent Date and whenever requested by Buyer during the term of this Agreement, certify that it does not have any current debt regarding property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center (*Centro de Recaudación de Ingresos Municipales*). Seller shall further certify it is current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. As evidence thereof, Seller shall deliver to Buyer:
- (i) A certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Seller does not owe any tax accruing during the last five (5) years to such governmental agency with respect to personal property, or (B) a negative debt certification issued by the MRCC with respect to personal property taxes and a sworn statement executed by Seller indicating that (1) during the last five (5) years (or the time in which it has been providing professional services) it has had no taxable business or personal property on the 1st of January of each year, (2) that for such reasons it has not been required to file personal property tax returns, as required under Article 6.03 of Act 83-1991, as amended and (3) that for such reason it does not have an electronic tax file in the MRCC's electronic system.
  - (ii) An All Concepts Debt Certification issued by the MRCC assuring that Seller does not owe any taxes to such governmental agency with respect to real and personal property or (B) a negative certification issued by the MRCC with respect to real property taxes.
- (e) Seller shall deliver to Buyer:
- (i) A certification issued by the Puerto Rico Treasury Department indicating that Seller has filed its Puerto Rico Sales and Use Tax for the last sixty (60) contributory periods and either (A) does not owe Puerto Rico Sales and Use



Taxes to the Commonwealth of Puerto Rico or (B) is paying such taxes by an installment plan and is in full compliance with the terms of such plan.

- (ii) A copy of Seller's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
  - (f) Seller shall provide an Employer Compliance Certificate indicating that either (i) it is complying with all income withholding orders as established in all cases, or (ii) there are no active income withholding orders to comply with at present.
- 28.2 As established by Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, no employee or executive of Buyer nor any member of his or her immediate family (spouse, dependent children, or other members of his or her household or any individual whose financial affairs are under the control of the employee) shall have any direct or indirect pecuniary interest in the services to be rendered under this Agreement, except as may be expressly authorized by the Governor of Puerto Rico in consultation with the Secretary of Treasury and the Secretary of Justice of the Government (3 L.P.R.A. § 8611 et seq.).
- 28.3 In the event any employee of Seller is bound to pay support for care of elderly people under the Law for the Strengthening of the Family Support and Livelihood of Elderly People in Spanish: "Ley para el Fortalecimiento del Apoyo Familiar y Sustento de Personas de Edad Avanzada", 3 L.P.R.A. §8611 et seq., Seller shall comply with any requirement or order issued by the corresponding administrative agency or local court.
- 28.4 Payment for Services under this Agreement will not be made until this Agreement is properly registered in the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.
- 28.5 No public officer or employee authorized to contract on behalf of the executive agency for which he/she works may execute a contract between the agency for which he/she works and an entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.
- 28.6 No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.
- 28.7 No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice.
- 28.8 No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an



entity or business in which he/she or any member of his/her family unit has or has had direct or indirect economic interest during the last four (4) years prior to his/her holding office.

- 28.9 No executive agency shall execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after two (2) years have elapsed from the time said person has ceased working as such.
- 28.10 Any and all necessary dispensations required by this Agreement have been obtained from any government entity and that said dispensations shall become part of the contracting record.
- 28.11 Seller acknowledges and accepts that it is knowledgeable of the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

## **29. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO**

- 29.1 Seller agrees to comply with the provisions of Act No. 2-2018, as the same may be amended, and as applicable, from time to time, which establishes the Anti-Corruption Code for a New Puerto Rico.
- 29.2 Seller shall furnish a sworn statement to the effect that neither Seller nor any president, vice president, executive director or any member of a board of officials or board of directors, or any person performing equivalent functions for any contractor has been convicted of or has pled guilty to any of the crimes listed in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico or any of the crimes included in Act 2-2018.
- 29.3 Seller hereby certifies that it has not been convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.
- 29.4 Buyer shall have the right to terminate the Agreement in the event Seller is convicted in Puerto Rico or United States Federal court for under Articles 4.2, 4.3, or 5.7 of Act 1-2012, as amended, known as the Organic Act of the Office of Government Ethics of Puerto Rico, any of the crimes listed in Articles 250 through 266 of Act 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act 2-2018, as amended, known as the Anti-Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico.



**30. CONSEQUENCES OF NON-COMPLIANCE**

- 30.1 The Seller expressly agrees that the conditions outlined throughout Clauses 28 and 29 are essential requirements of this Agreement. If any of the certifications listed in Clause 28.1 shows a debt, and Seller has requested a review or adjustment of this debt, Seller hereby certifies that it has made such request at the time of the Agreement execution. If the requested review or adjustment is denied and such determination is final, Seller will provide, immediately, to Buyer a proof of payment of this debt. The Seller accepts and acknowledges its responsibility for, when requested by Buyer, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service the Seller has secured in connection with the provision of Natural Gas under this Agreement and shall forward evidence to Buyer as to its compliance with this requirement.
- 30.2 Should any one of these representations, warranties or certifications be incorrect, inaccurate or misleading, in whole or in part, and should such non-compliance not be cured within sixty (60) days, there shall be sufficient cause for Buyer to terminate this Agreement. In case that the Seller is not able to obtain the required documentation during the term provided here for causes not in Seller's control, then Buyer agrees to extend the term for Seller to comply. Seller understands and agrees that Buyer is prohibited to process any payment under this Agreement until the enumerated certifications and sworn statements are submitted to Buyer.

**31. NON-DISCRIMINATION**

Seller agrees that it will not discriminate against any employee or applicant for employment on account of race, color, gender, age, sex, national or social origin, social status, political ideas or affiliation, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigrant status, for physical or mental disability, for veteran status or genetic information.

