

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

NEPR

Received:

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IN RE:

**REQUEST FOR PROPOSALS FOR
TEMPORARY EMERGENCY
GENERATION**

CASE NO.:

NEPR-AP-2020-0001

SUBJECT:

Resolution and Order dated April 6, 2020.

MOTION TO SUBMIT

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 prays as follows:

1. On April 6, 2020, the Energy Bureau ordered PREPA¹ to file redacted copies of:
 - a. The Proposed RFP with Appendixes A, B, C, D and F and their corresponding exhibits;
 - b. Exhibits A, B and C of the February 25 Filing; and
 - c. The Revised RFP with all their corresponding exhibits and Exhibits B and C of the March 5 filing.

2. Even though the Order directs PREPA to file redacted copies of the above-listed documents, PREPA has determined to file unredacted copies of said documents because the information contained the documents was thoroughly discussed by the Energy Bureau in the public *Resolution and Order* dated March 3, 2020.

- a. As such, PREPA herein submits:

¹ Resolution and Order dated April 6, 2020 (the "Order").

- b. Exhibit A - The Proposed RFP with Appendixes A, B, C, D and E and their corresponding Exhibits
- c. Exhibit B - Exhibits A, B and C of the February 25 Filing; and
- d. Exhibit C - The Revised RFP with all their corresponding exhibits and Exhibits B and C of the March 5 filing.

3. In addition to the documents listed above, PREPA herein submits the final approved RFP as published. Exhibit D.

4. PREPA has determined not to file a copy of the business case assessment attached as Exhibit C to the February 12 Filing. This document remains confidential in its entirety for two main reasons. First, the business case analysis is part of a communication prepared by PREPA to the Energy Bureau regarding PREPA's assessment of the project. Pursuant to article 4.2 of the Joint Regulation, "[t]hese communications shall be maintained confidential while the administrative competitive procurement process is ongoing[]" and therefore, since the competitive procurement process is ongoing, the business case analysis is still a confidential communication. Secondly, the information contained in the business case analysis is protected by the deliberate process privilege. The analysis in the document is currently being used by PREPA to make internal decisions related to the replacement of Costa Sur generation, not only for the issuance of the RFP, but also to analyze, deliberate and strategize for insurance and FEMA reimbursement and other generation alternatives. Also, the disclosure of the internal assessment made by PREPA to determine, among other things, the need for additional emergency generation, can give undue advantage to negotiators, which can in turn can affect discussions with relevant stakeholders. Therefore, Exhibit C to the February 12 Filing should be maintained under seal.

5. PREPA does not waive its right to assert confidentially or privileges to documents similar to the unredacted documents filed herein.

WHEREFORE, PREPA requests the Energy Bureau to note the filing of the instant motion and exhibits attached hereto.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of April 2020.

/s Katuska Bolaños
Katuska Bolaños
kbolanos@diazvaz.law
TSPR 18,888

DÍAZ & VÁZQUEZ LAW FIRM, P.S.C.
290 Jesús T. Piñero Ave.
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Exhibit A



Gobierno de Puerto Rico
Autoridad de Energía Eléctrica

12 de febrero de 2020

Comisionados
Negociado de Energía de Puerto Rico
268 Avenida Muñoz Rivera
Edificio World Plaza, Suite 202
Hato Rey, Puerto Rico 00918

Estimados señores Comisionados:

En conformidad con el "*Joint Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet*", presentamos ante su consideración los documentos para el proceso de Solicitud de Propuestas para Generación Temporal, luego del terremoto del 7 de enero de 2020.

Agradeceremos la evaluación expedita del Negociado de Energía de Puerto Rico y reiteramos que los recursos de la Autoridad de Energía Eléctrica de Puerto Rico están a su disposición para atender cualquier solicitud.

Cordialmente,



José F. Ortiz Vázquez
Principal Oficial Ejecutivo

Anejos

Principal Oficial Ejecutivo

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GOVERNMENT OF PUERTO RICO
Puerto Rico Electric Power Authority

Request for Proposals

RFnumber>

Temporary Emergency Generation

February 12, 2020 CONFIDENTIAL DRAFT

Issued by the Puerto Rico Electric Power Authority



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1. STATEMENT OF QUALIFICATIONS

This Request for Proposal (RFP) contains confidential and proprietary information that is the property of the Puerto Rico Electric Power Authority (PREPA), which is provided for the sole purpose of permitting the recipient to respond to the RFP. The recipient agrees to maintain such information as confidential and not to copy nor disclose the RFP information to any person outside the group directly responsible for responding to its contents. The contents of this document may not be used for any purpose other than preparation of a response or proposal to this RFP.

2. ABBREVIATIONS, ACRONYMS AND DEFINITIONS

Words and terms defined in this Section shall have the same meaning throughout all parts of this RFP and Contract Documents.

1. **Proponent** - means a(n) (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this RFP that is not currently debarred.
2. **Contractor or Selected Proponent** - means a proponent awarded a contract resulting from this RFP.
3. **Chief Executive Officer** - refers to the CEO of the Puerto Rico Electric Power Authority.
4. **Evaluation Committee** - refers to a committee designated by PREPA's Governing Board Officer, which will evaluate all complete proposals pursuant to the criteria listed in this RFP.
5. **Final Acceptance** - means the written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.
6. **Government Entity** - refers to any department, agency, board, commission, body, bureau, office, public corporation, or instrumentality of the Executive Branch of the Government of Puerto Rico, whether existing or to be created in the future.
7. **Inspection** - means a periodic action comprising a careful scrutiny of an item, carried out without dismantling and using all the senses as required, to detect anything that causes the item to fail to meet unacceptable condition. Note: An inspection may be followed by an operational review.
8. **Key Individuals** - means an individual who will play an important role in the engagement or contract on behalf of a Team Member resulting from this RFP.
9. **Local Parties** - means local subcontractors or professionals (which may include architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence in Puerto Rico.
10. **PREPA** - means the Puerto Rico Electric Power Authority.



- 11. Public Interest** - means any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.
- 12. Team Member** - means a member of a Proponent. Team Members shall be identified in Proponent' submissions and not be changed without the consent of PREPA.
- 13. Redacted copy** – means a version/copy of the proposal with the information considered confidential and proprietary information as defined Section 20 of this RFP.
- 14. Addenda/Addendum** - means a supplemental document with additions, deletions, and modifications to the provisions of the RFP, after the release date of the RFP.
- 15. Proponent** - Means a (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this RFP.
- 16. Notice to Proceed (NTP)** means a letter from an authorized PREPA representative to the contractor(s) stating the date the contractor(s) can begin work subject to the conditions of the contract. The performance time of the contract commences on the NTP date.
- 17. Unit** means a module composed of a generator and turbine for power generation purposes. The technology proposed by the Proponents capable of provided the capacity and energy required under this RFP.
- 18. EPA** means Environmental Protection Agency.
- 19. EQB** means Puerto Rico's Environmental Quality Board.
- 20. Federal Agency** means any of the departments of the Executive Branch of the Government of the United States of America, or any department, corporation, agency or instrumentality created, or which may be created, designated or established by the United States of America.

3. INTRODUCTION

3.1 About PREPA

The Puerto Rico Electric Power Authority (PREPA), is a public corporation and governmental entity of the Commonwealth of Puerto Rico, created pursuant to Act 83 of May 2, 1941, as amended, with the duty of providing electric power in a reliable manner, contributing to the general welfare and the sustainable future of Puerto Rico, maximizing the benefits and minimizing the social, environmental and economic impacts.

PREPA is empowered to make contracts, sell, and buy assets and real estate, borrow money and issue bonds.

PREPA's Objectives:

- Reduce energy cost
- Promote smart energy consumption



- Protect the environment

Strategies to Achieve these Objectives:

- Reduce operating expenses
- Increase efficiency
- Minimize Energy Theft
- Diversify Energy Sources
- Establish Smart Grid for energy control and consumption monitoring
- Maximize use of advanced technology

3.2 Background

On January 6, 2020, a magnitude 5.8 earthquake struck the southwest region of Puerto Rico causing considerable damage to homes and other private and public structures as well as a partial electric power blackout. Then, on January 7, 2020, Puerto Rico's most destructive earthquake in a century, a magnitude 6.4 earthquake that jolted residents, caused major damage to private and public structures and infrastructure, including mechanical and structural damage to PREPA's Costa Sur power plant, an 820MW power plant providing nearly 25% of the electric power on the island. The island suffered a complete electric power blackout as a result of the earthquake and the Costa Sur power plant failure. On January 11, 2020, a magnitude 5.9 earthquake once again rattled Puerto Rico's southwestern coast.

Since late December 2019, there have been more than 100 earthquakes or aftershocks of magnitude 3 or higher, which were strong enough for residents near the epicenters to feel, according to the U.S. Geological Survey (USGS). Various earthquakes of magnitude 5 or higher have also struck the island.

3.3 Project Need

At present and with the information available to date, the time to repair the Costa Sur power plant has been estimated at approximately twelve (12) months. The damage assessments are still underway as damages are significant and this is the first event of this magnitude affecting a large power plant in PREPA's fleet. However, a full inspection has not been completed to the continuing earthquakes/aftershocks affecting the power plant structure. Some experts have preliminarily indicated that the plant may not be viable for use due to safety concerns. The temporary or permanent loss of Costa Sur's 820MW generation has caused the following:

- Immediate shortage of reserve capacity
- Conditions that threaten lives, public health and safety
- Possible significant damage to improved public or private property Shortage of operating capacity to serve the peak demand months (June onwards)
- Shortage of Primary and Secondary frequency regulation
- Extensive use of less efficient and less flexible generating units using higher cost fuels, which will result in higher operating costs
- Reduced power system inertia and dynamic and transient stability margins
- Alteration of PREPA's generation fleet maintenance schedules



3.4 Purpose and Intent

Pursuant to the stated objectives and strategies, PREPA publishes this request for proposals (RFP) to solicit submittals from interested and qualified firms that can provide the scope of work detailed herein.

Contracts may be awarded, to those qualified persons or legal entities whose proposals, conforming to this RFP, are most advantageous to PREPA. Proponents shall demonstrate in their proposals their capacity to conduct all works in compliance with the Scope of Services indicated herein. PREPA will evaluate and analyze the information provided in the proposals and will determine which companies meet the minimum requirements.

This project seeks reputable and experienced firms (contractors) that can enter into a lease, installation, operation and maintenance contract with PREPA for dispatch-able generation capacity. The purpose of the Project is to provide capacity and energy to replace the loss of the 820MW Costa Sur power plant in Guayanilla until it can be repaired, replaced or alternate solutions have been secured. The contractor(s) shall be responsible for all equipment, delivery, installation, interconnection, testing, commissioning, operation and maintenance of this generation infrastructure, as well as of its eventual retirement, per PREPA's requirements and according to all applicable industry codes and standards (latest revisions), and federal and local regulations.

All non-variable, dispatch-able generation, dual fuel, low sulfur diesel, liquefied natural gas, or renewable technologies, in-land based or barge-mounted configurations may be considered, including single-cycle aeroderivative gas turbines, RICEs, combined cycles. Battery Energy Storage Systems (BESS) or other renewable sources may also be considered. Proponents can propose a combination of these resources at various locations, described in Appendix A. Additional sites may be proposed (including Vieques) and must be evaluated by PREPA to determine the interconnection viability to the grid and all requirements for the sites in Appendix A will apply. Alternate sites will be subject to PREPA's approval.

PREPA reserves the right to award to more than one contractor.

The contractor(s) shall be responsible for all equipment, delivery, installation, interconnection, testing, commissioning, operation and maintenance of this generation infrastructure, as well as of its eventual retirement, per PREPA's requirements and according to all applicable industry codes and standards (latest revisions), and federal and local regulations.

Due to the emergency circumstances, PREPA expects that the Proponent will not be responsible for units' operation permitting processes for the sites described in Appendix A. The proposal shall include design emission parameters for both required fuels of the units, with and without water injection. See Appendix B for Fuel Specifications. Proponents must clearly identify all environmental requirements and all process inputs. Proposals that do not comply with this requirement will be rejected. Selected proponents shall be responsible for any other permit required for the installation of the unit. For alternate sites not mentioned in Appendix A and suggested by the proponents, the selected proponent(s) shall be responsible for all permits, all infrastructure, fuel supply, and any other applicable requirement for successful operation of the units.



PREPA expects to award contracts per site to the best offers that substantially meet the established requirements and the intent of the RFP. As such, if no proposals meeting the minimum requirements of this RFP are received for one or more sites mentioned in Appendix A, PREPA reserves the right to resolicit proposals for said sites to proponents whose offers complied with this RFP's minimum requirements and that proposed for other sites, per the Evaluation Committee's determination.

The proponent shall assume a capacity factor of 90%, and all technologies proposed must be capable of providing energy at a 90% capacity factor.

PREPA prefers that the generating units may actively participate in primary and secondary frequency regulation.

PREPA expects the temporary generation units to be installed at existing PREPA facilities except at Costa Sur (see Appendix A). PREPA will be responsible for the fuel supply.

Although the Costa Sur power plant cannot be used to install generation units, its switchyard 230kV can be used as a transmission center and interconnection point. This site will be considered an alternate site and fuel supply will be the responsibility of the contractor.

PREPA has preliminarily discussed this necessity with FEMA and agreed to move forward with a procurement process for temporary generation, in compliance with the appropriate sections of the Stafford Act, for reimbursement of the project's costs.

Contractor shall fully comply with Puerto Rico (local) and federal laws and regulations and shall conform to FEMA documentation and audit requirements.

This RFP is issued by PREPA and as explained briefly above, the purpose is to award qualified firms which shall provide time-critical, dual fuel, low sulfur diesel, liquefied natural gas (LNG), or renewable generation to temporarily power existing switchyards substations in Puerto Rico as part of Disaster Recovery in response to the Governor of Puerto Rico's Executive Order 2020-01 and the United States' President's Disaster Declaration of January 16, 2020.

The required generation of up to approximately 500 MW shall be installed at various locations identified by PREPA (see Appendix A). The contractor(s) shall lease, transport, place/install, test, commission, operate and maintain up to 500 megawatt of continuous total net generator output capacity at different locations and divided by generation blocks per site.

For locations described in Appendix A, there is sufficient space for placing temporary generation units per site of no less than 20MW each. Although PREPA prefers units of 20MW or more for these locations, proposals with units of smaller capacity may be considered. Appendix A describes the actual capacity of the output transformers of each possible site, but if a new transformer, breaker and BOP equipment are furnished with the unit, the generator's output could be more. Proposals shall include a top-view layout of the arrangement of all equipment included in it for each proposed site.

PREPA prefers brand new generation units; however, used units of less than, or equal to, 5,000 hours will be considered as an option for evaluation yet must be able to meet the operational requirements during the emergency period. Proponents shall include in the proposal, evidence of all maintenance records which demonstrate the actual conditions of



the units and said units will be subject to PREPA's inspection prior to acceptance. Proponents shall include in the proposal the emissions profile of the required units for the following criteria pollutants – sulfur dioxide (SO₂), oxides of nitrogen (NO_x), particulate matter (PM), particulate matter less than 10 microns (PM₁₀), particulate matter less than 2.5 microns (PM_{2.5}), volatile organic compounds (VOC), sulfuric acid mist (H₂SO₄), carbon monoxide (CO) and Formaldehyde, hazardous or toxic air pollutant emissions (HAPS & TAPS), water requirements, wastewater discharge, solid or hazardous waste. Proponents shall also identify whether the required units have inherent emission controls and whether they can be retrofitted with emission controls.

The proponent shall include in their proposals the necessary components for the BOP, as the output transformers, breakers and BOP, if they are available for immediate delivery. If not, the temporary generation units shall have the capacity to be connected to the existing transformers per site. The bus voltages to connect the transformers are 38kV, 115kV and 230kV, as described in Appendix A.

In addition to transporting, providing and installing the units, the work requirement includes commissioning of the system(s), operation and maintenance of the unit(s) for the period of time required to adequately respond to the emergency situation, and that the contractor(s) uninstall and demobilize the units. If the need for temporary generation of power remains after an initial twelve (12) month period, PREPA may exercise an option to extend for an additional six (6) month period.

The contractor shall incorporate necessary and authorized resources to perform this work to applicable engineering, safety, construction standards, and local and federal regulations, in the timeliest manner possible (no later than June 1, 2020), and with optimal cost containment.

4. CONTRACT TERM

As a result of this RFP process and contingent upon the necessary authorizations for current contracting processes, PREPA expects to award the Selected Proponent(s) a Lease and Operating/Maintenance Contract. The term of the contract is expected to be for twelve (12) months with PREPA's option to extend the contract for six (6) additional months, subject to the availability of funds and required authorizations according to PREPA's rules and regulations. PREPA reserves the right to re-bid the contract after the expiration of the original term or under several contract breach circumstances from the Selected Proponent.

PREPA reserves the right to cancel this RFP process at any time and is not obligated to enter into a contract even upon its completion.

A draft of the contract is included as Exhibit 1. **Proponent must review the contract draft, and state any exceptions to its clause(s)** and may suggest proposed modifications to the contract language with which the proponent disagrees or for which proponent is unable to satisfy the condition or requirement, including an explanation of the review (if any), unless Proponent agrees and can comply with all of the conditions and requirements of the contract term. Proposed modifications to the contract draft documents will be evaluated and may, at PREPA's discretion, affect overall scoring of the proposals. PREPA reserves the right to reject any or all proposed modifications.



5. ASSET TRANSFER OPTION

During the term of the Contract, PREPA may request the contractor(s) an offer for the sale of the lease equipment.,

PREPA may also request that the contractor continue providing Operation and Maintenance services.

6. RFP Timeline

The following schedule is to advise all proponents of key dates of the RFP process. Please note that the RFP timeline includes target dates that may change. It is the responsibility of Proponents to monitor the PowerAdvocate© website for this event, for updates to the RFP timeline and other important information.

Milestone	Date Due
Request for Proposal issued	<date>
Kickoff meeting <If necessary>	<date>
Proponents Request for Clarifications	<date>
PREPA response to Request for Clarification	<date>
RFP proposal submission	<date>
Proposal Hard Copy submission	<date>
Evaluation Committee Requests for Clarifications of Proposals	<date>
Presentations <If necessary>	<date>
Selection announcement	<date>

Submittals that have not been completely uploaded by <date>, 8:00 PM AST will not be considered. Proponents shall allow themselves enough time to completely upload their proposals and to confirm that the files are available for PREPA's review.

7. Request for Proposal Submission

Proponent shall submit its proposal through the Upload Documents tab of the RFP <number> event on the PowerAdvocate© Platform. A redacted copy as required in Section 20 Confidentiality of Responses and Proprietary Information must also be uploaded. All RFP submissions, inclusive of the pricing, technical information, discounts and other requested details are to be submitted via PowerAdvocate© on or before 8:00 pm AST, <date>. Proposals must be signed by the authorized representative, natural person or legal entity or by the authorized person whose name appears (or will appear) in PREPA's Supplier Registry Office. The signature must be shown along with the name in print and the capacity or position held.

Proponents must also provide hard copies of 1) the uploaded proposal in PowerAdvocate and 2) the redacted copy on or before 3:30 pm AST, <date> to the following address:



Postal Address:

Puerto Rico Electric Power Authority
Supplier Registry Office
PO Box 3670151
San Juan, Puerto Rico 00936

Physical Address:

Supplier Registry Office
1110 Ponce de Leon Avenue
or
Third Floor, Office 305
NEOS Building, Santurce, PR

A. Proposal Requests for Clarification

Note that a Proponent may submit a Request for Clarification (RFC) to PREPA for explanation or interpretation of any matter contained in this RFP no later than 8:00 p.m. AST, **<date>** via PowerAdvocate® through the Messaging Tab of the event **<RFP number>**. If responses to the RFC constitute a modification or additional information to the original RFP, PREPA will provide such clarification through addenda posted on PowerAdvocate no later than **<date>**. Questions should NOT contain proprietary information, as answers may be published in the public domain to all participants. Please note that PREPA does not guarantee answers for all questions or comments received. Be advised that PREPA will NOT accept or address any questions that are not submitted as stated in this section.

Proponents must submit their questions in the Request for Clarification form included as Attachment **<number>**. This document must be submitted in Word format and each question must reference the page number, section of the RFP document, attachment or article of the contract. PREPA will respond to the requests for clarification in the column labeled 'Clarification Response'.

It is the sole responsibility of the potential proponent to monitor this site for additional information, updates and addenda concerning the RFP. Any changes or modifications to the RFP terms, conditions or specification will be made through addenda posted on PowerAdvocate.

The PowerAdvocate Guide is included as part of this RFP as **<exhibit XX>**. For technical assistance with this sourcing platform please contact PowerAdvocate's technical support at, (857) 453-5800 or via email at, support@poweradvocate.com. It is the Proponent's responsibility to make sure all of their proposal documents are fully uploaded before the closing date and time of the event.

B. Communications

For this RFP process verbal questions will NOT be accepted. All communications must be through the Messaging Tab of PowerAdvocate, and addressed to the following PREPA Procurement Representatives for this RFP:

Delis T. Zambrana
Natalia Martínez Lugo

Neither Proponents nor Proponent Team Members or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or



indirectly, at any time during the RFP process, any of the following persons on matters related to the RFP: (a) any member of the Evaluation Committee; (b) any Advisor of PREPA for this RFP process; (c) any employee or representative, directors, officers or consultants of PREPA. Proponents, and members of the proponent's team, are prohibited from directly or indirectly contacting other Proponents, such as directors, officials, employees, consultants, advisers, agents or representatives; in matters related to its proposal preparation, content, or presentation. Proposals shall be submitted with no connection to, knowledge, information comparison, or arrangement, with other proponent such their directors, officials, employees, consultants, advisers, agents or representatives.

Communications with PREPA representatives, other than the abovementioned procurement representatives, or with relevant entities of the Federal Government or local government, regarding any matter related to the contents of this RFP are prohibited during this RFP process.

Failure to comply with these communications restrictions must result in rejection of the firm's proposal.

C. Proposal Modification

PREPA may allow for proposal modifications if they are submitted by the closing date and time established in the timeline and per the RFP proposal submission instructions mentioned in this document.

D. Expenses and Rejections

Neither PREPA, the Government of Puerto Rico nor any of its instrumentalities, will be responsible for any expenses in the preparation and/or presentation of the proposals, oral interviews or disclosure of any information or material received in connection with this RFP.

PREPA reserves the right to reject any and all proposals received in response to this RFP, when determined to be in PREPA's best interest, and to waive minor noncompliance in a proposal. PREPA further reserves the right to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any and all firms submitting proposals in response to this RFP. The mere appearance of a conflict of interest must constitute sufficient cause for the outright rejection of a proposal(s). In the event that any or all proposals are rejected, PREPA reserves the right to re-solicit proposals.

8. Prohibited Communications

During this RFP, the only communications allowed are with the designated procurement representatives indicated in Subsection B. Communications with other PREPA representatives or other persons from the State or Federal Government regarding any matter related to the contents of this RFP are prohibited during the submission, evaluation and selection processes. **Failure to comply with these communications restrictions must result in rejection of the firm's proposal.**



9. Scope of Services

PREPA is pursuing temporary generation at different sites to respond to the current emergency situation due to the aftermath of several earthquakes experienced in January 2020. The temporary generation is to respond to conditions that threaten lives, public health and safety. Through this RFP process, PREPA is seeking temporary generation from qualified firms for the different sites via Lease and Operating and Maintenance Contracts. The proponents shall maximize the use of the existing systems in place located at each different site as time is of the essence for this project.

As PREPA recovers from the earthquakes, temporary replacement generation is required to create a more resilient system to enable a quicker, more effective recovery. PREPA expects proponents to consider the latest and most reliable technology which can provide flexible generation while minimizing environmental impacts. A flexible generation resource with fast response to changing conditions would address the current emergency situation.

Upon the preliminary evaluations of the current and foreseen generation capacity, this request for proposal requires the supply of temporary power generation of up to 500 MW size range based on equivalent operating characteristics (start times, ramp rates, heat rate curves, etc.), designed and capable of operating at a capacity factor of 90% for at least 12-months. The units shall be capable of burning low sulfur diesel and natural gas fuels if shown to be available and acceptable under all local and federal laws and regulations, and compatible with the proposed solution. Battery Energy Storage Systems or other renewable sources may also be considered. The generating units included in the proposal are required to be compliant with all applicable environmental and land use laws and regulations including but not limited to, the Clean Air Act and Clean Water Act, the regulations promulgated thereunder, with future permits' required modifications according with state and federal plans, and shall include appropriate emission controls.