**32. ENTIRE AGREEMENT**

The terms and conditions contained herein constitute the entire agreement between Buyer and Seller with respect to the subject matter of this Agreement, and supersede all communications, negotiations, and agreements of the Parties, whether written or oral, other than these, made prior to the signing of this Agreement.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

For and on behalf of

**SELLER:**

**NATURGY APROVISIONAMIENTOS S.A.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For and on behalf of

**BUYER:**

**PUERTO RICO ELECTRIC POWER AUTHORITY**

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

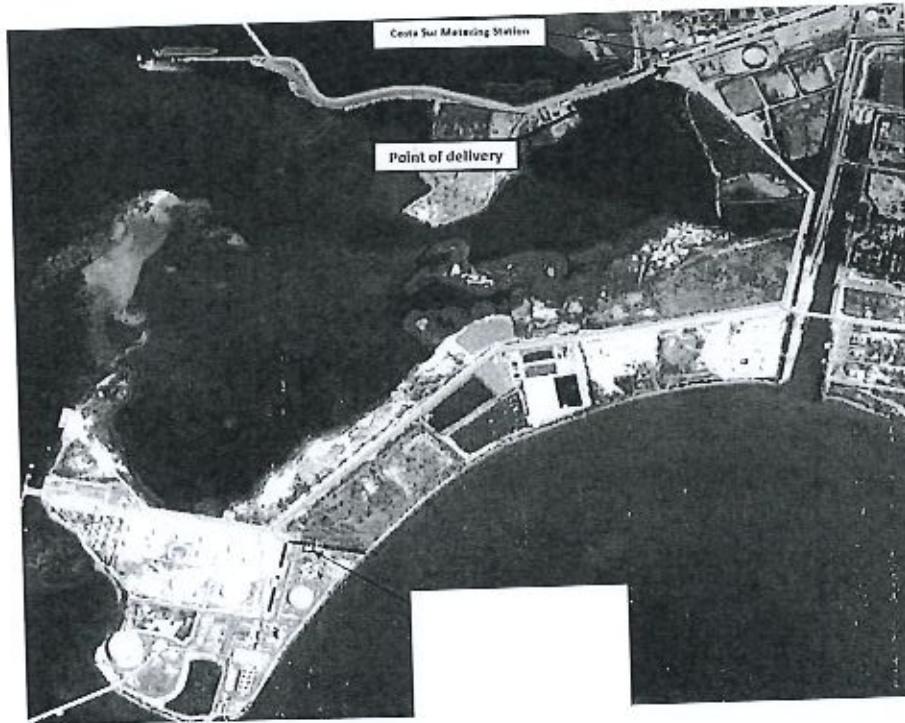
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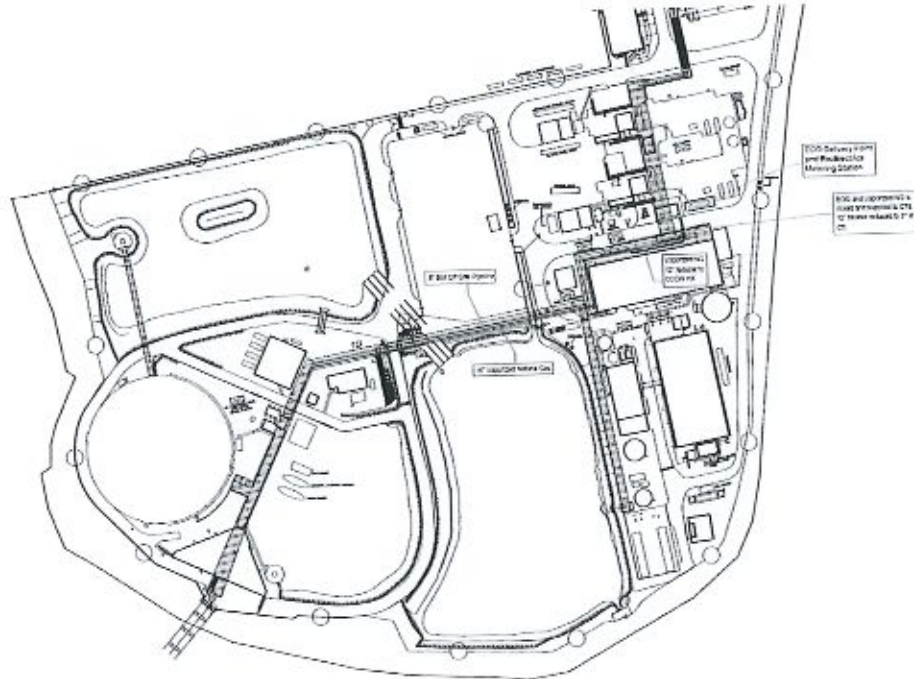


ANNEX A  
DELIVERY POINTS

1. COSTA SUR DELIVERY POINT



## 2. ECO DELIVERY POINT





## ANNEX B

### LNG TERMINAL COMPATIBILITY STANDARDS

1. If, pursuant to Clause 26, Buyer elects to propose Additional LNG Facilities as an Additional LNG Delivery Point, Seller may, on reasonable notice to Buyer and at its sole risk, send one or more representatives (including an independent internationally recognized maritime consultant) to inspect, during normal working hours, the Additional LNG Facilities and associated port proposed for the discharge of LNG under this Agreement to ascertain whether such facilities comply with the provisions of this Agreement. Seller shall bear the costs and expenses in connection with any such inspection.
2. Any inspection carried out pursuant to this Annex B shall not:
  - a. interfere with, or hinder, the safe and efficient construction and operation of any Additional LNG Facility; or
  - b. entitle the Seller or any of its representatives to make any request or recommendation directly to the construction contractor or operator or owner of the Additional LNG Facility except through Buyer in accordance with a notice under this Agreement.
3. Seller, acting reasonably, shall have the right to reject a proposed Additional LNG Facility as an Additional LNG Delivery Point, or any part thereof, only if it does not comply with the material requirements of this Annex B.
4. For the purpose of this Annex B, "**International LNG Terminal Standards**" means (to the extent not inconsistent with the express requirements of this Annex B) the international standards and practices applicable to the design, construction, equipment, operation or maintenance of LNG receiving and regasification terminals or LNG liquefaction terminals, as the case may be, established by the following (such standards to apply in the following order of priority): (i) a Governmental Authority having jurisdiction over any Additional LNG Facilities; (ii) the Society of International Gas Tanker and Terminal Operators (to the extent applicable); and (iii) any other internationally recognized non-governmental agency or organization with whose standards and practices it is customary for reasonable and prudent operators of LNG receiving terminals to comply; provided, however, that in the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail.
5. For the purpose of the compatibility process, in order for proposed Additional LNG Facilities to become an Additional LNG Delivery Point, such Additional LNG Facilities must comply with and include the following:
  - a. unloading facilities capable of receiving LNG Tankers and unloading (i) Large LNG Tankers at a rate of [REDACTED] m<sup>3</sup> per hour;

- b. a vapour return line system of sufficient capacity to transfer to the LNG Tanker quantities of NG necessary for the safe unloading of LNG at such rate, pressures and temperatures as may be required by the LNG Tanker design;
  - c. facilities allowing access to the LNG Tanker from onshore adequate for crew and personnel access, the handling and delivery of ship's stores, provisions and spare parts to the LNG Tanker;
  - d. LNG storage tanks of adequate capacity to receive and store a full cargo LNG upon each scheduled arrival of an LNG Tanker; and
  - c. appropriate systems for email, facsimile, telephone and radio communications with LNG Tankers; and emergency shut down, in accordance with International LNG Terminal Standards for linked ship/shore emergency shut down.
6. Regarding the unloading of an LNG cargo, the proposed Additional LNG Facilities shall comply with:
- a. during the unloading and discharge of LNG, Buyer shall return NG to the LNG Tanker, in such quantities as are necessary for the safe unloading of LNG at such rates, pressures and temperatures as may be required by the LNG Tanker design and commonly accepted operating practice for LNG Tankers;
  - b. the LNG sold and delivered under this Agreement shall be unloaded through manifold strainers of 60 mesh (or such other mesh as shall be agreed from time to time by the Parties); and
  - c. tugs, fireboats, pilots and other services as are necessary for the purposes of safety and efficiency and are required by the authorities at the relevant port.
7. For the purpose of the compatibility process, each LNG Tanker must satisfy the following requirements:
- a. each LNG Tanker shall have a gross volumetric capacity between 125,00 Cubic Meters and 180,00 Cubic Meters;
  - b. each LNG Tanker shall be, in accordance with International LNG Tanker Standards: (i) fit in every way for the safe loading, unloading, handling and carrying of LNG in bulk at atmospheric pressure; and (ii) tight, staunch, strong and otherwise seaworthy with cargo handling and storage systems (including instrumentation) necessary for the safe loading, unloading, handling, carrying and measuring of LNG in good order and condition; and
  - c. each LNG Tanker shall at all times be maintained in class with any of the following: American Bureau of Shipping, Lloyd's Register, Bureau Veritas, Det Norske Veritas or any other classification society that is mutually agreeable to the Parties.



8. For the purpose of this Annex B, "**International LNG Tanker Standards**" shall be (to the extent not inconsistent with the express requirements of this Annex B) the international standards and practices applicable to the ownership, design, equipment, operation or maintenance of LNG vessels established by: (i) the International Maritime Organization; (ii) the Oil Companies International Marine Forum (OCIMF); (iii) the Society of International Gas Tanker and Terminal Operators (SIGTTO) (or any successor body of the same); (iv) the International Navigation Association (PIANC); (v) the International Association of Classification Societies; and (vi) any other internationally recognized agency or non-governmental organization with whose standards and practices it is customary for reasonable and prudent operators of LNG vessels to comply, provided, however, that in the event of a conflict between any of the priorities noted above, the priority with the lowest roman numeral noted above shall prevail.

## ANNEX C

### FORM OF ASSIGNEE GUARANTEE

**THIS GUARANTY AGREEMENT**, is made and entered into as of [+], by [+] a company organized and existing under the laws of [...] whose registered office is at [+] ("**Guarantor**"), in favor of [+], a limited liability company organized and existing under the laws of [...] whose principal place of business is located at [+] ("**Beneficiary**").

#### WITNESSETH:

**WHEREAS**, Beneficiary has entered into the SPA (as defined below) with Puerto Rico Electric Power Authority, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by an Act of 2 May 1941, No. 83, as amended (together with any successor or permitted assign under the SPA ("**Buyer**")); and

**WHEREAS**, Buyer has consummated a Transfer (as defined in the SPA) of its rights, title and interest in the SPA to [...] ("**Transferee**"); and

**WHEREAS**, the SPA provides that in the event of a Transfer and under certain conditions, Transferee's obligations thereunder be guaranteed by the Guarantor in accordance with and subject to the provisions of this Guaranty Agreement and the Guarantor has agreed (it being in its best commercial interests to do so) to enter into this Guaranty Agreement in respect of the Guaranteed Obligations.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, Guarantor and Beneficiary hereby agree as follows:

#### ARTICLE 1. DEFINITIONS

- 1.1. **Definitions.** Except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Guaranty Agreement, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined:

"**Banking Day**" means any day other than a Saturday, a Sunday or any other day on which commercial banks in New York are authorized or required to be closed.

"**Buyer**" has the meaning set out in the recitals of this Guaranty Agreement.

"**Guaranteed Obligations**" has the meaning set forth in Section 3.1 of this Guaranty Agreement.

"**Guarantor**" has the meaning set out in the preamble of this Guaranty Agreement.



**"Guaranty Agreement"** means this Guaranty Agreement dated as of the date first written above, as may from time to time be supplemented, modified or amended as provided herein.

**"Local Banking Day"** has the meaning set forth in Section 4.2(a) of this Guaranty Agreement.

**"SPA"** means that certain Natural Gas Sale and Purchase Agreement dated [+], between Buyer and Beneficiary, as such SPA may from time to time be supplemented, modified or amended as provided therein.

**"Transferee"** has the meaning set out in the recitals of this Guaranty Agreement.

- 1.2. Other Defined Terms. Capitalized terms not otherwise defined in this Guaranty Agreement shall have the meanings ascribed thereto in the SPA.

## ARTICLE 2. REPRESENTATIONS OF GUARANTOR

- 2.1. Representations of Guarantor. Guarantor makes the following representations to Beneficiary as of the date hereof:

- (a) Guarantor has been duly organized and is validly existing under the laws of [...], has full legal right, power and authority to enter into this Guaranty Agreement and to carry out and consummate all transactions contemplated by this Guaranty Agreement, and by proper corporate action has duly authorized the execution and delivery of this Guaranty Agreement;
- (b) the execution and delivery of this Guaranty Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute on the part of Guarantor a breach of or default under its relevant organizational documents, as existing on the date hereof, or any indenture, or other material agreement or instrument to which Guarantor is a party or by which it or its properties are bound or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Guarantor or any of its activities or properties; and
- (c) this Guaranty Agreement has been duly authorized, executed and delivered by Guarantor and constitutes the valid and binding obligation of Guarantor, except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and by general equitable principles.

## ARTICLE 3. GUARANTY AND AGREEMENTS

- 3.1. Guaranty. Subject to the terms and conditions hereof, Guarantor unconditionally and irrevocably guarantees to Beneficiary the full and prompt payment by Transferee of all of Transferee's payment obligations when due and payable under the SPA to Beneficiary and its successors and permitted assigns, including payment obligations when due and payable in respect of any breach of the SPA by Transferee (the obligations guaranteed under this Guaranty Agreement are hereinafter referred to as the **"Guaranteed Obligations"**);

provided, however, notwithstanding anything herein to the contrary, Guarantor shall be entitled to all defenses, counterclaims and rights of set off and recoupment that Transferee may have under the SPA other than any such defenses arising out of the bankruptcy, insolvency or similar proceeding concerning Transferee.