The units must have the capability to start from standby to full load in no more than 30 minutes, shall have black-start capability, and operate at an all-in cost that is as low as possible. The units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.

The following items are requirements for this scope of work:

- a. The power plant facilities shall be located in different locations and shall be connected to the 38kV, 115kV or 230 kV (locations described in Appendix A), able to operate in islanded mode in case of an outage and an isolated operation is required. In islanded mode, units shall be black-start capable and be able to provide services such as frequency, voltage control, and be able to respond to deviations in generation.
- b. Units shall be operational, ready to export energy to PREPA on June 1st, 2020.
- c. The units shall be compliant with US Environmental Protection Agency and Puerto Rico Department of Natural Resources (formerly under the Environmental Quality Board) requirements, that include but are not limited to, New Source Performance Standards and Hazardous Air Pollutant Standards. If the proposed project has any impact on local marine environment, the successful proponent shall ensure compliance with all federal and local marine permitting requirements.
- d. Units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.
- e. The maintenance schedule for the next eighteen (18) months of the power generation



- units offered as a solution must be included in the proposal.
- f. The Proponent shall furnish documentation showing that the proposed equipment has been commercially demonstrated/successful and provide an experience list of similar model projects with similar delivery schedules.
 - g. The units must be individually and collectively capable of being dispatched from standby to full load in no more than thirty (30) minutes. PREPA prefers a minimal time from dispatch from standby to full load.
 - h. The project will be connected to the existing transformer. The proponent shall include in its proposal breakers and all necessary BOP equipment with the existing capacity. If the proposed unit(s) exceeds the capacity of the existing transformer, the contractor shall supply a new step-up transformer, breaker and BOP equipment, per site.
 - i. All units must be capable of synchronizing to the current electrical system and provide automatic load following services.
 - j. The units shall be designed and capable of operating at an annual average equivalent availability factor of at least 90 percent (90%) for the term of the contract.
 - k. Proposed solutions shall be a complete and grid connected generating facility including everything required for the operation of the units. The proposal shall include detailed plans for operation during inclement weather and emergency situations.
 - l. Time is of the essence for this RFP. PREPA is seeking a complete solution that complies with all requirements of this RFP, including, but not limited to, permitting, installation, interconnection, testing, and commissioning in the shortest possible time (see Scoring Criteria).
 - m. Power units shall have the capability of remote operation.
 - n. Units shall communicate to PREPA system through SCADA.
 - o. Dispatch of the units shall be at PREPA's sole discretion and electric system needs.
 - p. All proposed solutions must also be black-start capable.
 - q. Operation and maintenance (O&M) portion of the services shall be all-inclusive, including furnishing and maintaining an adequate inventory of all spare parts throughout the duration of the contract. The O&M services shall be designed to meet the high availability target and expected capacity factor of the units.
 - r. Contractor shall arrange for storage of all spare parts during the term of the O&M services in an appropriate environment to maintain the spare parts in a new condition.
 - s. Installation of the units shall be provisional, not permanent.
 - t. The units shall be capable of synchronizing with the existing units in each location, if applicable.

The contractor shall develop and submit the following documents for PREPA evaluation and approval.

Table 1 Submittal Register

Submittal Description
Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Counter-measures Plan (SPCCP)
Barge/Airplane Plan
Transportation Plan to the project site
Emergency Notification Plan for shut down
Life Support Plan, if necessary
Emergency Evacuation Plan



Site Preparation Plan
Fueling Plan (e.g. transfer, storage, line, valves, pressure testing)
Line clearance to connect GT to an operational transformer
Black Start Generator Mfn Commissioning Installation Plan
Pre-Commissioning Plan
Commissioning plan
AVR and Generator Protection
Operation and Maintenance Plan
Final Report

9.1 DELIVERABLES

Proponents shall outline the types of deliverables and timelines they produce, in performing the services being procured through this RFP. At a minimum, the key deliverables to be provided shall include such items as:

Proposals shall include the following:

- a. A description of the project scope, generation units, control system and electrical interconnection.
- b. Schedule for scope of work to support delivery of electric power to the grid including required time for engineering/design, interconnection tie-in, and startup/commissioning, as appropriate.
- c. Permitting plans and schedule.
- d. Schematic drawings for the interconnection
- e. Ownership structure
- f. Typical units' characteristics including energy and mass-balance, minimum load, maximum load, ramp rates, start times, minimum down times, and any part load changes in energy cost. Performance curves, including environmental, shall be provided for part and full-load operation of the units.
- g. The price proposals shall include all costs associated with the complete installation of the units including design, procurement, construction, testing, commissioning, consumables, and operation and maintenance of the facility. The pricing proposals shall include any fixed component, as well as the O&M cost. All pricing shall be based on achieving a net equivalent availability factor of at least ninety percent (90%) for the term of the contract. Proponent shall include any energy cost deviations at part load operation. Costs shall be provided over the range from minimum load to maximum load. Any additional impact to cost due to starting and stopping units shall also be specified.
- h. The selected proponent shall be required to negotiate a lease contract with PREPA.
- i. PREPA will expect the contractor to provide a list of spare parts with pricing (price paid by the contractor).
- j. Contractor shall be responsible for all applicable taxes.
- k. PREPA will apply a penalty of 100% of the proposed daily rate for up to sixty (60) days of delays in the project schedule. Delays of more than sixty (60) days shall result in termination of the contract.



9.2 MOBILIZATION/DEMOBILIZATION

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, etc., to the site.
- b. Door-to-door transportation of the units, materials, supplies, instruments, gas, etc., to embarkation location via barge/airplane
- c. Transport materials, supplies, equipment, personnel, etc., from port/air terminal to the project site.
- d. Remove and transport the same, once the project is complete, back to stateside or original locations.
- e. Moore equipment barge, as needed
- f. Coordinate with the port and/or airport for timely passage.

10. SITE PREPARATION

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, etc.
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, etc.
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award.
- d. Install command posts (trailers, offices, work areas, etc.) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the duration of the contract term.

11. TEMPORARY POWER INSTALLATION

- a. Place units per PREPA requirements.
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator.
- c. Install flow meters on the generation units' fuel line.
- d. Install the temporary pump station.
- e. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system.
- f. Install emergency notification system in the event of a shutdown
- g. Perform pre-commission of the system to verify system function as the generation units are being installed

Pre-Commissioning

- a. Perform and report completion of the following pre-commissioning tasks, as applicable to:
 - Battery systems
 - Control & vibration systems
 - Ventilation and combustion air systems
 - Turbine and hydraulic start lubrication systems
 - Generator lubrication oil system
 - Fuel system



- Fire system
- Turbine auxiliaries
- Water injection system
- Any other pre-commissioning tasks based on new or used units' factory requirements

Commissioning

Note: PREPA will accept invoices for the project upon completion of the commissioning of the units and once the units are in successful operation. PREPA will pay on a monthly, leasing basis, and will not prepay costs associated with mobilization or demobilization.

a. Perform commissioning on the installed system per manufacturers' requirements to include:

- Manual start-up and stop
- Emergency notifications sent to Site Management Team in the event of shut down mode
- Verify voltage, wattage, frequency per the following:
 - net power output of not less than 20 MW
 - Frequency 60 Hz
 - Low voltage connection for transformers at PREPA sites of 13.8kV

b. Revisit unit functional needs until criteria is met.

c. Provide the following information to PREPA regarding protective relays:

1. Copy of the Protective Relay Study and its settings for the proposed mobile power system.
2. Mobile power system protective relay settings criteria.
3. Grant access to PREPA to protective relay events.
4. Access to mobile power system proprietary software/program to allow communication with relays.
5. Mobile power system unit data sheet.
6. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
7. Contractor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
8. The contractor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements.
9. Contractor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the mobile power unit's control room.



10. Contractor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode.
11. Contractor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid.
12. Protective Systems Specifications are included as Appendix C.

12. FINAL WALK THROUGH

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

13. OPERATION AND MAINTENANCE

- a. The Contractor shall ensure spare parts are on hands and the system operates without interruption
- b. The contractor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 - Power output
 - MVAR
 - Gas turbine and generator RPM
 - Other parameters determined appropriate

14. SITE RESTORATION

- Restore site to pre-existing conditions to include the following
 - a. Remove unit, barriers, emergency notification system from the site and transport back to the place of leasing
 - b. Remove signs and posts

15. FINAL REPORT

- Provide Final Report, including executive summary, chronology and descriptions for work completed, etc.

16. PROPOSAL ASSUMPTIONS

The Proponent shall incorporate the following assumptions into their proposals to maintain consistency. Actual quantities/criteria may vary during the construction and verification of assumptions will be made throughout project execution.

- a. The existing fuel storage tank can be used as a temporary power fuel storage tank and it meets API standards. It can be used as is and no repairs are needed.
- b. Medium voltage and control wiring will be installed over head and not on the ground due to safety concerns
- c. The contractor shall provide pricing for leasing the units, including control systems, wiring, appurtenant devices, etc.



- d. Cutting the existing fuel line to create passage to the temporary generation unit site is needed and fabricating fuel conveyance piping to the generation unit and operational PREPA generator is required.
- e. The contractor shall provide a first aid competent representative to support basic health needs (e.g. small cuts, surficial burns).
- f. Assume unarmed security at the sites power station is required 12 hours per day during installation. During Operation and Maintenance, assume 10 hours of operator on-site time and 14 hours of unarmed security. The contractor will respond to resolve any operating issues is required within two (2) hours of outage.
- g. No utilities will be identified within the described work zones or will be impacted throughout this work.
- h. No temporary access road improvements will be needed for the execution of this work.
- i. The Evacuation Plan will include required protocols once understood in the submittal item post-award.
- j. Assume the connection point is the 13.8kV side of these transformers and the contractor will have to provide a line connection plan to integrate with a transformer that currently operational.

17. Proposal Requirements, Evaluation and Selection Process

The intent of the RFP is to encourage responses to fulfill PREPA's requirements and clearly communicate its approach to successfully provide the services. PREPA will examine all proposals in a proper and timely manner to determine if they meet the proposal submission requirements. Proposals that do not meet the submission requirements or have omitted material documents must be rejected. All proposals submitted before the closing date and time of the RFP will be evaluated.

Each proposal meeting all submission requirements will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criterion listed below in this section up to the maximum points, unless they are determined to be non-responsive according to the intent of the RFP.

PREPA may reserve the right to require additional information or clarifications after the proposals' due date to assist the Evaluation Committee in gaining additional understanding of the proposal.

A. Proposal Requirements

All proposals shall address the following items in the order listed below. Proponents must upload in the Technical Data Tab of Power Advocate© the requirements requested in this section. It is proponent responsibility to included evidence or information of all the submission requirements of this RFP. The Evaluation Committee will only take into consideration for the evaluation process the information provided by the proponents in their proposal.

Minimum Requirements:

1. Project Delivery Schedule:
 - a. Shall provide a proposed project schedule (Critical Path Method) based on



- continuous work with key and critical tasks for the proposed due date.
- b. Shall submit a description of the proposed working plan, including working methods, logistics, list of resources (manpower and equipment), permitting process, and subcontractors, if any.
2. Offeror's Experience:
 - a. Shall submit a brief description of the firm, including firm name, address, phone number, email address and authorized primary contact person; brief firm history, including the current permanent staff size as well as local organization structure.
 - b. Shall provide evidence of applicable past experience and performance related scope projects for the principal firm and any subcontractors. The subcontractor's role on the project shall be clearly established.
 3. Financial Capacity: Proponent must provide the following for the entity that is proposed to guaranty the transaction on an initial and on-going basis:
 - a. The proponent shall provide the latest documentation or reports from any rating agencies or debt analysis entities on the contracting entity (or guarantor). PREPA reserves the right to use its available credit evaluation tools to evaluate financial capacity of the proponent.
 - b. Provide information regarding the firm's financial stability, capacity and resources.
 - c. Provide a statement confirming awareness of PREPA's standard payment term of net 60 days upon approval of invoice and supporting documents.
 - d. Shall provide a Surety Bond-ability Letter establishing that the proponent has been underwritten with sufficient bonding capacity and approved by a surety company to perform this project. This letter shall include a power of attorney. Proponent must ensure that their bonding company provides the bonds required endorsed in Puerto Rico.

4. PRICE AND PERFORMANCE PROPOSAL

A) THE FOLLOWING DATA SHALL BE PROVIDED:

Fixed Capacity Price (stand by; only includes price for lease, operation, and maintenance)	\$	Per month
Unit Dispatch Cost Price (full load, lease, operation, and maintenance)	\$	per MW
Guaranteed net output per unit		MW
Heat Rate (LHV)		BTU/kW-hr
Guaranteed annual units equivalent availability factor		%
Units minimum load		MW
Ramp Rate		Minutes/MW
Unit start/stop cost (if applicable)	\$	Per Unit Start

PREPA reserves the right to require additional (supplemental) information after the proposals' due date, for evaluation purposes. Proponents shall provide such information within three calendar days after PREPA's notification and request.



Delivery and installation time (30 points)

Proposals must include a high-level project schedule and timeline identifying equipment delivery date, construction of needed local infrastructure, commissioning and commercial operation date starting from the Notice to Proceed issuance. Assume construction permits and environmental permits/waivers are available for the purposes of the requested schedule. Proposals with a shorter delivery and installation time will be favored compared to those who need more time or whose responses are vague.

PREPA will score the proposals based on a weighted percentage, up to a maximum of 30 points for the soonest availability for dispatch of the proposed generation.

Price Proposal (30 points)

PREPA will evaluate the proposals' price based on a Levelized Cost of Energy (LCOE) formula using the net present value. Proposed units' performance parameters such as low heat rate (LHV) and net capacity shall be included in the proposal to be used for the LCOE calculation, along with the term of the initial contract and a 90% capacity factor. Price proposals must include a monthly fixed capacity price, including only lease, operation, and maintenance, and unit dispatch price (per MW) as separate line items.

For the LCOE, the price component will be based on the following combination: 90% unit dispatch price and 10% fixed capacity.

PREPA will score the proposals based on a weighted percentage, up to a maximum of 30 points for the lowest LCOE.

Hours of Operation (10 points)

PREPA will give higher scores to proposals with newer units compared to those with used units. PREPA will score the proposals based on a weighted percentage, up to a maximum of 10 points for the least hours of operation.

Experience and Capacity (20 points)

Proponents must demonstrate experience and success installing and maintaining fast-track utility power generation unit(s) projects of at least five (5) years. Proponents shall demonstrate experience and success in fabricating, installing, testing, and commissioning the proposed solution. Proponents that demonstrate that the proposed solution can be dispatched in the required times than specified be favored compared to those who need more time, or whose responses are vague.

Offeror's Experience:

- a. Shall submit an abbreviated history of firm.
- b. Shall provide evidence of applicable experience and performance in at least two related scope projects within the past five years. Proposals shall include letters of recommendation and references from past projects where the proponent successfully completed within the required time of installation.
- c. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the proponent with at least ten (10) years



- of experience in similar projects.
- d. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the installation and/or operation and maintenance subcontractors (if any) with at least five (5) years of experience in similar projects.

Approach and Methodology (10 points)

Proposals that outline a clear and straightforward approach to providing fast track generation projects will receive higher scores (PREPA's expected timeline for execution of the project). Proponents shall identify key goals and objectives, and methods for providing the facilities described herein or exceeding these goals. Proponents shall explain how they will be organized to effectively deploy support for this project and clearly identify key personnel responsible for implementing the project.

Proposals will explain the approach to completing the project within the given construction dates and site constraints, include a summary-level Critical Path Method (CPM) schedule detailing all aspects of the project, and include a detailed assessment and response to the site condition restraints.

Respondents shall outline a clear and straightforward approach and demonstrated commitment to accomplishing the schedule goal of completing the project in the least possible time. Respondents shall identify key goals and objectives, and methods for achieving high standards for the delivery of services, in expectation of meeting or exceeding these goals.

Describe in detail the methods you foresee utilizing to accomplish the duties at the site. Provide sketches or illustrations to explain your approaches, if necessary. This approach will include:

1. Demonstrating a clear and thorough interpretation and acknowledged assimilation of the project work scope as described herein and that are part of this RFP.
2. Satisfactorily demonstrating how the duties will be staged to minimize impacts to PREPA operations.
3. Presenting a clear and logical approach for the efficient performance of all work tasks across the proponent's entire project team.
4. Describing how the proponent's submitted milestone schedule demonstrates a clear understanding and integration of all the interrelated duties.
5. Describing how the proponent intends to address and mitigate adverse environmental materials.
6. Providing a specific and project-proven approach and plan for effective Quality Assurance/Quality Control across the Proposer's Project Team.
7. The Proposer's outline plan and commitment to safety.

Commitment to Complying with all Applicable Federal, and Puerto Rico Regulations

A detailed written description of the Federal and Local process shall be submitted with specific plans for a permitting success. Understanding of Federal and local requirements is essential and will be highly considered.

B. Proposal Additional Content



Proponents must also upload in the Commercial Data Tab of Power Advocate© the requirements requested in this section. Proposals failing to submit all the information requested this Section will be rejected.

1) Cover Letter and Table of Contents

Provide a cover letter that includes a certification that the information submitted and the Proposal is true and accurate, and that the person signing the cover letter is authorized to submit the Proposal on behalf of the Proponent. Clearly identify the designated contact person for the engagement and provide the telephone number and email address of the contact person.

Provide a table of contents that clearly identifies the location of all material within the Proposal by section and page number.

2) Local Parties

Explain how the Local Party(ies) will add value to the team and their expected role. Identify the Key Personnel from the Local Party(ies) and provide an indication of the expected level of involvement on the day-to-day activities and interaction with PREPA.

3) Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations

Proponents shall explain their adherence to complying with all applicable Federal and Puerto Rico regulations, including those related to Public Assistance and 2 CFR Part 200 and required Contract Provisions. Indicate what characteristics of the team set them apart in terms of commitment to comply with all laws and requirements. Indicate what specific trainings and expertise reside within the team that reinforces the commitment to compliance. Adherence to strong ethical and integrity practices and unequivocal commitment to solid administrative practices is essential for PREPA.

4) Draft Contract

Proponents must upload in the Commercial Data Tab a statement (if any) of the exceptions to the terms and conditions to the contract and suggest proposed modifications to the specific contract language with which the proponent disagrees or for which proponent is unable to satisfy the condition or requirement, including an explanation of the revision. If proponent agrees with all terms and conditions of the contract and understands that it can comply with all of the conditions and requirements of the contract, acknowledgement of such must be included.

5) Supplementary Information

Proponents may provide supplementary facts as they consider may be of assistance in the evaluation of their proposals.



6) *Requirement of Legal Entities*

Proponents that are corporations, partnerships, or any other legal entity, U.S. or Puerto Rico based, shall be properly registered or capable to be registered or capable and willing to registered to do business in Puerto Rico and the U.S. at the time of the submission of their proposals, and comply with all applicable Puerto Rico or U.S. laws and/or requirements. A selected proponent must be part of PREPA's Supplier Registry in order to execute a contract.

Proponent must submit evidence that the firm is duly and properly organized and is qualified to conduct business in Puerto Rico or provide a statement confirming that the Proponent will be duly organized and qualified prior to contract award, if selected.

Additionally, the Proponent must provide a sworn statement per Act 2-2018, regarding the Anti-Corruption Code for Puerto Rico. See Appendix D.

7) *Required Qualifications of Proponents*

Proponents to this RFP shall provide information in their proposals that demonstrates the following qualifications:

- Proponent has evidence of satisfactory performance record.
- Proponent has a satisfactory record of integrity and business ethics.
- Proponent has the necessary organization, experience, accounting and operational controls, and technical skills.
- Neither Proponent nor any person or entity associated who is partnering with Proponents has been the subject of any adverse findings that would prevent PREPA from selecting Proponent. Such adverse findings include, but are not limited to, the following:
 - Negative findings from a Federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state.
 - Pending or unresolved legal action from the U.S. Attorney General or from the U.S. an attorney general in Puerto Rico or another state.
 - Arson conviction or pending case
 - Harassment conviction or pending case.
 - Puerto Rico and Federal or private mortgage arrears, default, or foreclosure proceedings
 - In rem foreclosure.
 - Sale tax lien or substantial tax arrears.
 - Fair Housing violations or current litigation.
 - Defaults under any Federal and Puerto Rico-sponsored program.
 - A record of substantial building code violations or litigation against properties owned and/or managed by Proponents or by any entity or individual that comprises Proponents.
 - Past or pending voluntary or involuntary bankruptcy proceeding.
 - Conviction for fraud, bribery, or grand larceny.



C. Proposal Format and Submission Requirements

Proponents must upload their entire proposal on the tab Number 2. Upload Documents of Power Advocate©. A summary table must be included, indicating the section and page number where the proposal meets the criteria stated below. In addition, proponents must upload the requirements in the indicated tab in each section. Not complying with this requirement may affect the score of the proponents.

Proponents must format their proposal as follow:

- 1) Cover Letter and Table of Contents
- 2) Local Parties
- 3) Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations
- 4) Draft Contract
- 5) Supplementary Information
- 6) Requirement of Legal Entities
- 7) Required Qualifications of Proponents
- 8) <Detailed proposal requirements>

D. Scoring Criteria

Each proposal meeting all submission requirements stated above will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criterion listed, up to the maximum points.

Criteria	Percentage of Total
<i>Delivery and installation time</i>	30%
<i>Price Proposal</i>	30%
<i>Hours of Operation</i>	10%
<i>Experience and Capacity</i>	20%
<i>Approach and Methodology</i>	10%
Total	100%

Award of the contract will be to those qualified and experienced companies whose proposals, conforming to this RFP, are in accordance with its intent and substantially comply with the established requirements herein.

The Evaluation Committee may choose to reconsider proposals with marginal scores.

The criteria will be graded using a score of 0 to 5:

- 0 = Information in the proposal was not applicable to the criteria, or was omitted.
- 1 = Poor – For example, representing that the criteria presented in the proposal does not meet PREPA requirements.
- 2 = Below Average, negative or disagree – For example, representing that the criteria presented in the proposal is judged to meet most of the requirements.



- 3 = Average, or neutral – For example, criteria judged as meeting all the minimum requirements set by PREPA.
- 4 = Good, positive, or agree – For example, all criteria met and improved when compared to PREPA expectations
- 5 = Excellent, very positive, or strongly agree – For example, representing that the criteria in the proposal best meets the requirements set by PREPA, above all other proposals.

Companies must clearly describe how they best comply with the standards set, as scoring will judge how a proposal specifically answers the criteria stated in the procurement document. Scores shall be higher for specific compliance findings and be lower for general or ambiguous answers.

18. Local Participation

Pursuant to Law Number 42 of January 21, 2018, as amended, PREPA requires Proponents to engage local contractors, professionals and relevant service providers headquartered in Puerto Rico (“Local Parties”) as Team Members and Key Individuals to the greatest extent possible.

Proponents are strongly encouraged as part of this RFP to provide descriptions of their current and/or anticipated business arrangements with Local Parties and, in particular, Local Parties who are Team Members and Key Individuals for the Project, as applicable.

19. Interview

PREPA reserves the right, at its sole discretion, to require Proponents to participate in interviews with the Evaluation Committee. If PREPA elects to conduct interviews, each qualified proponent will be required to give a strictly timed 30-minute presentation. This presentation shall highlight expertise and prior qualifications provided to similar organizations. The presentation shall also clearly explain the Proponent’s approach and entire team composition. The Evaluation Committee may alter the scoring of corresponding criteria of a qualified Proponent’s proposal based upon the presentation. Proponents are solely responsible for all costs or expenses incurred to attend and participate in the interview process.