- 3.2. Unconditional Nature of Obligations. Except as expressly provided in the proviso of Section 3.1, the obligations of Guarantor under this Guaranty Agreement shall be irrevocable and unconditional and shall remain in full force and effect until the date this Guaranty Agreement terminates in accordance with Section 4.6 hereof, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, Guarantor:
- (a) the waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of Transferee under the SPA;
  - (b) the failure to give notice to Guarantor of the occurrence of a default under the SPA, except for the written demand required by the proviso at the end of Section 3.3 hereof;
  - (c) the waiver, compromise or release of the payment, performance or observance by Transferee or by Guarantor, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the SPA or this Guaranty Agreement, as the case may be;
  - (d) the extension of the time for payment of any Guaranteed Obligations under the SPA or of the time for performance of any other obligations, covenants or agreements under or arising out of the SPA;
  - (e) the modification, amendment or alteration (whether material or otherwise) of any obligation, covenant or agreement set forth in the SPA;
  - (f) the taking or the omission of any of the actions referred to in the SPA;
  - (g) any failure, omission, delay or lack on the part of Beneficiary to enforce, assert or exercise any right, power or remedy conferred on it in the SPA;
  - (h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting Guarantor or Transferee or any of the respective assets of either of them, or any allegation or contest of the validity of this Guaranty Agreement in any such proceeding;
  - (i) any defense based upon any legal disability of Transferee or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums



owing by Transferee or any other liability of Transferee to Beneficiary;

- (j) to the extent permitted by law, the release or discharge by operation of law of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty Agreement;
- (k) the default or failure of Guarantor fully to perform any of its obligations set forth in this Guaranty Agreement; or
- (l) the invalidity of the SPA or any part thereof.

If any payment by Transferee to Beneficiary is rescinded or must be returned by Beneficiary, the obligations of Guarantor hereunder shall be reinstated with respect to such payment.

Except as expressly set forth in the proviso of Section 3.1, no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than a defense of payment or performance) which Transferee has or may have against Beneficiary shall be available hereunder to Guarantor to reduce the payments to Beneficiary under Section 3.1 of this Guaranty Agreement. Furthermore, no defense previously raised by Transferee arising out of or in connection with a Guaranteed Obligation claimed hereunder and which has been settled in Beneficiary's favor by the dispute resolution procedures of Section 20 of the SPA may be raised by Guarantor and no cure period previously used by Transferee may be used by Guarantor.

Guarantor assumes responsibility for being and remaining informed of the financial condition of Transferee and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations which diligent inquiry would reveal and agrees that Beneficiary shall not have a duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

- 3.3. Proceedings Against Guarantor. In the event of a default in the payment of the Guaranteed Obligations when and as the same shall become due and payable, Beneficiary shall have the right to proceed first and directly against Guarantor under this Guaranty Agreement without proceeding against Transferee or exhausting any other remedies which it may have; provided that, notwithstanding the foregoing or anything to the contrary contained herein, Beneficiary shall deliver to Guarantor a written demand for payment of all amounts claimed by Beneficiary hereunder, which written demand shall specify in reasonable detail the basis for such demand, and Guarantor shall pay such amounts promptly, but no later than three (3) Banking Days after its receipt of such written demand.
- 3.4. Subrogation. Upon payment of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Transferee with respect to such Guaranteed Obligations, and Beneficiary agrees to take at Guarantor's expense such steps as Guarantor may reasonably request to implement such subrogation, provided that Beneficiary shall not be obligated to take any such steps and Guarantor shall not enforce any right arising by way of subrogation or exercise any other right or remedy arising by reason of any performance

by it of this Guaranty Agreement, including, but not limited to, any contractual, statutory or common law rights of reimbursement, contribution or indemnity, whether against the Transferee or any other Person, until the date this Guaranty Agreement terminates in accordance with Section 4.6 hereof.

- 3.5. Costs. Guarantor agrees to pay all reasonable costs, expenses and fees, including without limitation all reasonable documented out-of-pocket attorneys' fees, which may be incurred by Beneficiary in enforcing or attempting to enforce this Guaranty Agreement following any default on the part of Guarantor hereunder, whether the same shall be enforced by suit or otherwise.
- 3.6. Existence of Guarantor; Consolidation, Merger, Sale or Transfer. Guarantor covenants that so long as it has any outstanding obligations under this Guaranty Agreement, it will maintain its existence, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided that Guarantor may, without violating the covenants contained in this Section 3.6, consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it, or sell or otherwise transfer to another corporation all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, (a) shall be incorporated, organized or formed and existing under the laws of [...], (b) assumes, if such corporation or other entity is not Guarantor, all of the obligations of Guarantor hereunder (unless such assumption occurs by operation of law, in which case no express assumption shall be required) and (c) is not, after such transaction, otherwise in default under any provisions hereof.

#### ARTICLE 4. MISCELLANEOUS

- 4.1. Governing Law and Dispute Resolution. This Guaranty Agreement shall be governed by and construed in accordance with the laws of the State of New York, including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York (but otherwise without reference to any other choice of law principles which would apply the laws of another jurisdiction). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Guaranty Agreement or the transactions contemplated hereby.
- 4.2. Notices. All notices and other communications to Guarantor or Beneficiary may be electronically communicated or hand delivered or sent by overnight courier, to any party hereto at the addresses as provided in this Section 4.2:

All communications intended for Guarantor shall be sent to:

[+]

with a copy to Buyer at:

[+]



All communications intended for Beneficiary shall be sent to:

[+]

or at any other address of which either of the foregoing (or Guarantor in the case of a change of address for Transferee) shall have notified the other in any manner prescribed in this Section 4.2.

For all purposes of this Guaranty Agreement, a notice or communication will be deemed effective:

- (a) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a day upon which commercial banks are open for the transaction of business in the city specified (a "**Local Banking Day**") in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Banking Day, then on the next succeeding Local Banking Day, and
- (b) if sent by facsimile transmission, on the date transmitted, provided that oral or written confirmation of receipt is obtained by the sender unless the date of transmission and confirmation is not a Local Banking Day, in which case on the next succeeding Local Banking Day.