20. Confidentiality of Responses & Proprietary Information

Upon completion of the RFP process, PREPA will make public its report regarding the procurement and selection process, which shall contain certain information related to this RFP process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as proprietary by the Proponents. In order to ensure that documents identified by proponents as confidential or proprietary will not be subject to disclosure by PREPA, proponents are required to submit a redacted copy of their proposal. The redacted copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercial harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by PREPA. PREPA reserves the right to



make public the redacted copies of the proposals at the conclusion of the RFP process. If a redacted copy is not submitted by a Proponent, PREPA will assume that the original copy of the proposal can be made public. Proposals containing substantial contents marked as confidential or proprietary may be rejected by PREPA. Provision of any information marked as confidential or proprietary shall not prevent PREPA from disclosing such information if required by law. The ultimately awarded contract(s) and all prices set forth therein shall not be considered confidential or proprietary and such information may be made publicly available.

21. Conflicts of Interest

Any contract awarded under this RFP will preclude the selected Proponents from representing before PREPA any Proponent other than those Proponents who may be assigned under this contract during the period the contract is in effect.

Proponents are required to provide a list of any other current or former advisory contracts the firm has/had with any Government Entity in Puerto Rico, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico. Further, please provide a description of any recent historical or ongoing legal proceedings, interviews or investigations being conducted by any U.S. law enforcement agencies involving your firm or team that are related to transactions executed in or on behalf of the Government of Puerto and/or its public corporations. In addition, please provide a brief description of any work you have performed for any creditors or guarantors of the Government of Puerto Rico or any public corporation debt about their positions in Puerto Rico debt obligations. Indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the selection process, PREPA may request information on any perceived conflict of interests. Also, PREPA may in the future request a list of direct or indirect relationships the firm or its professionals have to members of the Puerto Rico Public-Private Partnerships Authority (PPPA) or Board Members or executives of other Public Corporations.

The mere appearance of a conflict of interest shall constitute sufficient cause for the outright rejection of a proposal(s). PREPA reserves the right to cancel any contract awarded pursuant to this RFP with 30 days' notice in the event that an actual conflict of interest, or the appearance of such conflict, is not cured to PREPA's satisfaction.

22. Submittal Additional Information

A. Rejection of Submittals; Cancellation of RFP; Waiver Informalities and Withdrawal of Response

Issuance of this RFP does not constitute a commitment by PREPA to award a contract. PREPA reserves the right to accept or reject, in whole or in part, and without further explanation, any or all responses submitted and/or cancel this solicitation and reissue this RFP or another version of it, if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

PREPA reserves the right to waive any informalities and/or irregularities in a response if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.



A Proponent may withdraw a proposal at any time up to the closing date and time of the RFP by deleting the documents they've uploaded to PowerAdvocate, or by submitting their intent to withdrawal, in writing and addressed to PREPA's Head of Supply Chain (Chief of Procurement), Neftalí González Cruz, through the Messaging Tab before the closing date and time of the RFP.

B. Ownership of Submittal

All materials submitted in response to this RFP shall become the property of PREPA. Selection or rejection of a submittal does not affect this provision.

C. Cost of Preparing Responses

All costs associated with the response to this proposal are the sole responsibility of the Proponent.

D. Errors and Omissions in Responses

PREPA reserves the right to reject a response that contains an error or omission. PREPA also reserves the right to request correction of any errors or omissions and/or to request any clarification or additional information from any Proponent, without opening up clarifications for all Proponents.

23. Insurance – Proof of Coverage:

Proponent shall submit along with its Proposal, a Bid Bond, included as Appendix E **<reference>** of not less than ten percent (10%) of the total price of the Proposal. This Bond will be issued in favor of PREPA by an insurance company that is authorized to do business in Puerto Rico. The Bond may not have a duration of less than ninety days (90) days, securing the validity of the proposal for such term. Proposals that do not include this security will be rejected. If there is an extension of the ninety (90) day term, proponent will be responsible for keeping the Bid Bond in effect. Proposals that fail to meet this requirement will be rejected outright and the bid will be deemed to be non-responsive.

Selected proponent shall obtain and maintain in full force and effect during the life of this Contract and thereafter as provided herein, policies of insurance covering all operations engaged in by this Contract, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

(a) Workmen's Compensation Insurance: Proponent shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Proponent shall also be responsible for the compliance with said Workmen's Compensation Act by all his subcontractors, agents, and invitees. Proponent shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Contract are covered.

(b) Employer's Liability Insurance: Proponent shall provide and maintain Employer's Liability Insurance with minimum bodily Injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon the



Proponent as a result of body injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico.

(c) Commercial General Liability: Proponent shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability.

(d) Automobile Liability Insurance: Proponent shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos.

(e) Professional Liability Insurance: Proponent shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate.

(f) All Risk Physical Damage Property Insurance: Proponent shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the proponent (including earthquake and hurricane occurrence) to one hundred percent (100%) of replacement cost. This Policy shall include a Business Interruption and Contingent Business Interruption coverage. The insurance as required in this Section shall cover work at the Site and shall also cover portions of the work located away from the Site and portions of the work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the Site.

(g) Equipment Breakdown Policy (Boiler & Machinery): Proponent shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this Policy.

(h) Builder's All Risk Insurance: Proponent shall provide and maintain a Builder's All Risk Insurance which shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Job Site, and all equipment and materials delivered and stored at the Job Site, and all equipment and materials delivered and stored at the Job Site which have to be used in the work or incorporated into the Facility. PREPA shall be named Additional Insured under this Policy.

Requirements under the Policies: The Commercial General Liability Insurance and Automobile Liability Insurance required under this contract shall be endorsed to include:

(a) As additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 362467
San Juan, PR 00936-4267

(b) A 30-days cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.



(c) An endorsement including this Contract under contractual liability coverage and identifying it by number, date and the Parties.

(d) Waiver of Subrogation in favor of PREPA.

(e) The Breach of any of the Warranties or Conditions in these policies by the Proponent shall not prejudice PREPA's rights under this policy.

Bonds

Proponent shall furnish at any time before the execution of the Contract:

A Performance Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to the Authority guaranteeing that the contractor will well and faithfully perform the contract work within the time specified.

A Payment Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.

All bonds shall be presented to PREPA before commencement of any work and shall be executed in the required official form of PREPA.

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer.

24. PAYMENT TERMS & METHOD OF PAYMENTS

The payment provisions will be defined in the lease agreement which PREPA expects will be negotiated and executed with the successful Proponent(s). Notwithstanding the foregoing, PREPA's standard payment term is net 60 days upon approval of invoices and supporting documents. Invoicing for this project will commence upon the commissioning and successful operation of the units.

25. Process Rules & PREPA's General Instruction RFP Guide

This process will be regulated and executed according to Exhibit B "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016 (Request for Proposals)". Please, see the Download Documents tab for this Guide.

Proponents shall certify compliance with Section 4.17 of the "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016"



26. Attachments and Appendices

Appendix A – Sites for Temporary Generation

Appendix B – Low Sulfur Fuel (diesel) Specifications

Appendix C – GT Protection Requirements

Appendix D – Act 2-2018 Sworn Statement Anti-Corruption Code

Appendix E – PREPA Bid Bond form

Exhibit A – Contract draft

Exhibit B – PREPA's RFP Guide



Facility	Location	MPT Capacity	Aproximate Allowable Capacity (MW)	Transfomer	Transformer Primary Voltage /Available Bus
Cambalache 1	Arecibo, PR	100 MVA	85	MPT 1	230 kV
Aguirre	Salinas, PR	50 MVA	42	ESST 1-2	115 kV
Jobos	Salinas, PR	55 MVA	46	PU MPT	38kV
Yabucoa	Humacao, PR	56 MVA	47	PU MPT	115 kV
Daguao	Ceiba, PR	62 MVA	52	PU MPT	115 kV
Vega Baja	Vega Baja, PR	56 MVA	47	PU MPT	38 kV
Palo Seco	Toa Baja, PR	93 MVA (two transformers)	79	PU MPT 2-1 2-1 MPT 3-2	115 kV
San Juan	San Juan, PR	140 MVA	119	MPT 10	115 kV
Vieques Power Plant Station Juan	Vieques, PR	14 MVA	10	MPT 1-2	38kV

Notes:

1. Expected net output does not consider any water injection
 2. As an exception for this RFP, on the Vieques site, PREPA will accept units of less than 20 MW capacity.
- For this site, PREPA will only accept units with a capacity up to 10 MW.

FUEL SPECIFICATIONS
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, AND CAMBALACHE
GAS TURBINES GENERATING STATIONS

PARAMETER	ASTM METHOD	MINIMUM	MAXIMUM
Sampling	D-4057	-	-
Gravity, API Degree at 60°	D-287	30.0	42.0
Viscosity, Kinematic CTS at 100° F	D-445 D-2161	2.3	5.8
Water plus Sediment, % volume	D-95-83 D-473		0.1
Water Content, % weight	D-95-13e1		1.0
Flash Point, Degree F, PMCT	D-93	125	
Sulfur, % weight ¹	D-4294		0.050
Ash, % weight	D-482		0.005
Pour Point, Degree F	D-97		15
Sodium plus Potassium, PPM ²	D-1318		0.5
Vanadium, PPM	D-1548		0.5
Calcium, PPM	D-1548		2.0
Heating Value, BTU/lb. (Net) at 60° F	D-240	18,600	
Distillation Temp. 90% Point degree F	D-86		650
Carbon Residue WT. % (10% Bottoms)	D-524		1.0
Filterable Dirt (Particulates) Mg./100 ml.	D-2276		4
Color		Dyed	
Cetane Number	D-975	40	56
Lead PPM	A.A.	0.01	1.0
Fuel Bound Nitrogen Wt. %	4629-91		0.015
Total Glycerin	D-6584	None detected	

¹Reproducibility and repeatability must be taken into consideration in order to comply with the maximum sulfur percent weight specification. ²Latest published ASTM methods shall be used for all tests.

Appendix B – Specifications for Protection System

RFP Temporary Emergency Generation

GTs Protection System

- Protective Relay Study and its settings for the proposed mobile power system.
- Mobile power system protective relay settings criteria.
- Grant access to PREPA to protective relay events.
- Access to mobile power system proprietary software/program to allow communication with relays.
- Mobile power system generator data sheet.
- Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
- Contractor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
- The generator protection and its associate equipment connection shall comply with the latest applicable standards for small generators.
- Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection).
- At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5.
- The drawings for the generator installation shall be submitted for the approval of the Engineering Design Department. The proponent shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel.
- A complete protective relay study must be submitted at least fifteen (15) days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer.
- The proponent shall provide all the manufacturer information for each generator, such as manuals, data sheets, setting guidelines and curves.
- Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by the proponent for any connection or segment (between PREPA's facility and/or the generator and associated apparatus) that is not covered by the unit differential protection.
- The proponent shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.

DECLARACIÓN JURADA

Yo, _____, mayor de edad, ☐ soltero(a)
☐ casado(a) y residente en _____, en representación de la
compañía _____,
organizada como ☐ corporación, ☐ sociedad, ☐ negocio individual u ☐ otro
(especifique) _____, ocupando el cargo de _____ en
la compañía antes indicada, bajo juramento, declaro lo siguiente:

1. Que mi nombre y demás circunstancias personales son las anteriormente expresadas.
2. Que entiendo y acepto que toda persona natural o jurídica que desee participar de la adjudicación de una subasta o en el otorgamiento de algún contrato con cualquier agencia o instrumentalidad gubernamental, corporación pública, municipio, o con la Rama Legislativa o Rama Judicial, para la realización de servicios o la venta o entrega de bienes, someterá una declaración jurada ante notario(a) público(a), según establecido en el Artículo 3.3 de la Ley Núm. 2-2018 conocida como "Código Anticorrupción para el Nuevo Puerto Rico".
3. Que el (la) suscribiente, la compañía _____, o su presidente(a), vice-presidente(a), director(a), director(a) ejecutivo(a) o miembro(s) de una Junta de Oficiales o Junta de Directores(as), o persona(s) que desempeñe(n) funciones equivalentes para la persona jurídica:

☐ no ha sido convicto(a), ni se ha declarado culpable de cualquiera de los delitos enumerados en la Sección 6.8 de la Ley Núm. 8-2017, según enmendada, conocida como "Ley para la Administración y Transformación de los Recursos Humanos en el Gobierno de Puerto Rico", o por cualquiera de los delitos contenidos en la Ley Núm. 2-2018, conocida como "Código Anticorrupción para el Nuevo Puerto Rico".

☐ ha sido convicto(a) o se ha declarado culpable de cualquiera de los delitos, según enumerados en la Sección 6.8 de la Ley Núm. 8-2017, según enmendada, o por cualquiera de los delitos contenidos en la Ley Núm. 2-2018, antes mencionada. En tal caso, se indica lo siguiente:

Nombre de la compañía: _____

Nombre de su subsidiaria: _____

Nombre y apellido de la persona aplicable, según establecido en la Ley Núm. 2-2018: _____

Cargo en la Compañía: _____

Delito: _____

Fecha (D/M/A): _____

País: _____

Organismo o Tribunal: _____

4. Que entiendo y acepto que la convicción o culpabilidad por cualesquiera de los delitos enumerados en las citadas leyes inhabilitará de contratar o licitar a la persona natural o jurídica con cualquier entidad gubernamental, corporación pública, municipio, la Rama Legislativa y la Rama Judicial, por los términos aplicables bajo el artículo 6.8 de la Ley Núm. 8-2017, o diez (10) años contados a partir de la fecha en que termine de cumplir la sentencia cuando no se disponga un término en la citada Ley. Esta prohibición aplicará a cualquier delito, según establecido anteriormente, o su equivalente tanto en Puerto Rico, como en la jurisdicción federal, los estados, territorios de los Estados Unidos de Norteamérica o cualquier otro país.
5. Que la compañía _____, representada por el (la) suscribiente, tiene el deber y se compromete a informar continuamente, de forma inmediata, si el (la) suscribiente, o su presidente(a), vice-presidente(a), director(a), director(a) ejecutivo(a) o miembro(s) de una Junta de Oficiales o Junta de Directores(as), o persona(s) que desempeñe(n) funciones equivalentes para la persona jurídica, alguna vez resultara convicto(a) o se haya declarado(a) culpable o se encuentre(n) bajo investigación por los delitos contenidos en la Sección 6.8 de la Ley Núm. 8-2017, según enmendada, o por cualquiera de los delitos contenidos en la Ley Núm. 2-2018, antes mencionada.
6. Que suscribo esta declaración jurada de conformidad con lo establecido en la Ley Núm. 2-2018 y que hago la presente declaración jurada para que cualquier entidad gubernamental, corporación pública, municipio, la Rama Legislativa o la Rama Judicial tenga conocimiento de lo aquí declarado y para cualquier otro propósito administrativo o legal.

Y para que así conste, juro y firmo esta declaración en _____, Puerto Rico, el ____ de _____ de ____.

Firma del (de la) Declarante

AFIDÁVIT

Afidávit número: _____

Jurado y suscrito ante mí por _____, de las circunstancias antes mencionadas y a quien identifiqué mediante _____.

En _____, Puerto Rico, el ____ de _____ de ____.

Nombre del (de la) Notario(a)

Firma del (de la) Notario(a)

Sello Notarial



PUERTO RICO ELECTRIC POWER AUTHORITY

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____,
(hereinafter called the Principal) and _____, having its
principal offices at _____

_____ a corporation duly organized and existing under the Laws of the **COMMONWEALTH OF PUERTO RICO** and authorized to transact business in Puerto Rico (hereinafter called the Surety) are held and firmly bound onto the **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, (hereinafter called the Obligee), in the penal sum of 10% of _____ (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents.

WHEREAS, the Principal has submitted a bid for _____

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Obligee the different not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in a good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

IT IS hereby understood and agreed that this bond will be effect for a maximum period of ninety (90) days after the bid date, unless its obligation is fulfilled prior to such date.

IN WITNESS WHEREOF, the above jointly and in solid bound parties have executed this instrument under their several seals this _____ day of _____, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives pursuant to authority of its governing body.

(SEAL)
PRINCIPAL

(SEAL)
SURETY

TITLE

ATTORNEY IN-FACT

LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dual-fuel
fired, dispatchable power generation technology, located
at [REDACTED] Puerto Rico as part of PREPA's Temporary
Generation Program

between

[REDACTED]
as Lessor

and

PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee

dated as of [REDACTED], [REDACTED]



**Puerto Rico
Electric Power
Authority**

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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of [twelve (12)] months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain [●] MW of power generation capacity from [insert number] Temporary Generation Units (as defined below), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of twelve (12) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires:

“**Accounting Standards**” means [●];

“**Affected Party**” has the meaning given to it in paragraph (a) of Sub-Clause 17.01 (*General*).

¹ Note: Under review

“Affiliate” means 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 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.

“Agreement” has the meaning given to it in the first paragraph of this document.

“Agreement Date” has the meaning given to it in the first paragraph of this document.

“Agreement Term” has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

“Ancillary Services” has the meaning given to it in Annex 7 (*Ancillary Services*).


“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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

“Applicable Plans” means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Fueling Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

“Automatic Generation Control” or **“AGC”** means the provision of supplementary control that (a) automatically adjusts the power output level of the TGUs, (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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, spinning reserve computation, and production cost monitoring. Annex 8 (*Design Limits*) specifies the Design Limits applicable to the TGUs for the purpose of AGC. Such limits shall include maximum ramping rates and allowable step changes.

“Available Capacity” means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

“Average Net Derating” means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

“Backup Fuel” means  or any other type of fuel or fuel arrangements as mutually agreed by the Parties.

“Bankruptcy End Date” means the date on which a plan of adjustment consummated in connection with PREPA’s case under Title III of PROMESA becomes effective pursuant to its terms.

“Bid Submission Date” has the meaning given to it in Recital B.

“Bid Security” means the letter of guarantee procured by Lessor from a bank or financial institution in the amount of US [●] million (US\$ [●]) and otherwise in conformity with the provisions of the RfP referred to in Recital A, submitted to PREPA on the Bid Submission Date.

“Billing Period” has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

“Business Day” means any Day other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico).

“Year” means the twelve (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31.

“Completion” means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

“Completion Certificate” means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

“Completion Date” means the date on which the Lessor achieves Completion as certified in the Completion Certificate.

“Compliance Date” has the meaning given to it in Sub-Clause 19.02 (*Security Requirements*).

“Conditions Precedent” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Contract Capacity” means [*insert the net electric power generating capacity of Facility*].

“Court 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.

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

“Defaulting Party” has the meaning given to it in Sub-Clause 18.01 (*Right of Termination*).

“Delay” has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

“Derated Hours” means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

“Design Limits” has the meaning given to it in Annex 8 (*Design Limits*).

“Dispatch” means the ability of PREPA’s dispatching centers to schedule and control, directly or indirectly, manually or automatically, the generation of the TGUs in order to increase or decrease the Net Electrical Output delivered to the Grid System in accordance with Prudent Utility Practices, subject to the Operating Procedures and the Design Limits.

“Dispatch Instructions” has the meaning given to it in Sub-Clause 7.01 (*General*).

“Effective Date” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated by Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it in Part (iii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 17.01 (*General*).

“Facility” means, collectively, the [●] TGU's and all auxiliary equipment (including environmental control equipment, unit step-up transformers, breakers and balance of plant equipment) located at the Site on Lessor's side of the Interconnection Point, used to make the Contract Capacity and each of the Ancillary Services available at the Interconnection Point.

“Fair Market Value” means 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 Lessor (under no compulsion to sell) would reasonably obtain in an arms-length private sale of the Facility or a TGU (as applicable) to an informed and willing buyer (under no compulsion to purchase), using a commonly accepted valuation methodology applicable at the time of determination and which assumes a closing date of thirty (30) Days after the Valuation Firm renders such determination.

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Fuel” means Primary Fuel or Backup Fuel, as applicable.

“Fuel Delivery Point” means the position of the Fuel Measurement Facilities located on the Site at [●], as further detailed in Annex 4 (*Fuel Delivery Point*).

“Fuel Measurement Facilities” means the main and backup meter and other equipment as necessary to measure the volume and energy of Primary Fuel delivered pursuant to this Agreement, and the on-line chromatographs installed and maintained by Lessor, which measure the quality of Primary Fuel delivered pursuant to this Agreement.

“Fuel Specifications” means the specifications set forth in Annex 6 (*Fuel Specifications*).

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 17.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 17.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Heat Rate” means [●] Btu per kWh.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“Heat Rate” means, for a TGU, the consumption of energy from Primary Fuel expressed in Btu (Higher Heating Value) required for such TGU to generate, and deliver to the Interconnection Point, one (1) kWh of net electrical output.

“Higher Heating Value” means the amount of heat released by the unit mass or volume of Primary 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.

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 9 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 9 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 26.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

“Monthly Invoice” has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

“Monthly Lease Payment” has the meaning given to it in Part () of Annex 4 (*Monthly Payment and Calculations*).

“Net Electrical Output” means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

“Non-Affected Party” has the meaning given to it in paragraph (d) of Sub-Clause 17.01 (*General*).

“Non-Conforming Fuel” has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

“Non-Scheduled Outage” means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

“Operating Procedures” means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 13 (*Operating Procedures*).

“Outage Hours” means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

“P3A” means the Puerto Rico Public-Private Partnership Authority.

“Party” or **“Parties”** has the meaning given to it in the preamble of this Agreement.

“Performance Test” has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

“Period Hours” means all hours in the relevant period.

“Person” means 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.

“Potentially Hazardous Materials” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

“Pre-Existing Environmental Condition” means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any “Pre-Existing Environmental Condition” unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“PREB” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“PREPA” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“PREPA Interconnection Facilities” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 9 (*Interconnection*).

“Primary Fuel” means [●].

“Prime Commercial Lending Rate” means [●].

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“Prudent Electrical Practices” means 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” means 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., including those practices, methods, standards and procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Purchase Closing Date” has the meaning given to it in Sub-Clause 15.02 (*Option to Purchase*).

“Purchase Price” has the meaning given to it in Sub-Clause 15.01 (*Purchase Notice*).

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor

with the written consent of PREPA; provided that, if such financial institution's ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

"Qualified Bank Certificate" has the meaning given to it in Sub-Clause 19.01 (*General*).

"Ramp Rates" mean the rate(s) of time required for a TGU to change its per kilowatt output from a particular output level to another output level, determined in accordance with Part III of Annex 8 (*Design Limits*).

"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 that 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.

"Relevant Authority" means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

"Relevant Consent" means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 10 (*Relevant Consents*).

"RfP" has the meaning given to it in Recital A.

"RTU" has the meaning given to it in Sub-Clause 7.01 (*General*).

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

"Sale and Purchase Agreement" has the meaning given to it in Sub-Clause 15.03 (*Transition*).

"Scheduled Outage" means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of TGUs*).

"Scheduled Outage Program" has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

"Security" has the meaning given to it in Sub-Clause 19.01 (*Security*).

"Site" means the area described in Annex 11 (*Site*).

"O&M Services" has the meaning given to it in Sub-Clause 8.01 (*General*).

“T&D Operator” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“Taxes” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“Technical Scope” means the scope of work set forth in Annex 12 (*Technical Scope*).

“Temporary Generation Program” has the meaning given to it in Recital A.

“Temporary Generation Units” or **“TGU”** has the meaning given to it in Sub-Clause 5.01 (*Installation Works*), and **“TGU”** means any one of them.

“Termination Event” has the meaning given to it in Sub-Clause 18.01 (*Right of Termination*).

“Territory” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“Tested Capacity” means, for each Performance Test of a TGU, the maximum net electric generating capacity of such TGU (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, as measured by such test.

“Tested Heat Rate” means, for each Performance Test of a TGU, the Heat Rate of such TGU at the Tested Capacity, as measured by such test.

“Third Party” means any Person other than a Party to this Agreement.

“Third-Party Fuel Test” has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

“Transition Period Program” means a program to be agreed between the Parties in the event that Lessor transfers the Facility or any TGU to PREPA under Sub-Clause 15.01 (*Option to Purchase*) or Sub-Clause 18.05 (*Purchase by PREPA*).

“US-CPI” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

“Valuation Firm” means an independent, nationally recognized third-party valuation firm reasonably acceptable to Lessor.

1.02 Interpretation. In this Agreement and unless the context otherwise requires:

- a. words importing the singular only also include the plural and vice versa where the context so requires;
- b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;
- c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
- d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
- e. references to a Party or Person include that Party's or Person's successors and permitted assigns;
- f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
- g. the Parties shall construe all references to "include" and "including" as "including without limitation";
- h. 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," that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party's need to comply with its contractual obligations to any Person limit such Party's actions, 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;
- i. 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; and
- j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses [1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), [●]], which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until six (6) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA with the approval of FEMA for up to two additional six (6) month periods (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the initial six (6) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);
- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to [date]. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the “**Effective Date**”) on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days of the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- b. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Security.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.

- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Security to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. SITE

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.

4.02 Clearance and Consents.


- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of Fuel, labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data,

documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission  *MW [other generation technology]* units (collectively, the “**Temporary Generation Units**” or “**TGUs**” and each, a “**TGU**”) and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the “**Installation Works**”) at Lessor’s sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a “**Delay**”):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA’s personnel, or PREPA’s contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the

Completion Date has not timely occurred an amount equal to US [●] (\$[●])²; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated Damages for Delay*) for a maximum of thirty (30) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable, documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. each of the Temporary Generation Units conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. each of the Temporary Generation Units is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the TGUs generally accept and follow; and
- c. Lessor owns good and valid title to the TGUs free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.
- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to

² Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

be filed, or any complementary information required to be furnished, in relation to the Installation Works; and

- ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by the Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 23.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure. PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated hourly schedule of operations for the following five (5) weeks. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown any of the TGUs.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 7 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the “**O&M Services**”). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA’s request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the “**Scheduled Outage Program**”) for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA shall have the right, upon sixty (60) Days’ prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

8.03 Non-Scheduled Outages. Lessor shall use reasonable efforts to notify PREPA of, and coordinate, all Non-Scheduled Outages with PREPA. Lessor shall use reasonable efforts to schedule Non-Scheduled Outages affecting a TGU to occur during times when PREPA will not Dispatch such TGU, during Scheduled Outages or at such other times as will minimize any adverse effect on the operation of PREPA’s electric system. Lessor shall use reasonable efforts to perform and complete Non-Scheduled Outages in a timely manner consistent with Prudent Utility Practices.

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor’s personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA’s dispatching centers will notify Lessor’s personnel and, if requested by PREPA, Lessor’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 Lessor’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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the TGU's with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;
- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;
- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor shall maintain an accurate and up-to-date operating log at each of the TGU's 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and

- 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.

8.08 Certifications. At PREPA's request, Lessor 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 TGUs during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor 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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the TGUs, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the TGUs and the Lessor Interconnection Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. For each TGU, Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for such TGU not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the TGUs on such date.

9.04 Testing. Prior to the initial synchronization of a TGU with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of a TGU and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for a TGU, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for such TGU. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify Completion of the Facility as per the requirements of this Agreement and finally determine whether the TGUs and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the TGUs and Completion of all other Installation Works, Lessor shall notify PREPA of the

aggregate Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a "**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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its

option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.

11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor's issuance of a Monthly Invoice pursuant to paragraph (b) below.
- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a "**Monthly Invoice**"). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works, leasing of the Facility and provision of the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on each of the TGUs to establish the Tested Heat Rate, Tested Capacity, Ramp Rate and [●] for such TGU (each, a "**Performance Test**") at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 14 (*Performance Tests*) for a TGU, Lessor shall

declare, and provide PREPA with notification of, the Tested Capacity and Tested Heat Rate of such TGU within five (5) Days after receiving such Performance Test report from the qualified third party contracted to conduct the test according to Annex 14 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity and Tested Heat Rate for such TGU in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the aggregate Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the aggregate Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$[●] for each kW of power generation capacity shortfall below the Contract Capacity, such shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof..

13. FUEL SUPPLY

13.01 General. From the commencement of the testing and commissioning of the TGUs by Lessor until the expiration of the Lease Period, PREPA shall deliver Primary Fuel to the Fuel Delivery Point in compliance with the Fuel Specifications for each day of operation, at such times as may be required by Lessor to satisfy the hourly dispatch requirements issued by PREPA; provided that PREPA shall procure and deliver Backup Fuel to the Facility in compliance with the Fuel Specifications, at such times as may be agreed upon by the Parties in accordance with the Operating Procedures. PREPA shall regularly procure and obtain delivery of Fuel at its own cost, and Lessor shall provide PREPA with a monthly Fuel inventory report, in order to maintain an inventory equivalent to the amount of Fuel necessary to operate the Facility at the Contract Capacity for at least [●] consecutive Days, or such greater quantities as may be mutually agreed to by the Parties. Lessor shall ensure, and hereby guarantees, that the Heat Rate for each TGU, when operating at the Tested Capacity for such TGU, shall not exceed the Guaranteed Heat Rate, at any time during the Lease Period other than during a Scheduled Outage.

13.02 Coordination. Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel to the Facility for the operation of the Facility by: (i) providing the other Party such information as the first Party shall reasonably requests regarding the supply and transportation of the Fuel (on both a historical and estimated future basis), and (ii) 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 so long as such changes do not disrupt Lessor's operations.

13.03 Responsibility and Risk of Loss. Lessor shall be responsible for any losses of Fuel, and any damages or injury caused by such Fuel, at and downstream from the Fuel Delivery Point or located on Site (as applicable). Risk of loss of all Fuel shall transfer from PREPA to Lessor upon delivery to the Fuel Delivery Point or, in the case of Backup Fuel, to Backup Fuel storage facilities located at the Site.

13.04 Daily Nominations. After receiving the daily Dispatch Instructions, Lessor shall provide to PREPA the daily nominations of Fuel as required by Lessor to satisfy the Dispatch Instructions, in accordance with the Operating Procedures.

13.05 Non-Conforming Fuel. If Fuel supplied by PREPA fails to conform with the Fuel Specifications (such Fuel, "**Non-Conforming Fuel**"), Lessor shall, as soon as reasonably practicable, give written notice to PREPA that Lessor has received Non-Conforming Fuel, giving details of the nature and expected magnitude of the variance from the parameters set forth in the Fuel Specifications and the reason Lessor deems the Fuel to be non-compliant. If Lessor informs PREPA that it has received Non-Conforming Fuel, then PREPA shall have the right to request that Lessor send a sample of such Fuel to an independent third party, to be agreed to by the Parties, to determine whether such sample satisfies the criteria for Non-Conforming Fuel ("**Third-Party Fuel Test**"). The final determination made in such Third-Party Fuel Test regarding the Non-Conforming Fuel shall be binding on both Parties. The cost of such Third-Party Fuel Test shall be borne (i) by Lessor if the Third-Party Fuel Test concludes that the Fuel conforms with the Fuel Specifications, or (ii) by PREPA if the Third-Party Fuel Test concludes that the Fuel is Non-Conforming Fuel. PREPA shall, promptly upon becoming aware of the delivery of Non-Conforming Fuel or promptly upon receipt of notice from Lessor referenced above, send a notice to Lessor stating, to the extent known to PREPA, the period during which PREPA delivered the Non-Conforming Fuel, the quantity thereof and how such Non-Conforming Fuel departs from the Fuel Specifications.

13.06 Fuel Measurement Facilities. Prior to the commencement of testing and commissioning of the TGU's, Lessor shall install the Fuel Measurement Facilities at the Fuel Delivery Point in accordance with *[[•]] [to provide specific metering specifications, and a reference to the applicable AGA standard]*. If one or more components of the Fuel Measurement Facilities fails to function or a Party reasonably believes that such facilities inaccurately register the volumes of Primary Fuel delivered to the Fuel Delivery Point, the Parties shall determine the volume of Primary 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
- c. by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.

13.07 Disputes. In the event that a Party notifies the other Party of a material discrepancy between the quantity of Primary Fuel delivered to the Fuel Delivery Point as measured by the main meter and backup meter of the Fuel Measurement Facilities, either Party shall have the right to request an adjustment for Primary Fuel delivered up to the later of (i) thirty (30) Days before the notice of any such Primary Fuel measurement discrepancy, and (ii) the date of the last meter reading that preceded such notification. The Parties shall exercise their reasonable efforts to resolve such discrepancy amicably (including with respect to adjustments for Primary Fuel delivered during such fuel measurement review period).

13.08 Storage of Backup Fuel. Lessor shall furnish, maintain and repair at its own cost all storage facilities required for Backup Fuel at the Site.

14. LIABILITY

14.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of the electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of a TGU shall vest with PREPA upon generation. Each Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 14.02 (*Limitation of Liability*) below.

14.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other provisions of this Agreement. Nothing in this Clause 14 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

15. [OPTION TO PURCHASE]

15.01 Option to Purchase. At any time during the Agreement Term, PREPA shall have the option to purchase the Facility or any TGU at a price (the "**Purchase Price**") equal to [[ninety percent (90%)] of its Fair Market Value,] as determined by a Valuation Firm selected by PREPA.

15.02 Purchase Notice. If PREPA desires to exercise such option, then PREPA shall provide Lessor with notice thereof ("**Purchase Notice**") at least ninety (90) Days prior to the expiration of the Lease Period. Upon its receipt of such notice, Lessor shall (i) provide PREPA with the history and usage (hours, starts, and trips), projected costs for future maintenance (inspections, routine overhauls, and major overhauls) and other information regarding the TGUs and remainder of the Facility as reasonable requested by PREPA, and (ii) deliver to PREPA a replacement Security with a term extension of at least six (6) months. The Parties shall have a period, which will not exceed [twenty-one (21) Days] after Lessor receives the Purchase Notice, to establish the Fair Market Value of the Facility or TGU, as applicable. The Parties shall exercise their best efforts to consummate the transfer of the Facility or TGU (as applicable) to PREPA as soon as reasonably practicable after Lessor receives the Purchase Notice (the "**Purchase Closing Date**"), and in accordance with the Transition Period Program.

15.03 Transition. Promptly after the Parties agree on the Fair Market Value of the Facility or TGU (as applicable), the Parties shall:

- a. meet and discuss the Transition Period Program, and agree on (i) the anticipated work, costs and activities associated with the final maintenance overhaul of the Facility or such TGU (as applicable) prior to handover, (ii) training of replacement staff, (iii) calendar of activities for such transfer, including equipment and personnel, (iv) administrative procedures, Relevant Consents and compliance with Applicable Laws for the transfer, and (v) future operation and maintenance post-transfer; and

- b. submit to the FOMB and the PREB a draft of a sale and purchase agreement (the “**Sale and Purchase Agreement**”) and any necessary operation and maintenance agreement for the Facility, or such TGU (as applicable), for approval.

15.04 Purchase Closing Date. On the condition that the FOMB and the PREB approve the Sale and Purchase Agreement, on the Purchase Closing Date:

- a. PREPA shall pay the Purchase Price to Lessor in immediately available funds;
- b. Lessor shall convey to PREPA, free and clear of all liens and encumbrances, good and marketable title to all rights, title and interest in and to the Facility, or TGU (as applicable), including all fixtures, fittings, plant and equipment; and
- c. the Parties shall execute the Sale and Purchase Agreement.

15.05 Costs. Each Party shall bear fifty percent (50%) of the cost of the Valuation Firm employed in the determination of the Fair Market Value.

16. INDEMNIFICATION

16.01 General. 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.

16.02 Notice of Claim. 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.

16.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor’s agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

17. EVENTS OF FORCE MAJEURE

17.01 General. Neither Party 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 an act, event or circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 17.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the “**Affected Party**”) could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act, event or circumstance on the Affected Party’s ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;
- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party (“**Non-Affected Party**”) notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 17.05 (*Notices*);

(each such act, event or circumstance, an “**Event of Force Majeure**”). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

17.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 17.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the upstream facilities affecting the delivery of Fuel;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils; acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

17.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 17.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and
- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

17.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

17.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 17 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

17.06 Other Matters.

- a. If any Party claims relief under this Clause 17 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 17 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 17 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.
- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.

18. TERMINATION

18.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the "**Defaulting Party**") set forth in paragraphs (a) - (l) below (each, a "**Termination Event**"), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. For Lessor only as the Defaulting Party, Completion fails to occur on or before the thirtieth (30th) Day following the Guaranteed Completion Date, as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. For Lessor only as the Defaulting Party, the initial aggregate Tested Capacity of the Facility falls below ninety percent (90%) of the Contract Capacity;
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falls below ninety percent (90%) for any period of [three (3)] consecutive months during the Lease Period;
- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;

- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 17.06 (*Other Matters*);
- g. In the case of Lessor only, the conviction of one or more of Lessor's or its contractors' employees or representatives of a crime described in Sub-Clause 27.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 27.03 (*No Convictions Under Certain Other Acts*);
- h. In the case of Lessor only, the making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement, as contemplated by Sub-Clause 27.04 (*Right of Termination*);
- i. The declaration by Lessor of either (i) a Tested Capacity of less than ninety percent (90 %) of the Contract Capacity, or (ii) a Tested Heat Rate of more than two percent (2 %) above the Guaranteed Heat Rate, in each case under Sub-Clause 12.02 (*Declaration*);
- j. In case of Lessor only, its failure to cure an actual conflict of interest, or the appearance of such a conflict, to PREPA's satisfaction;
- k. (i) The inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) the initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and
- l. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days.

provided, however, that paragraph (k) and (l) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date, and provided further, that PREPA shall have the right to terminate this Agreement under paragraph (j) upon thirty (30) Days' prior written notice to the Lessor.

18.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of the Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to the Lessor.

18.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 18.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 18.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

18.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

18.05 Purchase by PREPA. Where a Termination Event occurs as to which Lessor is the Defaulting Party, PREPA shall have the right, but not the obligation, to acquire the Facility or any TGU from Lessor at a purchase price equal to [[eighty percent (80%)] of its Fair Market Value]. In order to exercise such right, PREPA shall provide Lessor with notice of its election to acquire the Facility or such TGU within thirty (30) Days of the occurrence of the Termination Event, and the procedure outlined in Sub-Clauses 15.02 (*Purchase Notice*), 15.03 (*Transition*) and 15.04 (*Purchase Closing Date*) shall apply. Lessor shall bear one hundred percent (100%) of the cost of the Valuation Firm during the determination of the Fair Market Value.

18.06 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 18.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party's right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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. SECURITY³

19.01 General. As security for the proper performance of all of Lessor's obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the "**Security**") issued by a Qualified Bank in the form set forth in Annex 15 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●] United States Dollars),⁴ together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a "**Qualified Bank Certificate**"), and (ii) maintain the Security in full force and effect until the expiration of the Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor's obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 19.01 (*General*).

19.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

³ NTD: We note that the RFP requires both a Payment and a Performance Bond. We recommend this more streamlined approach to Securities, and revising the RfP to align with these provisions.

⁴ Face Amount required by RFP

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and
- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 19.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the “**Compliance Date**”) on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA’s right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA’s right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

19.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the Security then outstanding.

20. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor 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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

21. INSURANCE

21.01 General. Except for the insurance described in paragraph (g) of Sub-Clause 21.01 (*General*), Lessor shall obtain or cause its agent or its Affiliate to obtain and maintain during the remainder of the Agreement 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 [●] (\$[●]);

- b. Employer's Liability Insurance with minimum bodily Injury limits of at least [●] (\$[●]) for each employee and [●] (\$[●]) for each accident, covering against the liability imposed by Applicable Law upon Lessor as a result of bodily injury, accident or disease, including death arising out of and in the course of the employee's employment outside of and distinct from any claim under the Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Comprehensive or Commercial General Liability Insurance with bodily injury and property damage combined single limits of at least [●] (\$[●]) per occurrence and [●] (\$[●]) in the aggregate. Such insurance shall include, but not necessarily be limited to, specific coverage for contractual liability encompassing the indemnification provisions in Clause 16 (*Indemnification*), broad form property damage liability, personal injury liability, "XCU" 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);
- d. Comprehensive Automobile Liability Insurance with bodily injury and property damage combined single limits of at least [●] (\$[●]) per occurrence covering vehicles owned, hired or non-owned;
- e. Professional Liability Insurance with minimum limits of at least [●] (\$[●]) per claim and [●] (\$[●]) in the aggregate;
- f. Excess Umbrella Liability Insurance with a single limit of at least [●] (\$[●]) per occurrence in excess of the limits of insurance provided in subparagraphs (a), (b) and (d) above;
- g. All risk physical damage insurance, including comprehensive boiler and machinery coverages, to cover all real and personal property of Lessor (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost to the extent available on commercially reasonable terms as determined by Lessor and subject to a reasonable deductible which shall be the responsibility of Lessor. This policy shall include a Business Interruption and Contingent Business Interruption coverage, and shall also cover portions of the work located outside of the Site and portions of the work during transit. This policy of insurance shall be placed into effect on the earlier of Completion Date or on the date that the insurance provided in paragraph (i) below;
- h. Equipment Breakdown policy (Boiler & Machinery) which shall cover all equipment and machinery of Lessor; and
- i. From the Effective Date until the Completion Date, 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 Lessor and subject to reasonable deductibles.

21.02 Structure of Coverage. The amounts of insurance required in Sub-Clause 21.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 21.01 (*General*).

21.03 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (b) of Sub-Clause 21.01 (*General*) and any required umbrella or excess coverage may be “occurrence” form policies if available on commercially reasonable terms. In the event Lessor has “claims-made” form coverage, Lessor shall notify PREPA and the retroactive date established on the first “claims-made” policy shall be maintained on all subsequent renewals.

21.04 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and, if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor’s Worker’s Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor’s indemnity obligations set forth elsewhere in this Agreement;
- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

21.05 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (d) and (e) of Sub-Clause 21.01 (*General*) 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 Lessor shall not prejudice PREPA’s right under this policy.” If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

21.06 Certificates of Insurance. Lessor 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 paragraph (g) of Sub-Clause 21.01 (*General*), 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 Facility. Failure of PREPA to obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 21 (*Insurance*) shall in no way relieve or limit Lessor's obligations and liabilities under other provisions of this Agreement.

22. REPRESENTATIONS, WARRANTIES & LIABILITIES

22.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;
- b. Lessor 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. Lessor's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor'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 Lessor's ability to perform its obligations hereunder, (ii) violate any provision of Lessor'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 Lessor'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; and
- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

22.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority,

PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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; and

- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA in accordance with its terms.

23. ASSIGNMENT

23.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by the Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as the Lessor, and (ii) comply with the requirements for pre-qualified participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

23.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

23.03 Transfer. 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 Lessor's consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

24. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 24 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

LESSOR: [•]

Attention: [•]

Telephone: [•]

Email: [•]

With copy to: [•]

Telephone: [•]

Email: [•]

PREPA: Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928

Attention: Attn: [•]

Telephone: [•]

Facsimile: [•]

Email: [[•]@prepa.com]

With Copies to: Attn: [•]

Telephone: [•]

Facsimile: [•]

Email: [[•]@prepa.com]

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

25. CHOICE OF LAW AND DISPUTE RESOLUTION

25.01 Choice of Law. 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.

25.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a "**Dispute**"), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

26. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

26.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

26.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).
- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.
- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and

- ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

26.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

26.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

26.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "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.

26.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

26.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

26.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

26.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

26.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

26.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

26.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

26.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

26.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

26.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

27. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

27.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

27.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

27.03 No Convictions Under Certain Other Acts. Lessor 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.

27.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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.

28. CONSEQUENCES OF NON-COMPLIANCE

28.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout Clauses 26 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*) and 27 (*Anti-Corruption Code for a New Puerto Rico*) are essential requirements of this Agreement. If any of the certifications listed in Sub-Clause 26.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

28.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

29. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

29.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through

(d) of this Sub-Clause 29.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

29.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

29.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

29.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

29.05 Sufficiency of Funds. Lessor acknowledges and agrees that funding for this Agreement is contingent upon the availability of Federal assistance awarded by federal agencies to the Government of Puerto Rico. A failure of PREPA to make any payment under this Agreement due to unavailability of Federal and/or Government of Puerto Rico funding shall not constitute a breach of the Agreement by PREPA or default thereunder and PREPA and the Government of Puerto Rico shall not be held financially liable therefor. If, during the Agreement Term, Federal or local funding is reduced, de-obligated, or withdrawn, PREPA shall have the right to reduce the scope of or terminate any task order or the Agreement. PREPA shall provide Lessor with written notice of the lack of funding within a reasonable time and PREPA reserves all rights to reduce the scope of or terminate the Agreement as a result of lack of funding. Lessor shall not be entitled to any compensation for any reduction of scope or termination of the Agreement as a result of the lack of funding under this Sub-Clause 29.05 (*Sufficiency of Funds*).

29.06 FEMA Disaster Assistance Survivor/Registrant Data.

- a. If Lessor has access to Disaster Assistance Survivor/Registrant data or any other personally identifiable information, Lessor shall comply with the provisions of the Terms and Conditions for Sharing FEMA Disaster Assistance Survivor/Registrant Data with State Governments set forth in the FEMA-Government of Puerto Rico Contract for FEMA-4339-DR-PR.
- b. Lessor shall indemnify, defend and hold harmless the PREPA Parties from and against all Claims arising out of Lessor's failure to comply with the requirements under this Agreement.

29.07 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

29.08 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

29.09 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

29.10 Debarment, Suspension, and Ineligibility.

- a. Lessor represents and warrants that Lessor, its principals, and affiliates have not been debarred, suspended, or placed in ineligibility status under the provisions of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 (government debarment and suspension regulations). Lessor represents and warrants that it will not enter into any contracts or subcontracts with any individual or entity which has been debarred, suspended or deemed ineligible under those provisions. During the Agreement Term, Lessor shall periodically review SAM.gov and local notices to verify the continued accuracy of this representation. Lessor shall require all subcontractors at every tier to comply with this requirement.

- b. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

29.11 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

29.12 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in the aforementioned clauses and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

29.13 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.
- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - 1. 2 C.F.R. § 327 (Financial Reporting);
 - 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 - 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

29.14 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are related to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the Site.

29.15 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than three (3) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
 - 1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - 2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - 3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
 - 4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
 - 5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 - 6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - 7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis

for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.

8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

29.16 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

29.17 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

29.18 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.

- d. Lessor shall send to each labor union or representative of workers with which it has a collective bargaining contract or other contract or understanding (if any) a notice advising the labor union or workers' representative of Lessor's commitments under section 202 of the US Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by PREPA and any Relevant Authority for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Lessor's non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated for default or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.
- h. Lessor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, so that such provisions shall be binding upon each Subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

29.19 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

29.20 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

29.21 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

29.22 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

29.23 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

29.24 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R Part 3001.

29.25 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

29.26 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

29.27 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

29.28 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

29.29 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

29.30 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

29.31 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.
- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

29.32 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.
- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.
- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

29.33 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

- 1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
- 2. **Commercially available off-the-shelf (COTS) item** means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and
 - c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
- 3. **Component** means an article, material, or supply incorporated directly into a construction material.

4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
5. **Cost of components** means:
- a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
6. **Designated country** means any of the following countries:
- a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
 - b. a Free Trade Agreement (FTA) country (as of the Agreement Date Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
 - c. a least developed country (as of the Agreement Date), Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands,

Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

- d. a Caribbean Basin country (as of the Agreement Date), Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
8. **Domestic construction material** means:
- a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
9. **Foreign construction material** means a construction material other than a domestic construction material.
10. **Free Trade Agreement country construction material** means a construction material that:
- a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
11. **Least developed country construction material** means a construction material that:
- a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and

different construction material distinct from the materials from which it was transformed.

12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
13. **WTO GPA country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a WTO GPA country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]
4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

- c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;
 - c. quantity;
 - d. price;
 - e. time of delivery or availability;
 - f. location of the Work;
 - g. name and address of the proposed supplier; and
 - h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.

- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
4. Include other applicable supporting information.
5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information

about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.

3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

29.34 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

30. MISCELLANEOUS PROVISIONS

30.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall (i) unless PREPA has opted to purchase the Facility under Clause 15 (*Option to Purchase*) or Sub-Clause 18.05 (*Purchase by PREPA*), demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, instruments, and TGU(s) forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

30.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

30.03 Non-Waiver. 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.

30.04 Third Party Rights. 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.

30.05 No benefits. No officer, employee, or agent of Lessor 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.

30.06 Relationship. 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.

30.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 30.01 (*Demobilization and Final Report*).

30.08 Reasonableness. 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.

30.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

30.10 Waiver. 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.

30.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

30.12 Severability. 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.

30.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

[•]

By: _____
Title: [•]

By: _____
Title: [•]

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _____
Title: [•]

Title: [•]

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ANNEX 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of Lessor under this Agreement shall be conditioned upon Lessor having delivered to PREPA:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 21 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 10 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 26 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 27 (*Anti-Corruption Code for a New Puerto Rico*), and Clause 29 (Compliance with Applicable Federal Law, Regulations and Executive Orders); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2 - PREPA CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of PREPA under this Agreement shall be conditioned upon PREPA having delivered to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of PREPA and Lessor under this Agreement shall be conditioned upon there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

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ANNEX 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Lessor**”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “**LOA**”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

SIGNED: _____
FOR LESSOR

DATE: _____

ANNEX 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“PREPA”)

To: [●] (“Lessor”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “LOA”). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

ACKNOWLEDGED: _____
FOR LESSOR

DATE: _____

ANNEX 4⁵

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for Billing Period “n” shall be calculated as follows:

$$CLP = LP \times FMAF \times EAF$$

where:

LP = Lease Price equal to \$[●]

FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below

EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below

- (i) Force Majeure Adjustment Factor (FMAF) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA’s ability, to Dispatch the TGUs as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

BPH = Hours in Billing Period

ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below

EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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 Event of

⁵ NTD: Payment structure drafted in line with discussions with PREPA on Monday, February 10, 2020. We note that the RFP now includes references to Capacity Payments and Energy Payments, which deviate from our discussions. To be discussed.

Force Majeure by the Contract Capacity applicable to that Derated Hour, plus
(b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (EGFMH) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

- GFMH = Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the corresponding Billing Period
- CC = Contract Capacity made available by Lessor, expressed in MW
- ASC = the average Lessor capacity placed in service by PREPA's Dispatch of the TGUs during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

ANNEX 5

FUEL DELIVERY POINT



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ANNEX 6

FUEL SPECIFICATIONS

Primary Fuel delivered at the Fuel Delivery Point:



Backup Fuel delivered at the Site:



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ANNEX 7

ANCILLARY SERVICES

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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 Lessor at the Interconnection Point as spinning reserve for immediate dispatch by PREPA.

“**Supplemental Spinning Reserve**” means the off-line generation at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Spinning Reserve following a Unit startup order from PREPA’s energy control center.

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

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor 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 Contract 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 8 (*Design Limits*). If, at the time of Spinning Reserve Capacity operation, PREPA Dispatches the Facility at less than the Contract 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 under frequency disturbance which caused the Spinning Reserve Capacity operation.

For any hour, 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. Supplemental Spinning Reserve

Following a Unit startup order from PREPA, Units will be synchronized approximately in the following amount of time: ■

ANNEX 8

DESIGN LIMITS

I. Objective

This Annex specifies the Design Limits applicable to the TGUs for the purpose of Automatic Generation Control, including Ramp Rates.

II. Design Limits

The following are preliminary Design Limits for each of the TGUs:



III. Ramp Rates

Each TGU shall have a Ramp Rate from standby to full load operation of less than ten (10) minutes.

ANNEX 9

INTERCONNECTION



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ANNEX 10

RELEVANT CONSENTS

[●]⁶

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⁶ NTD: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

ANNEX 11

SITE



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ANNEX 12

TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas], *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place units per PREPA requirements;
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator;
- c. Install flow meters on the generation units' fuel line;
- d. Install the temporary pump station;
- e. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- f. Install emergency notification system in the event of a shutdown; and

- g. Perform pre-commissioning of the system to verify system function as the generation units are being installed.

IV. Pre-Commissioning

- a. Perform and report completion of the following pre-commissioning tasks, as applicable to: Battery systems;
- b. Control & vibration systems;
- c. Ventilation and combustion air systems;
- d. Turbine and hydraulic start lubrication systems;
- e. Generator lubrication oil system;
- f. Fuel systems for both Primary Fuel and Backup Fuel;
- g. Fire system;
- h. Turbine auxiliaries;
- i. Water injection system; and
- j. Any other pre-commissioning tasks based on new or used units' factory requirements.

V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;

- vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;
- viii. Lessor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the TGU's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode;
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as **Schedule 1** to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 - i. Power output;
 - ii. MVAR; and
 - iii. Turbine and generator RPM or other parameters determined appropriate.

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*]

SCHEDULE 1 TO ANNEX 12

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements such as:

- a. Protective Relay Study and its settings for the proposed power system;
- b. Power system protective relay settings criteria;
- c. Grant access to PREPA to protective relay events;
- d. Access to power system proprietary software/program to allow communication with relays;
- e. Power system generator data sheet;
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation;
- h. The generator protection and its associated equipment connection shall comply with the latest applicable standards for small generators;
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection);
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5;
- k. The drawings for the generator installation shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel;
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer;
- m. Lessor shall provide all the manufacturer information for each generator, such as manuals, data sheets, setting guidelines and curves;
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the generator and associated apparatus) that is not covered by the unit differential protection; and
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

ANNEX 13

OPERATING PROCEDURES

[•]⁷

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⁷ Among other things, to include detailed procedures for: (i) daily nominations, management and coordination of the supply of Fuel, (ii) the reading of the Fuel Measurement Facilities (when installed in accordance with Sub-Clause 13.06 (Fuel Measurement Facilities)) and (iii) the resolution of disputes regarding material discrepancies between the quantity of Fuel delivered to the Fuel Delivery Point as registered by the Fuel Measurement Facilities.

ANNEX 14

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, Tested Heat Rate, the Ramp Rate of a TGU, and *[insert any other necessary tests]*.

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (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 TGU.

c. [others]

Test Conditions

a. Tested Capacity

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

b. Tested Heat Rate

For each Heat Rate test load point, the TGU 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 TGU.] All major components shall be operated within their design pressures, temperatures, and flow rates. TGU operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by TGU operating data. All necessary safety and environmental equipment shall be in service.

c. [others]

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.

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ANNEX 15

FORM OF SECURITY

ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: The Puerto Rico Electric Power Authority



Attn.: Chief Executive Officer

Date: 

LOA / PERFORMANCE SECURITY No. 

We understand that  (the “Applicant”) has entered into a contract with you (the “Beneficiary”) dated  (as amended from time to time, the “LOA”).

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

“Maximum Amount” means \$ .

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

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SCHEDULE 1 TO PART 1 OF ANNEX 14

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:
Authorized Signatory

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**ESTADO LIBRE ASOCIADO DE PUERTO RICO
AUTORIDAD DE ENERGÍA ELÉCTRICA**

**GUÍA PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A
TRAVÉS DE SOLICITUD DE PROPUESTAS
(*Request For Proposals*)
2016**

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SECCIÓN 1- BASE LEGAL, PROPÓSITO DE LA GUÍA Y ALCANCE

1.1 Base Legal

1. El estatuto orgánico de la Autoridad en su Sección 15 (22 LPRA 205) establece lo siguiente:

“Todas las compras y contratos de suministros o servicios, excepto servicios personales, que se hagan por la Autoridad, incluye contratos para la construcción de obras de la misma, se harán mediante anuncio de subasta hecho con suficiente antelación a la fecha de apertura de la subasta de pliegos de proposiciones, para que la Autoridad asegure el adecuado conocimiento y oportunidad de concurrencia de licitadores.

2. No será necesario el requisito de subasta:

- a. Cuando la cantidad estimada para la adquisición u obra no exceda de doscientos mil dólares (\$200,000).
- b. Cuando debido a una emergencia se requiera la inmediata entrega de materiales, efectos y equipo, o ejecución de servicios.
- c. **Cuando se necesiten piezas de repuesto, accesorios, equipo o servicios suplementarios para efectos o servicios previamente suministrados o contratados.**
- d. **Cuando se requieran servicios o trabajos profesionales o de expertos y la Autoridad estime que, en interés de una buena administración, tales servicios o trabajos deban contratarse sin mediar tales anuncios.**
- e. Cuando los precios no estén sujetos a competencia porque no haya más que una sola fuente de suministro o porque estén regulados por la ley.

3. La Sección 6 (22 LPRA 196) de ese estatuto orgánico establece, además, que:

"La Autoridad se crea con el fin de conservar, desarrollar y utilizar, así como para ayudar en la conservación, desarrollo y aprovechamiento de las fuentes fluviales y de energía de Puerto Rico, para hacer asequible a los habitantes del Estado Libre Asociado, en la forma económica más amplia, los beneficios de aquellos, e impulsar por este medio el bienestar general y aumentar el comercio y la prosperidad y a la Autoridad se le confieren, y

ésta tendrá y podrá ejercer, los derechos y poderes que sean necesarios o convenientes para llevar a efecto los propósitos mencionados, incluye (más sin limitar la órbita de dichos proyectos) los siguientes:

- a. Tener sucesión perpetua como corporación.
 - b. Adoptar, alterar y usar un sello corporativo del cual se tomará conocimiento judicial.
 - c. Formular, adoptar, enmendar, y derogar estatutos y reglamentos para regir las normas de sus negocios en general y ejercitar y desempeñar los poderes y deberes que, por ley, se le conceden e imponen; así como, con miras a garantizar la seguridad de las personas o la propiedad, reglamentar el uso y disfrute de sus propiedades y de aquellas otras bajo su administración; el uso y consumo de la energía eléctrica; la intervención con y manipulación de equipos, empresas, instalaciones, aparatos, instrumentos, alambres, contadores, transformadores y objetos de cualesquiera naturaleza análoga propiedad de la Autoridad de Energía Eléctrica que se utilicen en relación con la producción, transmisión, distribución y uso y consumo de energía eléctrica producida por dicha Autoridad. Los reglamentos, así adoptados, tendrán fuerza de ley, una vez se cumpla con las disposiciones de las Secs. 1041 a 1059 del Título 3. Toda persona, natural o jurídica, que viole o induzca a que se viole cualquier disposición de un reglamento promulgado conforme aquí se provee, incurrirá en delito menos grave, y convicta que fuere, se le impondrá multa no menor de veinticinco (25) dólares ni mayor de cien (100) dólares o cárcel por un término no menor de un (1) mes ni mayor de tres (3) meses o ambas penas, a discreción del tribunal; ..." "Vender o de otro modo disponer de cualquiera propiedad real, personal o mixta o de cualquier interés sobre las mismas, que a juicio de la Junta no sea ya necesaria para el negocio de la Autoridad o para efectuar los propósitos de las secs. de esta Ley".
4. Se promulga, además, de conformidad con los poderes que le confieren al Jefe de la División de Suministros las siguientes Resoluciones de la Junta de Gobierno: Núms. 27 de 1941, 46 de 1942, 334 de 1948, 1599 de 1978, 1896, 1903 y 1912 de 1984, 2055, 2075 y 2082 de 1986, 2145 de 1987, 2268 de 1989, 2340 de 1991, la Ley Núm. 170 del 12 de agosto de 1988, según enmendada, y las Órdenes Ejecutivas Núms. 1991-24 del 18 de junio de 1991 y 1992-52 del 28 de agosto de 1992.
 5. La Ley 12 del 10 de diciembre de 1975, según enmendada, establece disposiciones relacionadas con la venta de propiedad inmueble. *El Reglamento para la Disposición de Propiedad Inmueble Excedente*

contiene información relacionada aplicable a la Autoridad de Energía Eléctrica.

1.2 Propósito de esta Guía

El propósito de esta guía es establecer un marco regulatorio para la licitación, evaluación, selección, negociación y adjudicación a través del proceso definido local e internacionalmente como *Solicitud de Propuestas* y mejor conocido por sus siglas en inglés RFP. Este proceso asegura para la Autoridad de Energía Eléctrica uno justo, uniforme, transparente, vanguardista, flexible y que fomente y apoye un ambiente de innovación, e inversión por parte del sector privado a través de un proceso competitivo y justo. Para llevar a cabo los propósitos de la Ley, estas guías proveen para, entre otros: (i) identificar las Funciones, Requisitos, Experiencias, Tecnologías y Servicios entre otros, donde sea necesario el desarrollo de modelos de adquisiciones estratégicas; (ii) solicitar, obtener y evaluar propuestas; (iii) seleccionar las entidades o individuos que firmarán contratos o acuerdos de compras estratégicos con la Autoridad; y (iv) negociar y adjudicar Contratos y Acuerdos de Compras estratégicos del tipo *Sourcing* o cualquier otro que requiera el uso de la herramienta de Solicitudes de Propuesta o RFP, en especial para adquisiciones y compras tácticas y estratégicas.

La Solicitud de Propuesta (SP) conocida por sus siglas en inglés como (RFP) se define en esta guía como un método o herramienta de compras para solicitar información y precios a proponentes. Esta solo se utiliza cuando se tiene una idea general con algunas especificaciones, se solicitan soluciones, servicios o modelos operacionales de negocio los cuales incluyan más de un 50% de elementos subjetivos que solo pueden calcularse o valorarse a través de la otorgación de tarjetas de puntuación o *scorecard* por parte de los miembros que componen el comité evaluador o es un proyecto mayor y complejo, el cual cuenta con la posibilidad de ofrecer múltiples soluciones, técnicas, tecnológicas y de negocio.

1.3 Alcance de esta Guía

Las disposiciones de esta guía son aplicables a todo empleado de la Autoridad y a toda persona particular o entidad jurídica que intervenga directa o indirectamente en procesos de Solicitud de Propuestas o RFP en la Autoridad.

SECCIÓN 2- DEFINICIONES

Los siguientes términos utilizados en esta guía tienen los significados establecidos a continuación, excepto cuando el contexto claramente indique un significado diferente.

Adenda: significa un suplemento escrito a una Solicitud de Propuestas

promulgado por la Autoridad después de la publicación de dicha Solicitud de Propuestas, que incluye cambios o adiciones a (i) los términos y condiciones de la Solicitud de Propuestas; (ii) el diseño conceptual o los planos y especificaciones de un bien o servicio; (iii) los términos o condiciones del Contrato o Acuerdo de Compras correspondiente; ó (iv) cualquier otro documento relacionado a la Solicitud de Propuestas.

Adjudicación del Contrato o Acuerdo Agreement de Compras: significa la aprobación del Jefe de División de Suministros de un Contrato o Acuerdo conocido en inglés como *Agreement*; de Compras previamente evaluado y recomendado por un Comité o Equipo Evaluador designado al proceso y en conformidad con las disposiciones establecidas en las leyes locales y federales que regulan estos procesos, políticas corporativas, resoluciones emitidas por la Junta de Gobierno y órdenes ejecutivas emitidas por el Gobernador de Puerto Rico (cuando así apliquen y sean adoptadas mediante resolución conjunta de la Junta de Gobierno).

AEE: Acrónimo de Autoridad de Energía Eléctrica

Afiliada/ filial o subsidiaria: significa, en el caso de una entidad jurídica, cualquier otra entidad jurídica que controla o es controlada por dicha entidad y cualquier otra entidad que, directa o indirectamente, es controlada por la misma Persona que controla o tiene el poder de controlar dicha entidad.

Agencia Federal: significa cualquiera de los departamentos de la Rama Ejecutiva del Gobierno de Estados Unidos de América, o cualquier departamento, corporación, agencia o instrumentalidad creada o que pueda crearse, designarse o establecerse por los Estados Unidos de América.

Agente Contratante: se refiere al Jefe de División de Suministros o a su delegado.

Análisis de Costo del Ciclo de Vida (LCC): significa la investigación y valoración de los impactos ambientales de un producto o servicio causados durante el ciclo de vida de su existencia. En el cálculo de costo de ciclo de vida se incluye el 15% los costos de construcción, costos de operación y mantenimiento, impuestos, financiamiento, sustitución y renovación de los equipos o materiales.

Análisis de la Competencia: Evaluación integral y análisis de las propuestas provistas por los proveedores para un conjunto definido de criterios, requisitos y especificaciones de producto o servicio. Entre los aspectos a considerarse en forma integral se encuentran: especificaciones por artículo, servicios, requisitos financieros, requisitos de tecnología, servicio al cliente, entregas, manejo, logística, administración, certificaciones, soluciones de

negocio, etc... La evaluación final se analiza como un “todo” y la misma se clasifica por tipo, categoría, servicio o cualquier otra segmentación definida para el o los procesos particulares.

AUC: siglas en inglés para *Average Unit Cost* o Costo Unitario Promedio

Autoridad: significa la Autoridad de Energía Eléctrica de Puerto Rico

Banco o BGE: significa el Banco Gubernamental de Fomento para Puerto Rico.

Buy-back: Acuerdo negociado con un proveedor para que este compre los artículos existentes en inventario específico para facilitar una reducción o eliminación del inventario de una o múltiples categorías.

Clasificación Competitiva: significa aquellas Propuestas recibidas por la Autoridad en respuesta a una Solicitud de Propuestas que la Autoridad determine, a su discreción, que tienen una probabilidad razonable de ser recomendadas para la Adjudicación del Contrato o Acuerdo de Compras.

Canasta de Bienes o Servicios, conocida en inglés como Market Basket (MB): Lista que incluye conjunto de artículos que puedan ser comprados o adquiridos a través de un único o un reducido grupo de proveedores capaces de suplir la mayor cantidad o grupos dentro de esta lista. También es conocido como *Sourcing Group*.

Comité o Equipo Evaluador: significa el comité designado por el Jefe de la División de Suministros para evaluar y seleccionar las Personas, Organizaciones y Proponentes cualificados y a su vez establecer y negociar los términos y condiciones que considere apropiados para el Contrato o Acuerdo de Compras correspondiente. Este comité será presidido por el Jefe de Subdivisión de Compras, Gerente del Departamento de Compras, Logística y Administración o alguno de los Supervisores de Compras Principal a quien se le delegue el proceso. La constitución de este varía con respecto al tipo, naturaleza o complejidad del bien o servicio adquirido. La Autoridad se reserva el derecho de asignar y contratar consultores externos para reforzar, asesorar y dirigir este comité.

Concepto Financiero Alternativo (CFA): significa una petición de la Autoridad para permitir que los Proponentes incorporen creatividad e innovaciones financieras en sus Propuestas.

Concepto Técnico Alternativo (CTA): significa una petición de la Autoridad para permitir que los Proponentes incorporen creatividad e innovaciones técnicas en sus Propuestas.

Conferencia con Antelación a la Propuesta: significa una reunión, conferencia telefónica o conferencia vía web, previa a la fecha límite de entrega de una Solicitud de Cualificaciones y/o Solicitud de Propuestas, donde se invitan a todas las Personas que se hayan registrado con la Autoridad como Proponentes potenciales a participar, hacer preguntas y pedir aclaraciones relacionadas a la Solicitud de Cualificaciones y/o Solicitud de Propuestas, disponiéndose, que la Autoridad podrá llevar a cabo reuniones individuales cuando las preguntas o aclaraciones solicitadas por una Persona u ente jurídico, que se relacionen a información propietaria o confidencial a ser presentada como CFA o CTA o un proceso similar llevado a cabo por la Autoridad.

Consolidación: La reducción o eliminación de códigos o segregación de artículos en existencias e inventario asociado. Este enfoque será utilizado en un esfuerzo para reducir artículos duplicados o en conjunción con *el programa de estandarización de productos y preparación de kits*.

Contrato o Acuerdo de Compras: significa un contrato o acuerdo el cual es otorgado entre el Proponente Seleccionado y la Autoridad para establecer una relación comercial de “socio de negocio”, el cual puede incluir, pero no se limitará a, la delegación de una función, la administración o prestación de uno o más servicios, o el diseño, construcción, financiamiento, mantenimiento u operación de una o más instalaciones u operaciones, que sean o estén estrechamente relacionados, con las operaciones o Proyectos Prioritarios, según establecidos en el Plan Estratégico Corporativo o cualquier otro plan operacional adoptado por la Autoridad de energía eléctrica. Un Contrato o Acuerdo de Compras por alianza o socio de negocios *partnership* puede ser, sin que se entienda como una limitación, cualquier modalidad de los siguientes tipos de contratos: “integración de cadenas de suministros”, “contratos de suplidos del tipo *Sourcing*”, “administración y operación de cadenas de suministros”, “diseño / construcción (*design / build*)”, “diseño / construcción / operación (*design / build / operate*)”, “diseño / construcción / financiamiento / operación (*design / build / finance / operate*)”, “diseño / construcción / transferencia / operación (*design / build / transfer / operate*)”, “diseño / construcción / operación / transferencia (*design / build / operate / transfer*)”, contrato de llave en mano (*turnkey*), contrato de arrendamiento a largo plazo, contrato de derecho de superficie, contrato de concesión administrativa, contrato de empresa común (*joint venture*), contrato de administración y operación a largo plazo, acuerdo de concesión, contrato de pre-desarrollo y cualquier otro tipo de contrato que separe o combine las fases de diseño, construcción, financiamiento, operación o mantenimiento de los Proyectos Prioritarios y las operaciones generales de la empresa.

Contratista: Proponente seleccionado a partir del proceso de solicitud de propuesta o convocatoria.

Criterios de Evaluación: criterios adoptados por el Comité o Equipo Evaluador, a su discreción, que se utilizarán para evaluar, clasificar, seleccionar y recomendar Propuestas para el rechazo o adjudicación de las mismas. Los Criterios de Evaluación incluirán los criterios enumerados para cada Solicitud de Propuesta o RFP específico, sin que ello se interprete como una limitación o se presuma que su orden define su importancia, en la medida en que sean aplicables a un Proponente potencial o a una Propuesta, y aquellos criterios adicionales incluidos en una Solicitud de Propuestas o en esta guía.

Daños consecuentes: Lesión o daño que no se produce directa e inmediatamente como resultado de un acto de una de las partes en el contrato o acuerdo, sino sólo de algunos de los resultados de dicho acto, y que es compensable por una cantidad económica/monetaria después de una sentencia dictada a partir de un juicio emitido por un foro o judicatura con competencia en el campo. Surge en perjuicio de la interposición de circunstancias especiales e impredecibles. Es el daño a una persona o propiedad como resultado directo de cualquier incumplimiento de garantía o de una declaración falsa de hechos, relativa a la calidad o naturaleza de los bienes vendidos y hecha por el vendedor para inducir la venta e invocada por el comprador.

Día laborable: significa un día que no sea sábado, domingo o un día en que las instituciones bancarias en Puerto Rico estén autorizadas o permitidas bajo la ley aplicable a cerrar al público.

Jefe de la División de Suministros: significa el Jefe de la División de Suministros de la Autoridad o, en ausencia del nombramiento de éste, la persona que actúe como Agente Contratante o Jefe de División de Suministros de la Autoridad; esto para los propósitos de formalizar y firmar contratos.

ELA: significa el Estado Libre Asociado de Puerto Rico.

Entidad Gubernamental: significa cualquier departamento, agencia, junta, comisión, cuerpo, negociado, oficina, Entidad Municipal, corporación pública o instrumentalidad de la Rama Ejecutiva del ELA, así como de su Rama Judicial y de su Rama Legislativa, actualmente existente o que en el futuro se creare.

Escrito o por escrito: significa cualquier expresión que consista de palabras o cifras que se pueda leer, reproducir y que se pueda comunicar posteriormente, y puede incluir información transmitida y almacenada por medios electrónicos.

Estudio de Deseabilidad y Conveniencia: significa un estudio de la deseabilidad y conveniencia de un Proyecto, realizado o comisionado por la Autoridad, con o sin la asistencia del Banco.

Fianza de Propuesta: significa una fianza, garantía u otro tipo de garantía financiera presentada en moneda legal de los Estados Unidos de América, cheque certificado o giro postal pagadero a la Autoridad, o mediante carta de crédito, fianza o garantía emitida por un banco o institución financiera aceptable para la Autoridad (que en el caso de una compañía de fianzas o seguros, tiene que estar autorizada a emitir fianzas en el ELA), que se requiera que el Proponente entregue junto a su Propuesta, para asegurar el cumplimiento del Proponente con los requisitos de la Ley, esta guía y los términos de la Solicitud de Propuestas correspondiente y asegurar la firma del Contrato o Acuerdo de Compras por parte del Proponente de ser seleccionado para la Adjudicación del Contrato o Acuerdo de Compras. El monto, día de entrega y las condiciones para la devolución, si alguna, de la Fianza de Propuesta (cuando aplique) a cada Proyecto se determinará por la Autoridad y se especificará en la Solicitud de Propuestas correspondiente.

Función(es): significa cualquier responsabilidad u operación actual o futura de un oficial de la Autoridad, expresamente delegado a él o ella, ya sea mediante designación, asignación o instrucción, que esté estrechamente relacionada a las operaciones de la empresa y a los Proyectos Prioritarios, según establecidos en el Plan Estratégico de la AEE.