- 4.3. Banking Days. Except as otherwise provided in this Guaranty Agreement, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.
- 4.4. Successors and Assigns. This Guaranty Agreement shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of Beneficiary and its successors and permitted assigns. Except as provided in Section 3.6 hereof, Guarantor may not assign its obligations hereunder without the prior written consent of Beneficiary. Beneficiary may not assign its rights and obligations hereunder without the prior written consent of Guarantor, except that Beneficiary may, without any prior consent of Guarantor, assign its right and obligations hereunder to any permitted assignee of the SPA.
- 4.5. Guaranty for Benefit of Beneficiary. This Guaranty Agreement is entered into by Guarantor for the benefit of Beneficiary. Nothing contained herein shall be deemed to create any right in, or to be in whole or in part for the benefit of any person other than Guarantor and Beneficiary and their respective permitted successors and assigns.
- 4.6. Term. This Guaranty Agreement shall terminate and be of no further force and effect upon the earliest of (i) [\_\_\_\_\_, 20\_\_], (ii) receipt by Beneficiary of a written notice of termination from Guarantor, which termination shall become effective on the thirtieth (30th) day after the date of receipt by Beneficiary of such notice or (iii) the date on which the SPA shall have terminated or expired and none of the payment obligations of Transferee thereunder remain outstanding. Termination of this Guaranty shall not affect Guarantor's

liability hereunder as to any Guaranteed Obligations existing or arising under the SPA prior to the effective date of termination.

- 4.7. Amendments and Waivers. Any provision of this Guaranty Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by each of Guarantor and Beneficiary.
- 4.8. Headings. The article and section headings of this Guaranty Agreement are for convenience only and shall not affect the construction hereof.
- 4.9. Partial Invalidity. The invalidity of any one or more phrases, sentences, clauses or sections in this Guaranty Agreement shall not affect the validity or enforceability of the remaining portions of this Guaranty Agreement or any part thereof.
- 4.10. No Waiver, Remedies. No failure or delay by Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
- 4.11. Execution in Several Counterparts. This Guaranty Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, GUARANTOR has caused this Guaranty Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

GUARANTOR

[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Accepted and Agreed by:

BENEFICIARY

[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CN 078-04495  
Rev. 11/17



GOVERNMENT OF PUERTO RICO  
Puerto Rico Electric Power Authority  
Governing Board

RESOLUTION 4745  
APPROVAL OF ECO PPOA AND NATURGY GSPA

- WHEREAS The Puerto Rico Electric Power Authority ("**PREPA**") is a public corporation and an instrumentality of the Government of Puerto Rico created by Act No. 83 of May 2, 1941, as amended ("**Act 83**"). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, it provides a service based on affordable, fair, reasonable, and non-discriminatory cost that is consistent with environmental protection, non-profit, focused on citizen participation, and its clients;
- WHEREAS Act 83 authorizes PREPA, in the management of its purposes, to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers;
- WHEREAS PREPA entered into a Power Purchase and Operating Agreement, dated March 10, 1995 (as amended, the "**PPOA**"), with EcoEléctrica, L.P. ("**ECO**"), related to the existing cogeneration facility in Peñuelas (the "**ECO Facility**");
- WHEREAS PREPA entered into a Natural Gas Sale and Purchase Agreement, dated March 28, 2012 (as amended, the "**GSPA**"), between Gas Natural Aprovevisionamientos SDG, S.A. ("**Naturgy**") and PREPA, related to the supply of Natural Gas to Units 5 and 6 of PREPA's Costa Sur generating facility located adjacent to the ECO facility (the "**Costa Sur Facility**");
- WHEREAS PREPA engaged in a preliminary renegotiation of these agreements pertaining to the ECO Facility and Costa Sur Facility starting in late 2018, in order to achieve, as closely as possible, the objectives identified in PREPA's Fiscal Plan (which requires \$80 million in savings from the ECO PPOA and the AES PPOA) and the draft of the Integrated Resource Plan (the "**Draft IRP**"), issued on June 2019;

PO Box 364267 San Juan, Puerto Rico 00936-4267

"We are an equal opportunity employer and do not discriminate on the basis of race, color, gender, age, national or social origin, social status, political ideas or affiliation, religion, for being or perceived to be a victim of domestic violence, sexual aggression or harassment, regardless of marital status, sexual orientation, gender identity or immigration status, for physical or mental disability, for veteran status or genetic information."







WHEREAS

Under the amended PPOA and amended GSPA, as reflected in the approved term sheets, the commercial deal would essentially:

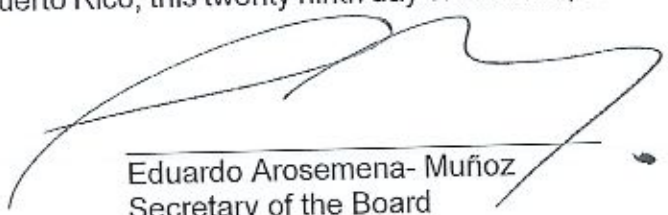
1. Restructure the fuel supply arrangements under the GSPA (under which Naturgy currently supplies Natural Gas to the Costa Sur Facility) and the PPOA (under which ECO currently supplies to PREPA electric capacity and energy produced from LNG received, stored, vaporized, and transported through LNG importation assets owned by ECO and controlled by Naturgy, for ultimate consumption in the generation of energy at the ECO Facility), such that PREPA would contract with Naturgy for the supply of Natural Gas for both the Costa Sur Facility and the ECO Facility. This would place PREPA in a position to nominate Natural Gas volumes for both generation facilities, thereby reducing the risk of PREPA incurring take-or-pay liability under the GSPA by allowing it to allocate deliveries of Natural Gas between such facilities;
2. Convert the PPOA into a tolling arrangement for the conversion of Natural Gas into electricity, which will facilitate an eventual move toward an aggregated, island-wide LNG / gas procurement strategy needed to achieve the most competitive pricing terms for LNG delivered to Puerto Rico; and
3. Allow the ECO Facility to transition from a mode of operation, which provides base load production to the grid system during all hours of the day, to a dual mode of operation through which, following the scale-up of intermittent renewables in Puerto Rico's generation mix as contemplated by the Puerto Rico Energy Public Policy Act, the Facility will provide (i) during day-time hours, cycling and ancillary services as required to stabilize / balance the Grid System, and (ii) during night time hours, base load production;

WHEREAS

As currently envisioned, the renegotiated deal would deliver \$85.4 million of overall annual savings to PREPA, comprising \$56.3 million from the amended PPOA and \$29.1 million from the amended GSPA. This includes a \$108 million (~48%) reduction in fixed payments, but increased utilization, under the renegotiated PPOA;