Inventario a Consignación: Inventario propiedad del proveedor o proveedores, el cual es adquirido y mantenido a costo exclusivo del proveedor para uso de la Autoridad. El inventario no será pagado por adelantado por parte de la Autoridad y el mismo no entrará en los libros financieros hasta que sea recibido y aceptado en las instalaciones de la Autoridad por un funcionario o personal autorizado.

Instalación(es): significa cualquier propiedad, obra capital o instalación de uso público, ya sea mueble o inmueble, existente en la actualidad o a ser desarrollada en el futuro, incluyendo, sin que se entienda como una limitación, los sistemas de acueductos y alcantarillados, incluyendo todas las plantas, represas y sistemas para almacenar, suplir, tratar y distribuir agua, sistemas de tratamiento, recolección y eliminación de aguas pluviales y de albañal, mejoras que sean financiadas bajo las disposiciones de la Ley Federal de Agua Limpia y de la Ley Federal de Agua Potable o cualquier otra legislación o reglamento federal similar o relacionado, sistemas de recogido, transportación, manejo y eliminación de desperdicios sólidos no peligrosos y peligrosos, sistemas de recuperación de recursos, sistemas de producción, transmisión o distribución de energía eléctrica, autopistas, carreteras, paseos peatonales, estacionamientos, aeropuertos, centros de convenciones, puentes, puertos marítimos o aéreos, túneles, sistemas de transportación, incluyendo los de transportación colectiva, sistemas de comunicación, incluyendo teléfonos, sistemas de informática y tecnología, instalaciones industriales, vivienda

pública, instituciones correccionales y toda clase de instalaciones de infraestructura turística, de salud y de agroindustria u otros bienes similares.

Ley: significa la Ley de la Autoridad de Energía Eléctrica, Ley Núm. 83, aprobada el 2 de mayo de 1941, según sea enmendada de tiempo en tiempo.

Parte Restringida: significa aquellas partes descritas en la Sección 4.18 de esta guía a las cuales se les ha prohibido participar en un proceso de Solicitud de Propuestas para un Proyecto en particular.

Persona: significa cualquier persona natural o jurídica organizada bajo las leyes del ELA, de Estados Unidos de América, de cualquiera de sus estados o territorios, o de cualquier país extranjero, cualquier agencia federal o cualquier combinación de las anteriores. El término incluirá cualquier departamento, agencia, Entidad Municipal, instrumentalidad gubernamental, cualquier individuo, firma, sociedad, compañía por acciones, asociación, corporación pública o privada, cooperativa o entidad sin fines de lucro que esté debidamente constituida y autorizada bajo las leyes del ELA, o de Estados Unidos de América, o cualquiera de sus estados o territorios.

Proponente: significa cualquier persona (que no sea una Entidad Gubernamental), o sus entidades afiliadas o relacionadas, que haya presentado una propuesta para entrar en el proceso de RFP, con la salvedad de que para propósitos de esta guía, el término “Proponente” también incluirá a Personas (que no sean una Entidad Gubernamental) que: (i) cumplan con los términos de la Solicitud de Cualificaciones o de la Solicitud de Propuestas; (ii) estén calificadas por la Autoridad y negocien un Contrato o Acuerdo de Compras. Con la Autoridad en los casos enunciados en el Reglamento de Selección y Adjudicación; ó (iii) sometan una Propuesta de conformidad con la Sección 4.12 de esta guía.

Proponente Seleccionado: significa la Persona o consorcio seleccionado para la Adjudicación de un Contrato o Acuerdo de Precios con la Autoridad de acuerdo a los criterios especificados en la Solicitud de Propuestas.

Propuesta: significa una documento escrito con relación a un proceso específico y único, hecha por un Proponente: (i) como respuesta a una Solicitud de Propuestas; (ii) conforme al Reglamento de Selección y Adjudicación; ó (iii) una propuesta escrita no solicitada, sometida por una Persona a la Autoridad sujeta a la Sección 4.12 de esta guía.

Proyecto: significa cualquier proceso de Solicitud de Propuesta o RFP para ofrecer bienes y servicios para la operación de la Autoridad o para el desarrollo de algún Proyecto Prioritario o un proyecto relacionado a una Función, Instalación o Servicio que, basado en una determinación por la

Autoridad a través de la División de Suministros, determine que es adecuado para un proceso de RFP, después de haberse considerado el Estudio de Deseabilidad y Conveniencia correspondiente o que fuera producto de la recomendación y análisis de informes o estudios realizados por compañías consultoras contratadas por la Autoridad de Energía Eléctrica.

Proyecto Prioritario: significa una iniciativa elaborada por la Autoridad, revestida de preeminencia, que tiene como fin la realización y ejecución de una obra de alto interés para la empresa, así como para el desarrollo táctico y estratégico de la economía de Puerto Rico.

Representante Autorizado: significa el Jefe de División de Suministros o el o los individuos designados bajo las Secciones 5.1(c) y 5.1(e) de esta guía y delegados por el Agente Contratante para negociar con los Proponentes a nombre de la Autoridad.

Servicio: significa cualquier servicio prestado o a ser prestado por la Autoridad destinado a velar por los intereses o satisfacer las necesidades de los clientes, ya sea bajo las disposiciones de su ley orgánica u otras leyes especiales, que sean o estén estrechamente relacionados con las operaciones o los Proyectos Prioritarios, según establecidos en la Ley.

Solicitud de Aclaración: significa una solicitud presentada por un Proponente a la Autoridad pidiendo la aclaración, explicación o interpretación de cualquier materia contenida en una Solicitud de Propuestas, según descrito en la Sección 4.7 de esta guía (conocida en inglés como *Request for Clarification*).

Solicitud de Cualificaciones: significa el documento que la Autoridad prepara, publica y distribuye en forma electrónica o física, mediante el cual le solicita a Proponentes potenciales que sometan sus cualificaciones para participar en un proceso de licitación mediante Solicitud de Propuestas (conocida en inglés como *Request for Qualifications* o *Survey*).

Solicitud de Expresión de Interés: significa un proceso de estudio de mercado que podría ser utilizado por la Autoridad para medir el interés sobre un proyecto o solución, según las disposiciones de la Sección 4.3 de esta guía (conocida en inglés como *Request for Expression of Interest*).

Solicitud de Información: significa un proceso de estudio de mercado que podría ser utilizado por la Autoridad para medir el interés sobre un proyecto, modelo de negocio o una solución, según las disposiciones de la Sección 4.3 de esta guía (conocida en inglés como *Request for Information*).

Solicitud de Propuestas: significa el documento que la Autoridad prepara, publica y distribuye, conforme a la Sección 4 de esta guía, para solicitar

Propuestas vinculadas a un posible contrato o acuerdo de compras o a una parte de la misma, según se enmiende o suplemente de tiempo en tiempo (conocida en inglés como *Request for Proposals*).

SECCIÓN 3- COMITÉ O EQUIPO EVALUADOR

3.1 Composición y Responsabilidades del Comité o Equipo Evaluador. El Director Ejecutivo (cuando así se requiera por Resolución de la Junta de Gobierno) o Jefe de la División de Suministros para los procesos regulares que no requieren la aprobación de la Junta de Gobierno, nombrará un Comité o Equipo Evaluador constituido por un mínimo de tres (3) miembros para cada RFP para asistir con la selección de Proponentes y con la negociación de los términos del Contrato o Acuerdo de Compras correspondiente. Los miembros de cada Comité o Equipo Evaluador se designarán conforme a la complejidad y nivel técnico del proceso. La Autoridad se reserva el derecho de contratar consultores y asesores que asistan y complementen los miembros de este comité. Aunque el mínimo de miembros será de 3, la Autoridad se reserva el derecho de añadir miembros a su composición de manera que se satisfagan las necesidades y se asegure la equidad y transparencia en la evaluación de procesos sin incrementar los costos o complejidad de estos. La composición de este comité nunca podrá ser menor de 3 miembros.

El Comité o Equipo Evaluador estará integrado como mínimo por:

- (a) el Jefe de División de Suministros y/o su delegado o delegada;
- (b) el funcionario designado por el Directorado o la División con inherencia directa en el proyecto o su delegado o delegada; (En el caso de contratos del tipo *Sourcing*, el Jefe de División de Suministros se reserva el derecho de asignar un Supervisor de Compras Principal en adición al delegado que estará presidiendo el Comité);
- (c) uno o más especialistas en cualquiera de las áreas técnicas de mayor competencia y relevancia para el proyecto. Estos tienen que tener vasta experiencia en el campo o *expertise* que representan, así como el apoderamiento o la delegación de autoridad para la toma de decisiones finales, firmes y responsables.

El Comité o Equipo Evaluador realizará las funciones en forma autónoma, independiente, sin intervención externa de índole alguna, democrática y en estricta confidencialidad. Aun así, el Jefe de la División de Suministros tiene la autoridad, responsabilidad y discreción para remover a cualquier miembro de un Comité o Equipo Evaluador y realizar nombramientos nuevos a un Comité o Equipo Evaluador, en la medida en que dicha remoción y/o nombramiento se realice salvaguardando los mejores intereses de la Autoridad, confidencialidad,

transparencia, calidad y cumplimiento con los itinerarios establecidos para el proceso.

El Comité o Equipo Evaluador tendrá las siguientes funciones y responsabilidades:

- (a) aprobar los documentos que requiera el proceso de Solicitud de Cualificaciones, Solicitud de Propuestas, evaluación y selección;
- (b) evaluar los Contratantes potenciales y pre-cualificar los que sean aptos para participar como Proponentes;
- (c) evaluar las Propuestas sometidas y seleccionar la mejor o las mejores, en cada caso, de conformidad con los requisitos que dispone esta guía;
- (d) llevar a cabo o supervisar la negociación de los términos y condiciones del Contrato o Acuerdo de Compras;
- (e) contratar, a nombre de la Autoridad, asesores, peritos o consultores con los conocimientos y pericia necesarios para asistir al Comité o Equipo Evaluador y a la Autoridad en el descargo adecuado de sus funciones;
- (f) mantener un registro electrónico de actas y reuniones en la plataforma electrónica de publicaciones;
- (g) preparar un informe final de cierre sobre todo el proceso conducente a la otorgación y establecimiento del o los contratos o acuerdos de compras;
- (h) velar por el cumplimiento adecuado con las leyes, reglamentos, políticas y reglamentos establecidos para la negociación y adjudicación de los Contratos o Acuerdos de Compras;
- (i) en aquellos casos que se entienda conveniente, el Comité o Equipo Evaluador podrá establecer uno o varios sub comités técnicos de evaluación para proveer asesoría y ayuda técnica o especializada al Comité o Equipo Evaluador; y
- (j) realizar cualquier tarea adicional relacionada al proceso de selección, negociación y adjudicación que dispone esta guía, según le requiera la Autoridad.

3.2 Reuniones del Comité o Equipo Evaluador - El Comité o Equipo Evaluador se reunirá con la frecuencia y en la cantidad que sea necesario y según se establezca por el Jefe de la División de Suministros. Esto para el descargue de sus funciones y responsabilidades según establecidas en esta guía y los *By Laws* de la Autoridad. Salvo se disponga lo contrario por la Autoridad, el Jefe de

División de Suministros o su delegado autorizado en el Comité o Equipo Evaluador dirigirá el comité evaluador. El líder del Comité Evaluador podrá designar a un Secretario, el cual no tiene que ser miembro del Comité o Equipo Evaluador, y puede designar a cualquier otro miembro del Comité o Equipo Evaluador para que en su ausencia dirigirá el comité. El líder del Comité o Equipo Evaluador, o en su ausencia, el miembro designado por el Líder, convocará a los miembros y dirigirá todas las reuniones del Comité o Equipo Evaluador, establecerá la frecuencia y duración de las reuniones y la agenda de los asuntos a tratarse en cada reunión. El líder se asegurará de que la agenda para cada reunión y, en la medida que sea posible, todos los documentos clave a considerarse en la reunión sean circulados entre todos los otros miembros del comité previo a la reunión. Se requerirá que haya quórum de al menos dos terceras partes de los miembros del Comité Evaluador o Sub-comités de Negociación, en todas las reuniones en que se vayan a tomar decisiones finales con respecto a la selección de Proponentes y la Adjudicación de Contratos o Acuerdos de Compras, así como la aprobación de cualquier otra acción oficial del Comité o Equipo Evaluador. Los miembros podrán participar en cualquier reunión mediante conferencia telefónica, conferencia web o vídeo conferencia. No será requisito realizar reuniones presenciales. En aquellos casos donde uno o varios miembros se abstengan en las votaciones o la firma de documentos o informes finales, estos tienen que establecer y estipular por escrito en el documento o informe las razones para su abstención.

- 3.3 Acciones del Comité o Equipo Evaluador** - Habrá quórum en una reunión del Comité o Equipo Evaluador únicamente si dos terceras partes de sus miembros están presentes. Una vez un integrante esté presente en una reunión, para cualquier propósito que no sea únicamente objetar que se realice la reunión o que se tomen decisiones en la reunión, durante el resto de la reunión el miembro se considerará presente para propósitos de quórum y de clausura de esa reunión. Las recomendaciones y aprobaciones del Comité o Equipo Evaluador requerirán el voto afirmativo de un mínimo de dos terceras partes de los miembros presentes en una reunión debidamente constituida en la cual haya quórum. El Comité o Equipo Evaluador podrá actuar sin realizar una reunión siempre y cuando dicha actuación haya sido aprobada por escrito por todos los miembros del Comité o Equipo Evaluador. El Comité o Equipo Evaluador proveerá al Jefe de División de Suministros recomendaciones no vinculantes con respecto a la selección de cualquier Proponente, la evaluación de cualquier Propuesta, y el establecimiento de una solución.

El Comité o Equipo Evaluador mantendrá un récord por escrito de sus decisiones y recomendaciones, al igual que de otras actuaciones del Comité o Equipo Evaluador. Todas las minutas, agendas, comunicaciones o documentos generados durante los eventos de publicaciones y su posterior adjudicación tienen que formar parte del expediente electrónico del caso en el portal

electrónico de publicaciones y posteriormente en la orden o contrato electrónico en el sistema de ERP de la Autoridad.

El Secretario del Comité o Equipo Evaluador mantendrá un récord de cada reunión, custodiará el calendario del Comité o Equipo Evaluador y realizará cualquier otra tarea relacionada a su puesto, según lo requiera el presidente de dicho comité.

Todos los miembros del Comité o Equipo Evaluador tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.

- 3.4 Subcomités del Comité o Equipo Evaluador.** El Comité o Equipo Evaluador, a su discreción, puede nombrar uno o más subcomités del Comité o Equipo Evaluador para proveer asistencia técnica o especializada y asesorar al Comité o Equipo Evaluador en el proceso de evaluar Proponentes potenciales y Propuestas, y negociar los términos de los Contratos o Acuerdos de Compras. Cada subcomité tendrá las responsabilidades y realizará los trabajos según sea instruido por el Comité o Equipo Evaluador. Todos los miembros de subcomités tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.
- 3.5 Asesores de la Autoridad y del Comité o Equipo Evaluador.** El Jefe de División de Suministros podrá nombrar empleados de la Autoridad o contratar consultores, asesores o agentes para asistir a la Autoridad y al Comité o Equipo Evaluador en la evaluación de las Propuestas, al igual que en el proceso de selección y negociación de los RFP, o proveer cualquier otra asistencia que se estime necesaria o apropiada en relación con la Adjudicación del Contrato o Acuerdo de Compras, incluyendo participar como miembro sin voto de los subcomités del Comité o Equipo Evaluador. Los individuos o entidades que provean dicha asistencia deberán satisfacer las guías de ética y conflictos de intereses adoptados de tiempo en tiempo por la Autoridad y podrán participar en el proceso de evaluación y negociación llevado a cabo por el Comité o Equipo Evaluador, según el Comité o Equipo Evaluador lo estime necesario. Todos los asesores tienen que firmar un Acta de Confidencialidad y No Divulgación, previo a tener acceso a cualquiera de los documentos relacionados al proceso cuando así sea requerido.
- 3.6 Responsabilidades de Supervisión.** El Comité o Equipo Evaluador garantizará al Jefe de División de Suministros y a la Autoridad que los procesos de licitación seguidos para cualquier RFP han cumplido con los procesos de licitación que se describen en el informe final emitido por el Comité o Equipo Evaluador. Las responsabilidades de supervisión del Comité o Equipo Evaluador estarán limitadas a los siguientes asuntos que se describirán en el informe: la totalidad

del proceso que lleve al establecimiento de un contrato o acuerdo de compras (detalles del proceso de pre-cualificación de Proponentes adecuados, del proceso de Solicitud de Propuestas, y de la selección de la Propuesta y el Proponente seleccionado); las razones por las cuales un Proponente en particular fue seleccionado; un resumen de los aspectos más importantes del Contrato o Acuerdo de Compras; una copia del Estudio de Deseabilidad y Conveniencia (cuando aplique); y una descripción de los objetivos empresariales y las metas económicas de los Contratos o Acuerdos de Compras.

SECCIÓN-4 PROPUESTAS

4.1 Identificación de Proyectos, Modelos de Negocio o Soluciones - La Autoridad seleccionará, evaluará y establecerá la prioridad de los Proyectos, Modelos de Negocio o Soluciones a ser establecidos bajo el modelo de contratos del tipo estratégico *Sourcing*, Acuerdos de Compras o cualquier otro tipo de servicio o integración de cadenas de suministros.

4.2 Estudio de Deseabilidad y Conveniencia - Para establecer que un Proyecto, Solución o Modelo de Negocio en particular satisfaga la política pública y cumpla con las metas económicas establecidas, el Jefe de División de Suministros podrá realizar o comisionar un Estudio de Deseabilidad y Conveniencia para cada Proyecto seleccionado por la Autoridad para ser procesado como una Solicitud de Propuesta- RFP. El Jefe de División de Suministros determinará el alcance y necesidad de cada estudio de este tipo de acuerdo a los hechos y circunstancias particulares de cada Proyecto, Modelo de Negocio o Solución bajo consideración para un proceso de RFP.

Luego de haberse completado un análisis ponderado del caso o el Estudio de Deseabilidad y Conveniencia y donde el Jefe de División de Suministros haya determinado que es conveniente y pertinente promover el uso de un RFP para un Proyecto, éste asignará un Comité o Equipo Evaluador, según dispuesto en la Sección 3.1 de esta guía. El Comité o Equipo Evaluador tendrá los poderes conferidos por esta guía.

4.3 Proceso de Estudios de Mercado - En relación con la identificación de Proyectos, Modelos de Negocios y Soluciones y previo al comienzo del proceso de Selección de Propuestas, la Autoridad podrá solicitar sugerencias y comentarios de participantes en el mercado para determinar la mejor manera de seleccionar Proyectos viables y comercializables mediante:

- (i) la realización de una Solicitud de Información (RFI);
- (ii) la emisión de una Solicitud de Expresión de Interés (RFEI); o

- (iii) la utilización de cualquier otro método apropiado para recopilar información de los participantes en el mercado; en forma electrónica.

La Autoridad podrá publicar guías generales con respecto a cómo se llevará a cabo una Solicitud de Información o una Solicitud de Expresión de Interés y cómo la Autoridad utilizará cualquier información obtenida durante dicho proceso. Cualquier información obtenida por la Autoridad mediante una Solicitud de Información o Solicitud de Expresión de Interés estará sujeta a las disposiciones de **confidencialidad** contenidas en la Sección 9.3 de esta guía, en la medida que sea aplicable.

4.4 Cualificación de Proponentes - La Autoridad podrá emitir una Solicitud de Cualificaciones para un RFP únicamente luego de haber determinado que: (i) el Proyecto, Modelo de Negocio o Solución cumple con los requisitos establecidos por la Autoridad y es recomendable el uso de un proceso de RFP con respecto a un Proyecto, Modelo de Negocio o Solución.

Previo a la publicación de una Solicitud de Propuestas o según lo requiera la Autoridad, el Comité o Equipo Evaluador podrá llevar a cabo un proceso de Solicitud de Cualificaciones para identificar los Proponentes potenciales que satisfagan unos parámetros mínimos de: (i) condición financiera; y/o (ii) capacidad y experiencia técnica o profesional. Cualquier parámetro mínimo se especificará en la Solicitud de Cualificaciones y guardará relación y proporción a la materia del Contrato de o Acuerdo de Compras propuesto. El Comité o Equipo Evaluador puede, además de dichos parámetros mínimos, incluir otros requisitos de cualificación en la Solicitud de Cualificaciones y solicitar información sobre un Proponente potencial, incluyendo incumplimientos anteriores, quiebras o litigios pertinentes.

La Solicitud de Cualificaciones será publicada por medio de un anuncio electrónico en la página WEB de la Autoridad (www.aeepr.com) y a través de comunicación directa a los suplidores segmentados en la o las categorías a ser trabajadas. Esto, según los estándares para la Solicitud de Propuestas expuestos en las secciones 4.5 y 4.6 de esta guía, en la medida que sean aplicables. La Autoridad se reserva el derecho de utilizar su experiencia de negocio y de mercado para el envío de invitaciones a potenciales participantes, así como la divulgación a través de medios de comunicación masiva o a segmentos industriales específicos a través del internet.

Los consorcios y otros Proponentes que tengan la intención de someter Propuestas en conjunto tendrán que cumplir con los requisitos establecidos por la Autoridad para el Registro y Certificación de Compañía, de esta guía y cualquier otro requisito especificado por la Autoridad en la Solicitud de Cualificaciones.

Un Proponente podrá solicitar a la Autoridad la aclaración, explicación o interpretación de cualquier asunto dentro de la Solicitud de Cualificaciones hasta un máximo de quince (15) días calendario (o cualquier período mayor o menor, según se especifique en la Solicitud de Cualificaciones) antes de la fecha de vencimiento para la información especificada en la Solicitud de Cualificaciones. Cualquier solicitud de los Proponentes deberá ser por escrito. Si la Autoridad proveyera cualquier aclaración como resultado de una Solicitud de Cualificaciones, dicha aclaración será por medio de mensajería electrónica disponible a través del portal electrónico y enviado a todos los Proponentes potenciales con por lo menos tres (3) días calendario de anterioridad a la fecha de vencimiento de la información requerida por la Solicitud de Cualificaciones. Estos tiempos podrán ser menores a tres (3) días calendario cuando los mismos así sean notificados al inicio del proceso. Esto podrá ocurrir en aquellos proyectos que por lo crítico, impactante o complejo del mismo, necesita manejarse en itinerarios de tiempo agresivos, para así salvaguardar los mejores intereses de la Autoridad.

La meta de la etapa de Solicitud de Cualificaciones es ayudar al Comité o Equipo Evaluador a crear una lista corta *short list* de los Proponentes mejor cualificados. Por lo tanto, el Comité o Equipo Evaluador, al evaluar las cualificaciones de un Proponente potencial, puede descalificar a un Proponente potencial, con lo cual excluiría a dicho Proponente potencial del proceso de Solicitud de Propuestas, sólo si el Proponente potencial (i) puede ser tratado como inelegible para someter una Propuesta por una o más de las razones especificadas en la Sección 6 de esta guía; (ii) no cumple con los parámetros mínimos de **condición o riesgo financiero**, o capacidad y experiencia técnica o profesional establecidos por la Autoridad en la Solicitud de Cualificaciones.

El Comité o Equipo Evaluador se reserva el derecho de cualificar a un número limitado de Proponentes potenciales con el propósito de formular una lista corta para un Proyecto en particular si dicho derecho a realizar una lista corta se incluye en la Solicitud de Cualificaciones o en la Solicitud de Propuestas.

Si el Comité o Equipo Evaluador decide no emitir una Solicitud de Cualificaciones antes de publicar una Solicitud de Propuestas para cualquier Proyecto, el Comité o Equipo Evaluador realizará la evaluación de las cualificaciones de los Proponentes como parte del proceso de Solicitud de Propuestas, de conformidad con los requisitos de cualificaciones contenidos en la Solicitud de Propuestas y las secciones 5 y 6 de esta guía. Si se ha realizado un proceso de Solicitud de Cualificaciones para un Proyecto en particular que cumple con los requisitos de las secciones 4.5 y 4.6 de esta guía, el proceso de Solicitud de Propuestas se podrá modificar, según corresponda.