- WHEREAS PREPA has recently reached a preliminary agreement with (i) ECO on a draft, full-length form of amended and restated PPOA and (ii) Naturgy on a draft, full-length form of amended and restated GSPA (attached as Annex A and Annex B, respectively), each draft subject to approval by PREPA's Governing Board, the Financial Oversight and Management Board ("**FOMB**");
- WHEREAS The Public-Private Partnership Authority formally released PREPA to finalize the PPOA without their procurement process, and after informal meetings with the FOMB and Puerto Rico Energy Bureau ("**PREB**") to familiarize them with the transaction. PREPA now intends to (i) seek approval from the FOMB, and (ii) permit the Puerto Rico Energy Bureau ("**PREB**") to review, such PPOA and GSPA; and
- WHEREAS PREPA's Governing Board deems the negotiation and execution of the draft, full-length form of the amended and restated PPOA and the GSPA, as further described in the memorandum from Fernando Padilla to José Ortiz dated October 29, 2019, to be in the best interest of PREPA and its revitalization and transformation process;
- THEREFORE In accordance with Act 83, PREPA's Governing Board resolves to:
- Approve (i) the amendment and restatement of the PPOA and GSPA, as per the draft, full-length forms of agreement, (ii) the submission of each such agreement to the FOMB and PREB for approval, (iii) subject to such approval, the finalization and execution of such agreements, and (iv) the execution of ancillary documentation and the taking of other action as reasonably necessary to implement the amended PPOA and GSPA transactions in accordance with the above.

Approved in San Juan, Puerto Rico, this twenty ninth day of October, two thousand nineteen.



Eduardo Arosemena- Muñoz  
Secretary of the Board



This memo provides the results of the assessment performed for EcoEléctrica's Amended & Restated PPOA, under Scenario 4, Strategy 2, Base load from PREPA's 2018 IRP. The assessment was performed using the Aurora model, with the following assumption updates compared to the 2018 IRP 2<sup>nd</sup> filling from June 2019.

The following was assumed for modeling the Amended & Restated PPOA:

- Exhibit 1: EcoEléctrica Amended & Restated PPOA Capacity Payments**

[illegible]

- Henry Hub \* [REDACTED] + Adder \$/MMBTU

Where adder has the following values: \$[REDACTED]/MMBtu for 2020, \$[REDACTED]/MMBtu for 2021, \$[REDACTED]/MMBtu for 2022, and \$[REDACTED]/MMBtu for 2023 until the end of the contract. There is a discount in case of Puerto Rico

securing a Jones Act waiver and in this case the adder becomes \$ [REDACTED] / MMBtu, but this was not modeled at this time

For consistency with this negotiated terms, the long-term formula (Henry Hub \* [REDACTED] + [REDACTED] \$/MMBTU) is used as the cost of the delivered liquified gas to Puerto Rico for all other LNG terminals, instead of the previously assumed formula of Henry Hub \* [REDACTED] + \$ [REDACTED] /MMBTu.

With the exception of EcoEléctrica and Costa Sur 5&6, regassification costs are extra for gas delivered from other prospective new LNG terminals (Yabucoa and Mayaguez).

3. Model EcoEléctrica Heat rate will be modeled as [REDACTED] MMBTU/MWh at [REDACTED] MW, as in the IRP. This is assumed to be the average value for the evaluation period. The heat rate at minimum is [REDACTED] MMBtu/MWh, in line with the IRP assumption.
4. Siemens simulated a net dependable capacity of [REDACTED] MW, as the guaranteed capacity value, not affected by any degradation.
5. Fuel delivery to Costa Sur 5&6 will follow the same formula as to EcoEléctrica and will have no other adjustment for gasification.
6. San Juan 5&6 gas supply was modeled according to the conditions in the contract with New Fortress Energy (NFE), which is effective for 5 years starting on January 1, 2020.

## Other Assumptions

The new PPOA was simulated in Aurora as an economic option in the LTCE along with new CCGT generation options. The existing contract was simulated with the economic option to be retired in the LTCE starting in 2020. If the new PPOA is not chosen, the existing contract is terminated by the end of 2022, following the terms of the existing contract. In this last case there will be an increased price of the LNG to be delivered to Costa Sur 5&6 to cover the regasification costs that would not be covered by the fixed payments to EcoEléctrica; [REDACTED] \$/MMBTU assumed based on similar contracts.

## LTCE Results

The Aurora model selected the new PPOA for EcoEléctrica starting on January 1<sup>st</sup>, 2020 and retired the existing contract on December 31<sup>st</sup>, 2019. In other words, the model finds to be the most economic option under Scenario 4, base to select the new contract given its lowered capacity payments and despite higher delivered gas prices. The new EcoEléctrica PPOA is then selected by the model not to be extended economically by the end of 2032, as shown in Exhibit 3.

After the new EcoEléctrica's contract expires a new CCGT in Costa Sur (302 MW) is selected by the Aurora model to become online (see Exhibit 2). No other CCGT new additions are selected by the model. Instead of building a new CCGT in Palo Seco, the model adds 3,060 of solar PV (240 MW more than



S4S2B) with 394 MW more of gas peaking capacity (23 MW more than Scenario 4) and 1,560 MW of storage (80 MW less than Scenario 4).

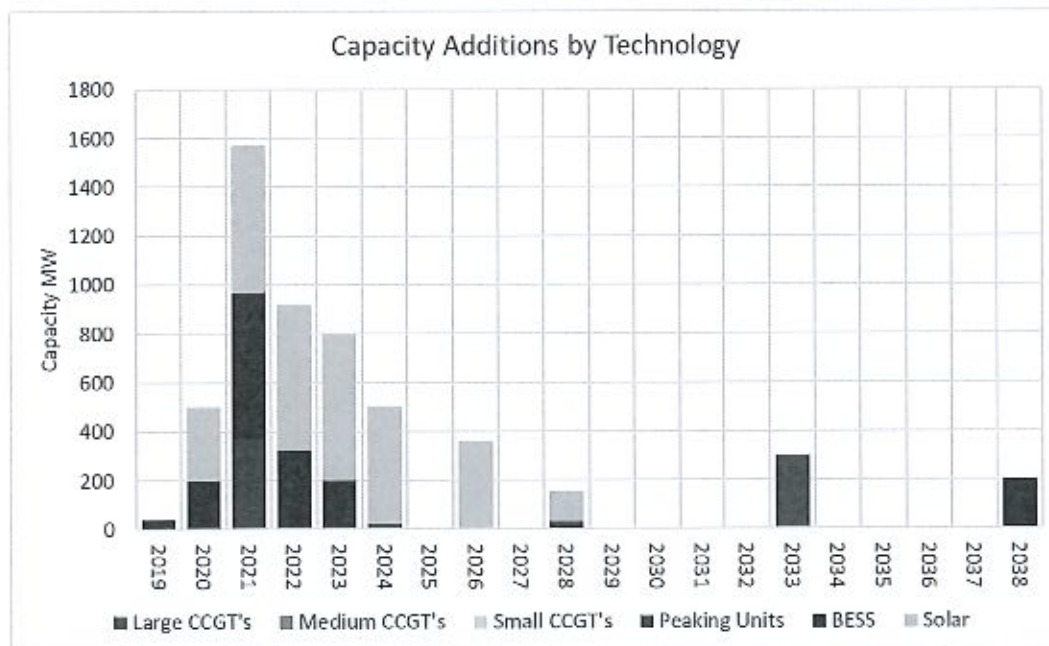
As will be shown later in this memo this decision not to build a CCGT at Palo Seco is only marginally better than the option of not building it, before accounting for resiliency as measured as the deemed energy not served. Once this is accounted for, the selection of building the CCGT at Palo Seco in 2025, complemented with some peaking generation in Costa Sur, when the EcoEléctrica contract expires and instead of the new CCGT there, is the least cost solution.

The reasons behind the EcoEléctrica contract not being extended under the optimization process and a new CCGT at Costa Sur being deployed instead, can be traced to two reasons; a) as the load declines EcoEléctrica capacity factor drops and the program finds it more effective to replace it with a smaller unit and b) this new CCGT is developed at Costa Sur due to maintain the reserve requirements otherwise when EcoEléctrica retires the reserves the ratio of local dependable capacity to demand would drop under 80%

Both Costa Sur 5 & 6 units are retired at the end of 2020, 12 months after the existing EcoEléctrica contract is terminated and the new contract is in place.

San Juan 5&6 units stay online through the study period and are not retired. Exhibit 3 shows the retirement results for the existing large thermal units.

**Exhibit 2: Capacity Additions S4S2B with EcoEléctrica Amended and Restated PPOA**



**Exhibit 3: Capacity Retirements S4S2B with EcoEléctrica Amended and Restated PPOA**

Sum of Capacity Row Labels	Column Labels																			
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
AES_1	227	227	227	227	227	227	227	227	227	0	0	0	0	0	0	0	0	0	0	0
AES_2	227	227	227	227	227	227	227	227	227	0	0	0	0	0	0	0	0	0	0	0
AGUIRRE 1 CC	257	257	257	257	257	257	257	0	0	0	0	0	0	0	0	0	0	0	0	0
AGUIRRE 2 CC	249	249	249	249	249	249	249	0	0	0	0	0	0	0	0	0	0	0	0	0
AGUIRRE STEAM_1	432	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AGUIRRE STEAM_2	429	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
COSTA SUR 5	388	388	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
COSTA SUR 6	393	393	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EcoEléctrica	507	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ecoelctrica_NewPPOA	0	530	530	530	530	530	530	530	530	530	530	530	530	530	0	0	0	0	0	0
PALO SECO 3	206	206	206	206	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PALO SECO 4	206	206	206	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SAN JUAN 07	94	94	94	94	94	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SAN JUAN 08	95	95	95	95	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SAN JUAN 5 CC	99	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SAN JUAN 6 CC	99	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SAN JUAN 5 CC_Conversion	101	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200
SAN JUAN 6 CC_Conversion	101	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200	200

**System Costs**

The NPV of total system costs is \$14.83 billion as shown in the exhibit below

**Exhibit 4: NPV of System Costs compared to IRP Filed S4S2B**

	<b>S4S2B Eco New PPOA</b>
NPV fuel	6,490,988
NPV Var O&M	363,821
NPV Fixed Costs	7,970,732
Total	14,825,541
NPV Energy Not Served	242,924
Total with ENS	15,068,465
Average 2019-2028 2018\$/MWh	101.88

Note that a comparison with the Scenario 4 IRP filing is not accurate as in this filing an assumption with respect of the EcoEléctrica contract was made, that is now is superseded by the conditions above, additionally as noted we are using a higher cost of for the LNG deliveries to Puerto Rico to match the conditions in the fuel delivery contract with Naturgy. A more appropriate to consider the alternative situation, in which the Amended & Restated PPOA is not signed by PREPA and EcoEléctrica's current PPOA ends in 2022. In such case, Costa Sur delivered fuel costs increase as well from higher regasification costs, in absence of the gas contract with EcoEléctrica.

As shown, on Exhibit 5, signing the new PPOA represent savings of over the study period with a NPV of \$705 million (5% lower). Most of the savings comes from lower fuel costs (due to more efficient use of the fleet and lower renewable curtailments). Under the case with EcoEléctrica's new PPOA not signed, the Aurora model decides to extend the operation of Costa Sur 5 through 2027 (in spite of having higher



delivered fuel costs due to regasification), and also the operating life of Aguirre CC 2 through 2033, placing less flexibility in the system to handle the amount of solar installed and its volatility. San Juan 5 & 6 conversions operate through 2032 and 2036, respectively. In addition, under the case without the new PPOA, the Aurora model builds a new CCGT in Costa Sur (in 2028, instead of 2025) and decides not to build the unit in Palo Seco due to reserve considerations as indicated earlier. Considering the deemed energy not served the difference in the present value of cost increases to 822 Million (5% greater costs).

**Exhibit 5: NPV of System Costs compared to EcoEléctrica's Amended PPOA Not Signed (\$000)**

	S4S2B Eco New PPOA	S4S2B Eco New PPOA not Signed	Difference	%
NPV fuel	6,490,988	7,432,189	(941,201)	15%
NPV Var O&M	363,821	420,020	(56,199)	15%
NPV Fixed Costs	7,970,732	7,678,666	292,066	-4%
<b>Total</b>	<b>14,825,541</b>	<b>15,530,875</b>	<b>(705,334)</b>	<b>5%</b>
NPV Energy Not Served	242,924	360,190	(117,266)	48%
<b>Total with ENS</b>	<b>15,068,465</b>	<b>15,891,065</b>	<b>(822,600)</b>	<b>5%</b>
<b>Average 2019-2028 2018\$/MWh</b>	<b>101.88</b>	<b>107.91</b>	<b>(6.03)</b>	<b>6%</b>

## Palo Seco Assessment

As mentioned above the Aurora model did not select to add the CCGT at Palo Seco in 2025, due to the added capacity in the South (530 MW at EcoEléctrica) and possibly the increase in LNG delivered prices. However, the Aurora model does not properly capture the need for resiliency, which favors the development of the combined cycle in the north (Palo Seco). Hence, we ran an additional case with the CCGT at Palo Seco as a fixed decision in 2025.