Un Proponente que ha sido cualificado de acuerdo a una Solicitud de Cualificaciones no tendrá derecho a indemnización (incluyendo, pero sin limitarse a, reembolso de gastos) por parte de la Autoridad si la Autoridad decide, a su discreción, terminar el proceso de licitación de un RFP en cualquier momento o etapa.

4.5 Aviso Solicitud de Propuestas - La Autoridad solo podrá emitir una Solicitud de Propuestas para un RFP luego de haber evaluado y determinado que es recomendable el desarrollo de un RFP con respecto a un Proyecto. Excepto en los casos descritos en la Sección 4.12 de esta guía o cuando una Solicitud de Cualificaciones anterior, relacionada al Proyecto, se haya efectuado por medio de avisos electrónicos a las compañías ya registradas, activas y clasificadas bajo los grupos o categorías de compras y servicios que se estarán solicitando. La Autoridad se reserva el derecho de realizar anuncios públicos a través de periódicos o revistas locales, así como en publicaciones, revistas y portales cibernéticos dedicados a la venta y promoción de artículos, servicios o soluciones iguales o similares a las solicitadas en el RFP. La Autoridad también puede utilizar aquellos otros métodos y procesos, incluyendo otros medios de comunicación electrónica, que estime aconsejables para divulgar la Solicitud de Propuestas.

El Comité o Equipo Evaluador también puede solicitar Propuestas directamente de Proponentes potenciales a través de un aviso de Solicitud de Propuestas si entiende que tales entidades pueden estar cualificadas de una manera única para participar en un RFP en específico siempre que la Autoridad haya primero o en forma simultánea publicado tal aviso o notificación de Solicitud de Propuestas, según lo descrito en esta Sección 4.5.

Esta Sección 4.5 no aplicará a ningún Proyecto, Modelo de Negocio o Solución para el cual se haya comenzado una Solicitud de Cualificaciones. En el caso de que se haya comenzado una Solicitud de Cualificaciones, la Autoridad podrá, a su discreción, distribuir una Solicitud de Propuestas y adenda relacionada a aquellos Proponentes cualificados mediante el proceso de Solicitud de Cualificaciones.

4.6 Contenido de la Solicitud de Propuestas - La Solicitud de Propuestas incluirá los siguientes elementos, sin que se interprete como una limitación o se asuma que el orden define su importancia, a menos que la Autoridad o el Comité o Equipo Evaluador, a su discreción, aprueben lo contrario:

- (a) una descripción del Proyecto, Modelo de Negocio, Solución o adquisición estratégica que se desarrollará.
- (b) una descripción y el itinerario *timeline* propuesto para el proceso de selección; lo cual pudiera incluir una evaluación inicial de los aspectos técnicos de la Propuesta;

- (c) instrucciones respecto al formato, plataforma electrónica utilizada por la Autoridad para la Solicitud de Propuesta o cualquier otra especificación técnica en que se deben someter las Propuestas, en la medida en que éstas difieran de las instrucciones provistas en la Sección 4.8 de esta guía, y la información y materiales mínimos que se deben someter para que la Propuesta se considere completa. Mientras sea posible, la publicación de Solicitudes de Precio o RFP se realizarán a través del portal especializado de la Autoridad para procesos de adquisiciones o mejor conocidos en inglés como *PowerAdvocate® Sourcing Portal*;
- (d) si aplica, un bosquejo del proceso independiente de evaluación y cumplimiento ambiental, el cual puede incluir requisitos de que (i) cualquier mejora tenga que cumplir con los términos y condiciones de la evaluación ambiental, y (ii) el reembolso por cualquier trabajo preliminar, realizado por y a costo del Proponente, sea contingente a que se complete el proceso de evaluación ambiental y cualquier disposición específica incluida en el Contrato o Acuerdo de Compras que se otorgue;
- (e) una petición de la Autoridad para permitir que los Proponentes puedan someter, antes de la Propuesta, un Concepto Técnico Alternativo (CTA) y/o Concepto Financiero Alternativo (CFA) para que los Proponentes puedan incorporar innovaciones técnicas y financieras, y creatividad, en sus Propuestas. **El CTA y/o CFA será confidencial y no podrá ser compartido con otros Proponentes.** Este método permitirá al Comité o Equipo Evaluador analizar y considerar los CTAs y/o CFAs de los Proponentes que hayan sido sometidos con tiempo al tomar la decisión de selección, para evitar demoras y potenciales conflictos en el plan que puedan estar relacionados con la posposición del análisis de los CTAs y/o CFAs al período posterior a la adjudicación, y en última instancia, para obtener el mejor y más alto valor para la Autoridad y sus clientes;
- (f) una declaración sobre el tipo de proceso de selección a ser utilizado por la Autoridad en relación con el RFP propuesto;
- (g) los Criterios de Evaluación mínimos aplicables, incluyendo los criterios de selección y/o ponderación para adjudicar un Contrato o Acuerdo de Compras, que serán utilizados al evaluar a los Proponentes, si no se ha emitido anteriormente una Solicitud de Cualificaciones relacionada, incluyendo cualquier capacidad o Propuestas;
- (h) cualquier Fianza de Propuesta aplicable establecida por la Autoridad;
- (i) si aplica, una declaración respecto a cualquier contingencia de financiamiento u otras condiciones, contingencias, aprobaciones,

autorizaciones o certificaciones que se requieran para adjudicar o firmar un Contrato o Acuerdo de Compras;

- (j) fecha y hora de vencimiento para someter Propuestas y el lugar al que las mismas deberán ser sometidas;
- (k) el punto de contacto (POC) designado en la Autoridad o su delegado o delegada;
- (l) cualquier otro término y condición aplicable que le puedan ser útiles a, o que deban ser exigidos de, los Proponentes, según lo determine la Autoridad o el Comité o Equipo Evaluador;
- (m) una cláusula mencionando que ninguno de los Proponentes ni miembros de su equipo, discutirán o se comunicarán, directa o indirectamente, con cualquier otro Proponente, o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier miembro del equipo de cualquier otro Proponente, en cuanto a la preparación, contenido o representación de sus Propuestas. Las Propuestas serán sometidas sin ninguna conexión (por ejemplo, que surja de un interés en o de un Proponente o miembro del equipo de un Proponente), conocimiento, comparación de información, o arreglo, con cualquier otro Proponente o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier miembro del equipo de cualquier otro Proponente. Para asegurar esto, todos los proponentes potenciales tienen que firmar y aceptar un Acuerdo de Confidencialidad, previo a tener acceso a cualesquiera de los documentos que han sido seleccionados para ser protegidos a través del acuerdo de confidencialidad. La violación de los acuerdos e instrucciones incluidas en este inciso, serán causa suficiente para la expulsión definitiva del proceso. La AEE también se reserva el derecho separar y eliminar a la compañía en forma definitiva del Registro de Suplidores; esto en adición a las sanciones legales y financieras a las cuales se puede exponer como resultado de una o varias de las violaciones aquí contenidas;
- (o) una cláusula indicando expresamente que la Solicitud de Propuestas podrá ser enmendada mediante la publicación de adenda; y
- (p) un requisito de que cada Proponente o miembro de un consorcio certifique que se ha cumplido con los requisitos de la Sección 4.17 de esta guía en la forma proscrita por la Autoridad.

4.7 Solicitud de Aclaración - Los Proponentes pueden solicitar cualquier aclaración, explicación o interpretación de una Solicitud de Propuestas sólo según se dispone en esta sección.

Después de emitirse una Solicitud de Propuestas, un Proponente podrá solicitar una o más Solicitudes de Aclaración hasta un máximo de quince (15) días calendario (o la cantidad, ya sea menor o mayor, de días, según se especifique en la Solicitud de Propuestas); antes de la fecha límite para someter Propuestas especificadas en la Solicitud de Propuestas. Cualquier Solicitud de Aclaración por parte de un Proponente solo podrá hacerla por escrito y utilizando el medio de mensajería electrónica que se estipule en las instrucciones del RFP. La Autoridad ha determinado utilizar un portal electrónico especializado para la publicación de procesos de adquisiciones *PowerAdvocate® Sourcing Portal*, por lo que ninguno de los Proponentes estará autorizado a utilizar ningún otro método alternativo al aquí designado.

Los representantes de la Autoridad y/o del Comité o Equipo Evaluador también podrán participar en una o más Conferencias con Antelación a la Propuesta. En tales reuniones o conferencias, los Proponentes también pueden solicitar a la Autoridad una aclaración, explicación o interpretación de cualquier material contenido en la Solicitud de Propuestas. La Solicitud de Aclaración de los Proponentes en una Conferencia con Antelación a la Propuesta no tendrá que ser por escrito. Las conferencias se realizarán a través de medios electrónicos de video conferencias, conferencias vía web o teléfonos. La Autoridad se reserva el derecho de grabar estas conferencias para asegurar la transparencia, certeza y calidad de los procesos. En el caso que la Autoridad opte por esta opción, la misma será anunciada previo al inicio de la conferencia.

Cualquier respuesta de la Autoridad a peticiones escritas u orales de parte de Proponentes potenciales, podrá compilarse en una o más adendas que se divulgarán o circularán a todos los Proponentes potenciales que se hayan registrado con la Autoridad al menos tres (3) días calendario, antes de la fecha de vencimiento de la Propuesta establecida en la Solicitud de Propuestas. Si una o más adendas se circulan a menos de tres (3) días de la fecha de vencimiento establecida en la Solicitud de Propuestas, entonces la fecha de vencimiento de la Propuesta se entenderá cambiada a la fecha que sea tres (3) días después de la fecha en que dicha adenda se haya circulado. Sin embargo, si la Autoridad, a su discreción, identifica que una Solicitud de Aclaración o la correspondiente Respuesta a los Proponentes es de naturaleza menor o administrativa, la Autoridad podrá emitir una Respuesta a los Proponentes a menos de tres (3) días de la fecha de vencimiento de la Propuesta. No obstante lo anterior, una Solicitud de Aclaración con respecto a un CTA o CFA se tratará como confidencial y se emitirá una aclaración sólo al Proponente que la solicite.

Se advierte que la Autoridad ha establecido que las contestaciones mediante adendas serán distribuidas a través de las herramientas de mensajería electrónica disponible en el portal electrónico especializado. Esto permitirá

mayor agilidad, flexibilidad y permitirá que todos los participantes tengan la misma contestación al mismo tiempo, garantizando el envío y recibo de las mismas. A través de este medio se mantendrá un historial de fechas, tiempos, preguntas y personas que formulan las mismas, garantizando así el fiel cumplimiento con los parámetros de tiempo aquí establecidos.

Sólo las respuestas escritas provistas por la Autoridad, a través de la plataforma de publicaciones electrónicas de la Autoridad, serán oficiales. Cualquier otro tipo de comunicación con cualquier funcionario, empleado o agente de la Autoridad, el Comité o Equipo Evaluador o la Unidad de Negocio o Directorado, División, Departamento, Oficina o persona, incluyendo cualquier respuesta oral durante cualquier Conferencia con Antelación a la Propuesta, no se considerará una respuesta oficial de la Autoridad o de dicho comité.

En aquellos casos en los cuales una Solicitud de Propuestas incluya un borrador del Contrato o Acuerdo de Compras, la Solicitud de Propuestas especificará la forma en que (i) los Proponentes podrán someter comentarios o sugerencias al borrador de Contrato o Acuerdo de Compras, y la forma en que (ii) el borrador revisado del Contrato o Acuerdo de Compras, si alguno, se distribuirá a los Proponentes.

4.8 Respuesta a una Solicitud de Propuestas

(a) Fase Uno (1) – Preparación de Respuesta a una Solicitud de Propuestas.

Las Propuestas tienen que proveer una descripción precisa y concisa de la capacidad del Proponente para completar o realizar el Contrato, Acuerdo de Compras, Servicio, Modelo de Negocio y Solución. Se le dará énfasis a la claridad del contenido de la Propuesta y que la misma esté completa.

Los Proponentes serán responsables por todos los gastos directos e indirectos incurridos relacionados con el proceso de preparación de una Propuesta. Aunque la Autoridad podrá, a su discreción, aceptar Propuestas que no cumplan con todos los requisitos, a menos que la Solicitud de Propuestas estipule otra cosa, las Propuestas sometidas para ser consideradas tienen que cumplir con los siguientes requisitos:

- (i) las Propuestas estarán firmadas en tinta por un representante autorizado del Proponente cuando se solicita la entrega de los documentos en formato de papel, y el Proponente o dicho representante autorizado firmará con sus iniciales, en tinta, para confirmar cualquier alteración o corrección a la Propuesta. La Autoridad solo aceptará propuestas electrónicas las cuales solo pueden ser cargadas a través del portal electrónico de adquisiciones de la Autoridad y el cual es operado por la compañía *PowerAdvocate*®. De esta

forma se mantendrá un registro fiel y exacto con la fecha, hora, minutos, usuario y documento electrónico que ha sido cargado. La disponibilidad para ver y analizar estas Propuestas estará protegida a través de controles electrónicos que no permitirán el acceso a ningún oficial de la Autoridad o miembro del Comité o Equipo Evaluador hasta luego de pasada la fecha, hora y minutos estipulados para el cierre de recibo de Propuestas. Tampoco tendrá acceso ningún empleado externo al Comité Evaluador ya que la seguridad de acceso es por usuario. Con este método se mantendrá un historial de acceso y actividades relacionadas al uso y manejo de la información contenida en el portal;

- (ii) se someterá toda la información solicitada bajo la Solicitud de Propuestas y los formularios electrónicos incluidos en la plataforma electrónica para licitaciones. A los Proponentes que no sometan toda la información requerida por la Solicitud de Propuestas y formularios electrónicos, se les podrá brindar una oportunidad *Post Bid* de presentar rápidamente la información que falte o se les podrá dar una puntuación menor en la evaluación de su Propuesta. Aquellas Propuestas que carezcan de información esencial que sea requerida por la Solicitud de Propuestas y formularios electrónicos podrán rechazarse de plano;
- (iii) cada Propuesta tiene que incluir una tabla de contenido, que haga referencia a los requisitos por categoría y estará organizada, según requerido en la Solicitud de Propuestas correspondiente. La información que el Proponente desee presentar que no corresponda a ninguno de los requisitos de la Solicitud de Propuestas debe insertarse en un lugar apropiado o anejarse al final de la Propuesta e identificarse como material adicional. Las Propuestas que no estén organizadas de esta manera podrán ser devueltas para su revisión, a discreción de la Autoridad;
- (iv) cada Propuesta tiene que proveer una descripción completa del trabajo y suficiente información sobre el Proyecto, Modelo de Negocio o Solución para determinar si la misma satisface los Criterios de Evaluación y objetivos establecidos para el evento de RFP;
- (v) las Propuestas cargadas electrónicamente en la plataforma electrónica podrán ser cargadas en archivos separados. Estos tienen que estar claramente titulados y no se aceptarán títulos

en siglas o nombres no relacionados al contenido del documento; y

- (vi) el plan financiero del Proyecto, Modelo de Negocio o Solución incluirá suficientes detalles para permitir un análisis minucioso que revele si el modelo de financiamiento propuesto es viable. El plan financiero divulgará el nivel de financiamiento.

La Autoridad también promueve que todos los Proponentes, al preparar sus Propuestas, sigan las guías establecidas a continuación. Aunque no es requerido cumplir con estas guías, las mismas ayudarán a la Autoridad a acelerar el proceso de revisión:

- (i) Todas las páginas de la Propuesta tienen que estar enumeradas. La evaluación de las Propuestas se facilitará si las contestaciones de los Proponentes citan el número de Sección y Sub-sección correspondiente, y repiten el texto del requisito y no el texto de la Propuesta. Si una respuesta toma más de una página, el número de la pestaña y la letra correspondiente se deben repetir en la parte superior de la próxima página. Si un Proponente somete información confidencial o propietaria a la Autoridad, la información confidencial o propietaria será provista en archivos electrónicos separados para así facilitar la revisión de la información confidencial o propietaria por parte de la Autoridad o del Comité o Equipo Evaluador, según se dispone en la Sección 9.3 de esta guía; y
 - (ii) las Propuestas incluirán un resumen ejecutivo y harán referencia al número de Sección y Sub-sección correspondientes, al abordar los puntos en la Solicitud de Propuestas en lugar de repetirlos.
- (b) Fase Dos (2) – Presentación de Propuestas. Se exhorta a los Proponentes que propongan soluciones innovadoras a las necesidades de la Autoridad y sus clientes. Las Propuestas se cargarán en el portal electrónico de adquisiciones *PowerAdvocate(c) Sourcing Portal* en o antes de la fecha y hora límite para recibir Propuestas establecida en la Solicitud de Propuestas, de acuerdo con las instrucciones incluidas en la misma y, a menos que se estipule algo distinto en la Solicitud de Propuestas, cumpliendo con los siguientes requisitos:
- (i) Se requiere que los Proponentes sometan una (1) copia electrónica en formato de documento portátil (*pdf*), a menos que la Autoridad indique algo distinto en la Solicitud de Propuestas. Para propósitos de esta guía, una Propuesta se considerará sometida a la Autoridad en la fecha y hora de la

carga de archivos electrónicos en la plataforma electrónica de licitaciones establecido para estos propósitos.

- (ii) los Proponentes entregarán sus Propuestas a través de cargas electrónicas en la plataforma electrónica destinada para estos propósitos. Una vez la carga se complete en forma exitosa, el sistema proveerá evidencia electrónica de la fecha, hora y minuto que la carga se completó en forma exitosa. Este medio brinda la flexibilidad a los proponentes de realizar la carga en cualquier momento antes del período de cierre establecido para el recibo de Propuestas;
- (iii) cualquier Propuesta sometida por correo o entregada personalmente por el Proponente o su representante autorizado será rechazada y devuelta al Proponente sin abrir;
- (iv) las Propuestas cargadas electrónicamente en o antes de la fecha de vencimiento establecida en la Solicitud de Propuestas no estarán accesibles *Sealed Bid* para evaluación hasta el momento posterior la fecha y hora establecida en la Solicitud de Propuestas, según se indique en la adenda correspondiente. Este control es uno automático y autónomo el cual no puede ser modificado o alterado en forma alguna;
- (v) las Propuestas no serán leídas en público. La Autoridad no generará copias de las Propuestas. Sólo los integrantes de la Autoridad y los integrantes del Comité o Equipo Evaluador u otras personas designadas por el Jefe de División de Suministros tendrán acceso electrónico a las Propuestas y a los resultados de la evaluación durante el período de selección y evaluación. Todas las Propuestas sometidas a la Autoridad se convertirán en propiedad de la Autoridad, salvo los documentos o información sometida por los Proponentes que constituya secretos de negocios, información propietaria o privilegiada o confidencial del Proponente. Un Proponente que tenga una preocupación especial por alguna información propietaria o confidencial que desea hacer disponible a la Autoridad, deberá leer con detenimiento la Sección 9.3 de esta guía antes de someter su Propuesta;
- (vi) el que un Proponente potencial dejare de entregar, dentro del período establecido en la Solicitud de Propuestas, una Propuesta que cumpla con los requisitos allí establecidos, impedirá que dicha Propuesta sea considerada por la Autoridad y por el Comité o Equipo Evaluador; y

- (vii) a los Proponentes que sometan una Propuesta se les podrá requerir que hagan una o más presentaciones orales de su Propuesta al Comité o Equipo Evaluador.

4.9 Cargo por Revisión de Propuesta; Fianza de Propuesta

- (a) Para cubrir los costos de procesar, revisar y evaluar Propuestas incurridos por la Autoridad, esta podrá requerir un pago, que no es reembolsable ni negociable, por la revisión de la Propuesta. El monto del cargo por revisión de Propuesta será determinado por la Autoridad, caso a caso, y se incluirá en la Solicitud de Propuesta. El incumplir con el pago de cualquier cargo suspenderá la consideración de una Propuesta. Todos los cargos se pagarán de la manera que establezca la Autoridad en la Solicitud de Cualificaciones o en la Solicitud de Propuestas. Los Proponentes que sometan múltiples propuestas para RFPs que no están relacionados, tendrán que someter un pago de cargo por revisión de Propuesta para cada Propuesta sometida en el caso de así requerirse.
- (b) La Solicitud de Propuestas podrá requerir que el Proponente someta una Fianza de Propuesta. Una Fianza de Propuesta *Bid Bond* podría consistir de un primer plazo de menor cantidad, el cual se sometería junto con la Solicitud de Propuestas como condición para competir en el proceso de cualificación, y un segundo plazo de mayor cantidad, el cual se sometería al notificarle al Proponente que es el Proponente Seleccionado. La cantidad, fecha de entrega y condiciones de devolución, si alguna, de cualquier Fianza de Propuesta requerida se determinará por la Autoridad y se especificará en la Solicitud de Propuestas correspondiente.

4.10 Modificación de Propuesta - El Comité o Equipo Evaluador sólo aceptará una modificación a una Propuesta previamente sometida si la modificación se recibe antes de la fecha de vencimiento que especifique la Solicitud de Propuestas para esa Propuesta. Todas las modificaciones se harán por escrito y se ejecutarán y someterán en la misma forma y manera de la Propuesta original, de conformidad con los términos de la Solicitud de Propuestas.

4.11 Cancelación de una Solicitud de Propuestas - La Autoridad, a su discreción, o por recomendación del Comité o Equipo Evaluador, podrá cancelar un proceso de Solicitud de Propuestas en cualquier momento. Si el Comité o Equipo Evaluador recomienda que se cancele una Solicitud de Propuestas, el Comité indicará la razón o las razones para su recomendación. El Jefe de División de Suministros podrá realizar una de las siguientes alternativas:

- (a) realizar una nueva Solicitud de Propuestas;

- (b) negociar directamente con un Proponente, luego de haber cancelado la Solicitud de Propuestas, sólo si dicho Proponente obtuvo la clasificación más alta previo a la cancelación de la Solicitud de Propuestas, las razones para cancelar la Solicitud de Propuestas ya no aplican o no existen, la negociación es para el mismo RFP para el cual originalmente se licitó y dicha negociación esté en los mejores intereses de la Autoridad; o
- (c) tomar cualquier otra acción que la Autoridad considere apropiada.

La Autoridad podrá, a su discreción y caso a caso, pagar un estipendio u honorario por terminación a todos los Proponentes en la eventualidad de cancelación. Sin embargo, la Autoridad no tendrá que indemnizar (incluyendo, pero sin limitarse a, reembolso de gastos) a cualquier Proponente si decide, a su entera discreción, cancelar un proceso de Selección de Propuestas.

4.12 Propuestas No Solicitadas - Generalmente, la Autoridad le dará prioridad a la evaluación de Propuestas solicitadas a través del proceso de Solicitud de Propuestas. La Autoridad, sin embargo, podrá recibir y evaluar Propuestas no solicitadas de un Proponente relacionadas a Proyectos que no se hayan seleccionado para una Solicitud de Propuestas, pero que cumplan con los requisitos de la Ley y de esta guía, dentro de quince (15) días después de haber recibido la Propuesta no solicitada.