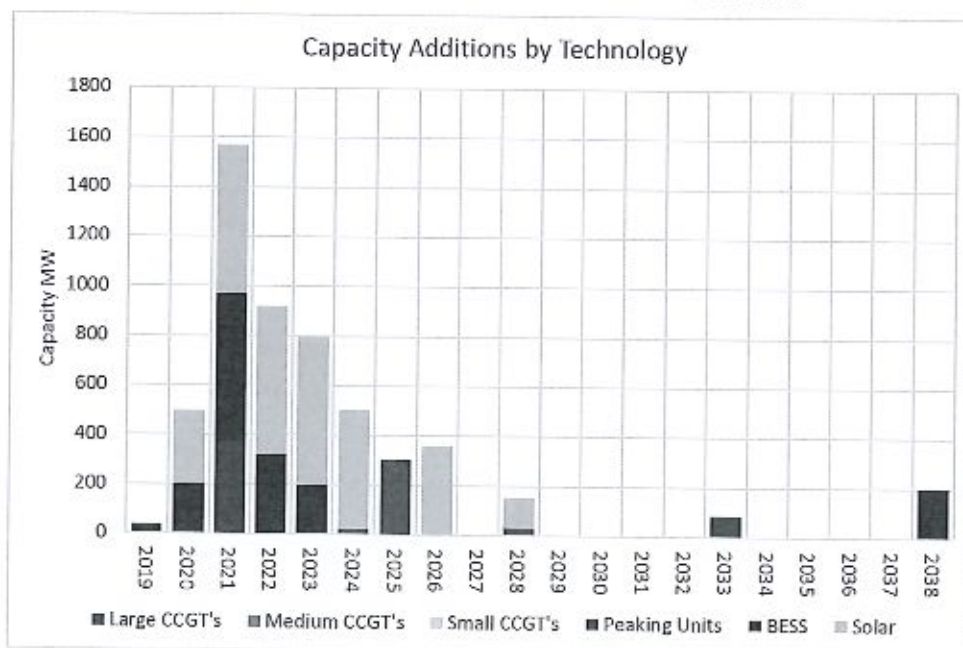
With respect of the cost of the land based LNG at Palo Seco we considered two costs; the Base Cost used in the IRP, which may be on the high side (consider that the cost per MW of generation supported is 20% higher than the equivalent for a ship based LNG at Yabucoa or Mayaguez) and a reduced cost that based on market comparisons and considering that there could be synergies with the installations made by New Fortress Energy (NFE), uses a cost that is approximately 58% of the Base Cost.

As shown in the exhibit below in this case, once EcoEléctrica retires (2032) the optimization program adds at Costa Sur 85 MW of peaking generation (3 x 23.2 MW GT + 16 MW of RICE), instead of the CCTG. This additions are triggered by the need to maintain reserves in the South, which in the case without the CCGT at Palo Seco were provided by the CCGT at this site.

Other additions and retirements were the same as in the prior case; 3,060 MW of new solar by 2038 (2,580 MW by 2025), 1560 MW of BESS (1,360 MW by 2025).

San Juan 5&6 converted stay in operations for the entire period, which enhances the reserves in the north.

Exhibit 6: Additions for the Case with the CCGT at Palo Seco.



As can be observed below the case with the CCGT at Palo Seco has an NPV, before accounting for the impacts of Energy Not Served, that ranges from \$ 76 million (0.5%) to \$ 9 million (0.1%) higher than the case without Palo Seco (Base Case), depending on the cost of the LNG terminal. However, when the NPV of the deemed value of energy not served is taken into consideration the situation reverses and the case with Palo Seco is between \$ 12 million and \$ 78 million lower, which is in line with the expectations that this investment will result in greater resiliency without a major impact in cost.

Exhibit 7: NPV of System Costs compared to EcoEléctrica's Amended PPOA and

	S4S2B Eco New PPOA (Base Case)	S4S2B Eco New PPOA + Palo Seco with LNG Base	S4S2B Eco New PPOA + Palo Seco with LNG Reduced	Difference (LNG Base)	%	Difference (LNG Reduced)	%
NPV fuel	6,490,988	6,278,543	6,278,543	(212,445)	3%	(212,445)	3%
NPV Var O&M	363,821	359,242	359,242	(4,579)	1%	(4,579)	1%
NPV Fixed Costs (w/o Palo Seco Regas)	7,970,732	8,081,434	8,081,434	110,702	-1%	110,702	-1%
Palo Seco Regas Costs		182,652	116,135			116,135	
<b>Total</b>	<b>14,825,541</b>	<b>14,901,871</b>	<b>14,835,355</b>	<b>76,330</b>	<b>-0.5%</b>	<b>9,814</b>	<b>-0.1%</b>
NPV Energy Not Served	242,924	154,746	154,746	(88,178)	36%	(88,178)	36%
<b>Total with ENS</b>	<b>15,068,465</b>	<b>15,056,617</b>	<b>14,990,101</b>	<b>(11,848)</b>	<b>0.08%</b>	<b>(78,364)</b>	<b>0.52%</b>
<b>Average 2019-2028 2018\$/MWh</b>	<b>101.88</b>	<b>102.25</b>	<b>101.85</b>	<b>0.38</b>	<b>-0.37%</b>	<b>(0.03)</b>	<b>0.03%</b>



## Conclusions

Based on the results presented in this memo, the following conclusions are derived:

- a) PREPA should accept the renegotiated contract with EcoEléctrica and Naturgy (gas delivery) as described in this document.
- b) The levels of Photovoltaic Generation and Battery Energy Storage Systems (BESS) are not affected materially by these contract and are largely in line with previous assessments.
- c) The Palo Seco CCGT should continue to be developed in parallel with signing of the agreement with EcoEléctrica and Naturgy. Although the increased capacity of EcoEléctrica per the contract and the projected increase in delivered LNG prices (higher than in the IRP), resulted in the CCGT at Palo Seco not being selected by the Optimization Process, subsequent assessments identified that the difference with the case without Palo Seco is under 1% and this is reversed when the cost of energy not served is taken into consideration.

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