Los pasos principales del proceso de Propuestas no solicitadas, el cual la Autoridad ha determinado cumple con los requerimientos del proceso de Solicitud de Propuestas a utilizarse, según la Ley, se describe a continuación:

- (i) Antes de radicar una Propuesta no solicitada, un Proponente potencial podrá presentarle su interés en una Solución, Contrato del tipo *Sourcing* o Modelo de Negocio a la Autoridad mediante el envío de una carta al Jefe de la División de Suministros;
- (ii) Si la Autoridad no tiene objeción o no está en el proceso de preparar un proceso de licitación para la misma, el Proponente potencial radicará una Propuesta no solicitada a la atención del Jefe de División de Suministros. La Propuesta no solicitada estará acompañada de un cargo por solicitud no negociable en la cantidad que determine el Jefe de la División de Suministros, de hasta \$50,000. El Jefe de la División de Suministros revisará, evaluará y hará recomendaciones iniciales a la Autoridad con respecto a cualquier Propuesta no solicitada recibida por la Autoridad. El Jefe de la División de Suministros, sin embargo, podrá rechazar cualquier Propuesta no solicitada por cualquier razón y devolverle

al Proponente el(los) cargo(s) por concepto de solicitud;

- (iii) La Autoridad comentará y revisará la Propuesta no solicitada dentro de quince (15) días calendario, y determinará si la Propuesta cumple todos los requisitos legales y de política pública para continuar con su evaluación. La Autoridad podrá, sin embargo, rechazar cualquier Propuesta no solicitada por cualquier razón y devolverle al Proponente el(los) cargo(s) por concepto de solicitud;
- (iv) tras recibir una Propuesta no solicitada y llegar a la determinación posterior de que la Propuesta no solicitada, según sometida o enmendada, reúne los requisitos de esta guía, la Autoridad llevará a cabo un Estudio de Deseabilidad y Conveniencia, según dispone la Sección 4.2 de esta guía;
- (v) si dicho estudio es favorable, el Jefe de División de Suministros podrá comunicar los resultados del estudio al Director Ejecutivo y la Junta de Gobierno para que sea incluido en el inventario de Proyectos, con excepción de soluciones, modelos de negocios o contratos del tipo *Sourcing* y relacionados a las cadenas de suministros los cuales son de su absoluta responsabilidad y pertinencia;
- (vi) una vez incluido en el inventario de Proyectos, Modelos de Negocios o Soluciones de la Autoridad, el Jefe de la División de Suministros podrá establecer o asignar un Comité Evaluador, publicar el Estudio de Deseabilidad y Conveniencia, y determinar el alcance final del Proyecto, Modelo de Negocio, Contrato *Sourcing* o Solución;
- (vii) el Comité o Equipo Evaluador entonces podrá colocar un aviso en el portal electrónico de la Autoridad (www.aeepr.com), publicaciones especializadas de circulación general u otros portales electrónicos, relacionados, según sea apropiado para notificarle a Proponentes potenciales que pudieran estar interesados. La Autoridad también podrá determinar utilizar solo aquellas compañías bonafides, registradas para la(s) categorías solicitadas y que estén activas en el Registro de Suplidores de la Autoridad. La Autoridad, además, podrá utilizar su conocimiento y experiencia de negocio de más de 70 años, para determinar las compañías aptas y capaces de cumplir con los requisitos establecidos para el proceso de RFP. La notificación dispondrá que la Autoridad ha recibido y aceptado una Propuesta no solicitada, que tiene la intención de evaluar la Propuesta, que podrá negociar un Contrato o Acuerdo de Compras interino o abarcador basado en la Propuesta y que aceptará para consideración simultánea cualquier Propuesta que compita con la Propuesta no solicitada y cumpla con las normas aplicables que la

Autoridad reciba de conformidad con esta guía en o antes de la fecha de límite de treinta (30) días calendario que se incluya en la notificación para recibir Propuestas que compitan con la Propuesta no solicitada y que cumplan con esta guía. La fecha límite para el recibo de cualquier Propuesta que compita con la Propuesta no solicitada será a las 11:59pm (UTC -4), hora de San Juan, Puerto Rico, en el último día del periodo de competencia después de la publicación inicial por la Autoridad de la notificación. La notificación proveerá un resumen del Proyecto propuesto y sus elementos principales. El Comité o Equipo Evaluador tendrá disponible la Propuesta completa, excepto por aquellas porciones que claramente y adversamente afectarían la posición financiera, competitiva o de negociación de la Autoridad, del Comité o Equipo Evaluador y/o del Proponente, según determine la Autoridad, a su discreción, o según se identifique por el Proponente. En la eventualidad que un Proponente no esté seguro de que su Propuesta sea suficientemente similar a la Propuesta que fue objeto de la notificación para que la misma se considere como una Propuesta competitiva, dicho Proponente podrá radicar ante la Autoridad una solicitud por escrito para una determinación preliminar de si su Propuesta sería considerada una Propuesta que compite en parte o en su totalidad. La Autoridad responderá no más tarde de diez (10) días calendario después del periodo de competencia con una contestación preliminar en cuanto a si la Propuesta se considerará como que compite o que no ha recibido suficiente información para tomar dicha determinación;

- (viii) el Comité o Equipo Evaluador también podrá determinar que una Propuesta no solicitada deberá modificarse o enmendarse para cumplir con los objetivos de la Autoridad. La Autoridad publicará una notificación aceptando dicha Propuesta para evaluación, según enmendada o modificada e invitando a otros a radicar una Propuesta competitiva. Si la Propuesta es modificada o enmendada, también se le dará la oportunidad al Proponente original a incluir información adicional durante el periodo de competencia;
- (ix) el fracaso de un Proponente potencial en presentar una Propuesta competitiva que cumpla con todos los requisitos dentro del periodo de competencia publicado evitará que dicha Propuesta sea considerada a menos y hasta que la Autoridad termine de considerar, o de negociar, la Propuesta no solicitada original y cualquier Propuesta competitiva recibida dentro del periodo de competencia. La Autoridad se reserva el derecho de extender el periodo de competencia. El recibo de una o más Propuestas

competitivas durante dicho periodo no será causa para la publicación de una nueva notificación o del comienzo de cualquier nuevo periodo de competencia; y

- (x) tras la expiración de dicho periodo de competencia, la Autoridad y el Comité o Equipo Evaluador someterán la Propuesta no solicitada original, junto con cualquier otra Propuesta competitiva y que cumpla con los requisitos de esta guía que se haya recibido apropiadamente, al proceso de evaluación y selección que se detalla en la Sección 5 que aparece a continuación.

Para acelerar el proceso de revisión y evaluación de Propuestas no solicitadas, la Autoridad recomienda que los Proponentes incluyan los siguientes documentos con sus Propuestas no solicitadas, según sea aplicable:

- (a) un mapa topográfico que indique la ubicación del Proyecto propuesto o localizaciones o actividades impactadas a través de su solución o modelo de negocio y (si aplica);
- (b) una descripción del Proyecto y un diseño conceptual que indique la interacción del Proyecto con la infraestructura existente y las operaciones actuales;
- (c) una declaración respecto al itinerario de desarrollo y el ciclo de vida de la instalación, activo, equipo, componente, sub-componentes u otros;
- (d) información con respecto a los pasos requeridos para desarrollar el Proyecto, Modelo de Negocio o Solución, incluyendo, pero sin limitarse a, permisos y necesidades de adquisición de terrenos, permisos de construcción, permisos de operación, permisos ambientales, permisos estatales y federales relacionado a las operaciones, etc...;
- (e) el esquema operacional propuesto y el estudio de viabilidad del Proyecto, Modelo de Negocio o Solución; y
- (f) una descripción detallada de cualquier asistencia gubernamental o por parte de la Autoridad que se requiera.

La Autoridad reconoce que podría recibir Propuestas con ciertas características en común, pero con diferencias significativas. En estos casos, la Autoridad se reserva el derecho, a su sola discreción, a tratar dichas Propuestas o cualquier porción de dichas Propuesta recibidas después de la Propuesta no

solicitada original, como una Propuesta competitiva o como una Propuesta no solicitada no competitiva. Dada las consecuencias a un Proponente si fracasa en radicar dentro del periodo de competencia una Propuesta que la Autoridad después pudiera determinar es una Propuesta competitiva, la Autoridad insiste en que los Proponentes potenciales deberán estar atentos al portal de Internet de la Autoridad para cualquier notificación de una Propuesta no solicitada recibida y estar preparados para radicar dentro del periodo de competencia si entienden que una Propuesta que están considerando o preparando tiene cierta similitudes a, o características en común con, una Propuesta no solicitada que sea objeto de una notificación.

No obstante cualquier otra cosa dispuesta en esta guía, la Autoridad no está obligada a revisar, evaluar, procesar y hacer recomendaciones con respecto a Propuestas no solicitadas, y la Autoridad, a su entera discreción, podrá terminar en cualquier momento cualquier proceso relacionado con una Propuesta no solicitada. La evaluación de una Propuesta no solicitada por la Autoridad no otorgará derecho alguno a un Proponente, incluyendo, pero sin limitarse a, el derecho de reembolso por gastos incurridos por el Proponente en la preparación de la Propuesta no solicitada.

4.13 Conceptos Técnicos y Financieros Alternos - Según dispone la Sección 6.4(e) de esta guía, el contenido de una Solicitud de Propuestas incluirá una solicitud por la Autoridad que le permitirá a los Proponentes someter Conceptos Técnicos Alternos y/o Conceptos Financieros Alternos antes de una Propuesta para que los Proponentes incorporen innovación y creatividad técnica y financiera en las Propuestas. Los CTAs también incluyen conceptos que no requieren una modificación de las disposiciones técnicas, pero que, si se implantan, requerirían evaluación ambiental, de seguridad o cumplimiento con algún otro requisito estatal o federal adicional para un Proyecto, Modelo de Negocio o Solución o una porción material de un Proyecto, Modelo de Negocio o Solución.

Los CTAs y/o CFAs serán **confidenciales** y no se compartirán con otros Proponentes. Esta guía, a su vez, permitirá que el Comité o Equipo Evaluador revise y considere temprano en el proceso los CTAs y/o CFAs de un Proponente al momento de tomar la decisión de selección, para evitar potenciales demoras y conflictos en el diseño asociadas con la posposición de la revisión de CTAs y/o CFAs al periodo posterior a la adjudicación, y en última instancia, obtener el mejor valor para los clientes.

Los CTAs y CFAs elegibles a ser considerados se limitarán a aquellos cuyas desviaciones de la Solicitud de Propuestas, o aquellos CTAs que requieran evaluación ambiental adicional, que resulten en una calidad y desempeño del producto final igual o mejor que la calidad y el desempeño del producto sin considerar la desviación o concepto, según determine la Autoridad, a su entera

discreción. Un concepto no se considerará un CTA, si a juicio de la Autoridad, sólo produce una reducción de cantidad, desempeño o confiabilidad. Un concepto no es elegible para consideración como un CTA si está basado o requiere:

- (i) la inclusión de un Proyecto adicional de la Autoridad (tales como la expansión del alcance del Proyecto, Modelo de Negocio o Solución);
- (ii) un cambio en las disposiciones estéticas o de paisaje, operacionales y administrativas del negocio; o
- (iii) un incremento en la cantidad de tiempo para comenzar el Proyecto, Modelo de Negocio o Solución.

Los CTAs que, de implantarse, requerirían evaluación ambiental adicional para el Proyecto, Modelo de Negocio o Solución, podrían permitirse, según los términos y condiciones impuestos por la Autoridad. Si el Proponente no puede obtener las aprobaciones necesarias para implantar el CTA, el Proponente estará obligado a desarrollar el Proyecto, Modelo de Negocio o Solución de conformidad con las aprobaciones existentes sin costos adicionales o extensiones de tiempo.

4.14 Contrato o Acuerdo de Compras sin Solicitud de Propuestas - Las disposiciones de la Sección 4 de esta guía respecto al uso de la Autoridad del proceso de Solicitud de Propuestas no aplicarán a las situaciones descritas en la Sección 15 (22 LPRA 205) de la Ley. El Comité o Equipo Evaluador recibirá y evaluará las Propuestas que no hayan sido objeto de una Solicitud de Propuestas y negociará un Contrato o Acuerdo de Compras para operar y/o desarrollar Funciones, Instalaciones o Servicios que cualifiquen con Proponentes según permitido bajo dicha Sección 15 (22 LPRA 205) y conforme a las circunstancias particulares de cada caso. El Comité o Equipo Evaluador, en dichos casos, podrá utilizar, a su discreción, cualquier ley, reglamento, guía, normativa o combinación de estos para evaluar y seleccionar Proponentes y negociar un Contrato o Acuerdo de Compras, con el objetivo de maximizar los beneficios económicos y operacionales de la Autoridad con el objetivo principal de reducir los costos de producción eléctrica e incrementar los niveles de operación y servicio.

4.15 Comunicaciones con Oficiales de la Autoridad - Una vez se comience un evento de Solicitud de Propuestas RFP, ni los Proponentes ni sus representantes podrán contactar o comunicarse en forma alguna con ningún oficial o representante de la Autoridad con relación al Proyecto, Modelo de Negocios, Solución o la Solicitud de Propuestas, excepto con los representantes oficiales de la Autoridad que hayan sido designados por el Jefe de División de Suministros como los Representantes Autorizados y sólo bajo las circunstancias permitidas en la Solicitud de Propuestas. El no cumplimiento

con esta restricción será causa suficiente para la descualificación automática de la compañía en el proceso. La Autoridad, además, podrá aplicar sanciones administrativas y económicas a las compañías que incumplan con este requisito. Las sanciones pueden incluir una prohibición permanente de la empresa, individuos y compañía para participar en procesos o relaciones de comercio futuras. Esta prohibición no aplicará a las Conferencias Pre-Propuesta, según se describen en la Sección 4.7 de esta guía.

4.16 No Cabildeo, No Colusión, No Actos Prohibidos - Ninguno de los Proponentes e integrantes del equipo de un Proponente, ni sus respectivos directores, oficiales, empleados, consultores, agentes, asesores y representantes podrán con relación a un Proyecto, una Solicitud de Cualificaciones, una Solicitud de Propuestas, o un proceso competitivo de selección, participar de forma alguna en cualquier tipo de cabildeo político o de otra índole, ni podrán, a menos que se contemple expresamente en una Solicitud de Cualificaciones o Solicitud de Propuestas, tratar de comunicarse de forma alguna en relación a estos asuntos, directa o indirectamente, con cualquier representante del Comité o Equipo Evaluador o de la Autoridad, incluyendo cualquier Parte Restringida, o cualquier director, oficial, empleado, agente, asesor, miembro de personal, consultor o representante de cualquiera de las antes mencionadas personas, según aplique, para ningún propósito, incluyendo para propósitos de:

- (a) comentar o tratar de influenciar la opinión sobre los méritos de su Propuesta, o con relación a la Propuesta de otros Proponentes;
- (b) influenciar, o tratar de influenciar, el resultado de la fase de Solicitud de Cualificaciones o Solicitud de Propuestas, o del proceso competitivo de selección, incluyendo la revisión, evaluación, y la clasificación de las Propuestas, la selección del Proponente Seleccionado, o cualquier negociación con el Proponente Seleccionado;
- (c) promover sus intereses o los del Proponente en el Proyecto, incluyendo sobre las preferencias de otros Proponentes;
- (d) criticar o comentar sobre aspectos de la Solicitud de Cualificaciones, Solicitud de Propuestas, el proceso competitivo de selección, o el Proyecto, incluyendo de una manera que pueda darle una ventaja competitiva o cualquier otra ventaja al Proponente sobre otros Proponentes; y
- (d) criticar la Propuesta de otro Proponente.

Ni los Proponentes ni los integrantes del equipo del Proponente discutirán o se comunicarán, directa o indirectamente, con cualquier otro Proponente o

cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier integrante del equipo del otro Proponente con relación a la preparación, contenido o representación de sus Propuestas. Las Propuestas se someterán sin conexión alguna (por ejemplo, a través de la tenencia de acciones en o de un Proponente o integrante del equipo de un Proponente), conocimiento, comparación de información, o arreglo, con cualquier otro Proponente o cualquier director, oficial, empleado, consultor, asesor, agente o representante de cualquier otro Proponente, incluyendo cualquier integrante del equipo de dicho otro Proponente. **El incumplimiento con una o más de las restricciones aquí establecidas será causa suficiente para la separación indefinida y permanente de la compañía a participar o formalizar relaciones comerciales futuras. La Autoridad podrá, además, aplicar sanciones económicas y referir el o los casos a la División de Anti-Trust del Departamento de Justicia Federal para la formulación de cargos criminales, según apliquen. Estas sanciones aplicarán además a cualquier empleado, oficial o miembro de la Autoridad que contribuya en uno o más de los esquemas aquí presentados.**

- 4.17 Partes Restringidas** - Las Partes Restringidas, sus respectivos directores, oficiales, socios, empleados, y Afiliadas no serán elegibles para participar como Proponentes o como integrante de un equipo de un Proponente, o asesorar cualquier Proponente o integrante del equipo de un Proponente, directa o indirectamente, o participar en cualquier forma como empleado, asesor, consultor o de otra forma relacionada a cualquier Proponente. Cada Proponente se asegurará que ni el Proponente ni los integrantes de su equipo utilice, consulte, incluya, o solicite asesoramiento de cualquier Parte Restringida. Cualquier director, oficial, socio, empleado, o Afiliada de una de las compañías aquí descrita podrán exponerse a la aplicación de leyes estatales y federales las cuales incluyen delitos criminales y sanciones económicas.

Cualquiera de las siguientes Personas contratadas por la Autoridad o el Comité o Equipo Evaluador o involucrada en la preparación del Estudio de Deseabilidad y Conveniencia, la Solicitud de Cualificaciones y/o la Solicitud de Propuestas, será una Parte Restringida:

- (i) Asesores Técnicos (tales como firmas de ingeniería y consultoría);
- (ii) Asesores Financieros (tales como bancos de inversión, firmas de contabilidad);
- (iii) Asesores Legales;
- (iv) Asesores Ambientales; y

(v) Asesores Sociales o Laborales.

Cualquier Persona trabajando como consultor de una Parte Restringida y que desee participar en una Solicitud de Cualificaciones y/o una Solicitud de Propuestas deberá describir la naturaleza y alcance de su trabajo para la Parte Restringida, así como para el equipo del posible Proponente que someterá una Propuesta.

Esta lista de Partes Restringidas no es exhaustiva. Podrán identificarse Personas adicionales Partes Restringidas, incluyendo mediante inclusión en la lista durante el proceso competitivo de selección.

Para evitar dudas, una Parte Restringida con relación a un Proyecto se considerará como tal sólo con respecto al Proyecto en particular y, por tanto, no estará de otra forma restringida de las actividades descritas en el primer párrafo de esta Sección 4.17. Además, ninguna Persona se convertirá en Parte Restringida como resultado de haber sido nombrada como miembro del grupo de consultores y sólo se convertirá en Parte Restringida una vez sea formalmente involucrada por la Autoridad o un Comité o Equipo Evaluador con respecto a una Instalación, Proyecto, Modelo de Negocios o Solución en específico.

SECCIÓN 5- PROCESO DE EVALUACIÓN Y SELECCIÓN

5.1 Proceso de Evaluación - Salvo que una Solicitud de Propuestas particular indicara otro proceso, el Comité o Equipo Evaluador someterá las Propuestas recibidas a través de un proceso de Solicitud de Propuestas o a través de la forma que haya determinado la Autoridad, por el siguiente proceso de evaluación, selección y negociación de tres (3) fases, según apliquen:

(a) Fase Uno: Revisión de Control de Calidad.

(i) Dentro de los cinco (5) días laborables después de la fecha límite para someter Propuestas bajo una Solicitud de Propuestas, el Comité o Equipo Evaluador determinará qué Propuestas aprobaron la revisión de control de calidad al satisfacer los requisitos básicos delineados en la Solicitud de Propuestas y en esta guía. El no cumplir con los Criterios de Evaluación y otras condiciones especificadas en una Solicitud de Propuestas o en esta guía constituirá suficiente causa para no aprobar la revisión de control de calidad. El Comité o Equipo Evaluador, a su discreción, podrá extender la duración de la revisión de control de calidad de la Fase Uno debido al volumen de Propuestas, la complejidad de las Propuestas, la necesidad de información adicional, la cooperación oportuna de los Proponentes, u otras circunstancias no previstas.

- (ii) Cada Proponente será notificado por escrito por el Comité o Equipo Evaluador de que su Propuesta ha aprobado o no la revisión de control de calidad y si avanzará a la Fase Dos. El Comité o Equipo Evaluador podrá devolver Propuestas que: (i) estén incompletas; (ii) no cumplan con los requisitos de la Solicitud de Propuestas; o (iii) no cumplan con los requisitos de la Ley o la Sección 4 de esta guía.

(iii) El Comité o Equipo Evaluador, a su discreción, podrá hacer caso omiso de cualquier informalidad o asunto técnico en los documentos de cualquier Propuesta, siempre y cuando dichos asuntos se puedan corregir o aclarar sin perjuicio a la Autoridad.

(b) Fase Dos: Revisión y Recomendación del Comité o Equipo Evaluador.

- (i) El Comité o Equipo Evaluador revisará y evaluará todas las Propuestas que pasen la revisión de control de calidad. El Comité o Equipo Evaluador establecerá un itinerario preliminar para la revisión de Propuestas y la negociación del Contrato o Acuerdo de Compras, si se requiere. En cualquier momento de la Fase Dos, el Comité o Equipo Evaluador podrá solicitarle información adicional a un Proponente sobre su Propuesta para asistir al Comité o Equipo Evaluador con la revisión y evaluación de la misma. Basándose en la revisión de las Propuestas, el Comité o Equipo Evaluador seleccionará una Propuesta o podrá no seleccionar ninguna. Si la Solicitud de Propuestas exige negociaciones competitivas, el Comité o Equipo Evaluador podrá seleccionar una o más Propuestas o ninguna. Si la Autoridad no selecciona ninguna de las Propuestas (el Comité o Equipo Evaluador notificará al Jefe de División de Suministros de su decisión), cada Proponente que ha avanzado a la Fase Dos será notificado por escrito por el Comité o Equipo Evaluador, y su Fianza de Propuesta será devuelta;
- (ii) Si una Solicitud de Propuestas exige un proceso competitivo de negociación, el Comité o Equipo Evaluador revisará y considerará las Propuestas en base a los Criterios de Evaluación para determinar la clasificación de cada Propuesta. Basándose en dicha clasificación, el Comité o Equipo Evaluador determinará las Propuestas que están dentro de la Clasificación Competitiva. Tras discutirlo con el Jefe de División de Suministros, el Comité o Equipo Evaluador podrá elegir: (i) llevar a cabo discusiones y negociaciones con aquellos Proponentes cuyas Propuestas estén dentro de la Clasificación

Competitiva, según se contempla más adelante en la Sección 5.1(c); ó (ii) negociar con el Proponente que obtuvo la clasificación más alta y, si las negociaciones no son fructíferas, continuar las negociaciones estrictamente en el orden de clasificación de cada Propuesta, según se contempla más adelante en la Sección 5.1(d). El Comité o Equipo Evaluador podrá elegir llevar a cabo negociaciones y discusiones con un Proponente cuya Propuesta se encuentra dentro de la Clasificación Competitiva, aun cuando no se trate de la mejor Propuesta;

- (iii) Los Proponentes cuyas Propuestas no caigan dentro de la Clasificación Competitiva serán notificados por escrito por el Comité o Equipo Evaluador, pero aún serán considerados parte del proceso de licitación hasta que se firme el Contrato o Acuerdo de Compras. La Fianza de Propuesta de cualquier Proponente no seleccionado será devuelta (si aplica) una vez el Contrato o Acuerdo de Compras se haya firmado por todas las partes;
- (iv) La Autoridad se reserva el derecho de rechazar cualquier y todas las Propuestas sometidas si considera que tal acción está en los mejores intereses de la Autoridad;
- (v) Si se recibe sólo una Propuesta, dicha Propuesta se podrá considerar si el Comité o Equipo Evaluador y la Autoridad determinan que hacerlo está en los mejores intereses de la Autoridad.

Durante el proceso de evaluación, selección y negociación, todas las Propuestas, evaluaciones, discusiones y negociaciones se mantendrán confidenciales hasta que se firme el Contrato o Acuerdo de Compras, sujeto a las disposiciones del reglamento para el Programa de Administración de Documentos de la AEE y esta guía.

(c) Fase Tres-A: Negociaciones Simultáneas con Proponentes Múltiples

Si el Comité o Equipo Evaluador decide llevar a cabo discusiones y negociaciones con todos los Proponentes cuyas Propuestas caen dentro de la Clasificación Competitiva, tales Proponentes recibirán una notificación por escrito con los nombres y títulos de los Representantes Autorizados y explicando que las negociaciones se llevarán a cabo de acuerdo a las siguientes reglas:

- (i) Ninguna declaración hecha o acción tomada por la Autoridad, el Comité o Equipo Evaluador, cualquier empleado u oficial de

la Autoridad, o cualquier asesor o consultor, u otro agente o representante de la Autoridad durante las discusiones y negociaciones vinculará en forma alguna a la Autoridad relacionada con alguna Solicitud de Propuestas en particular. Sólo el Contrato o Acuerdo de Compras, cuando sea efectivo conforme a sus términos será vinculante sobre la Autoridad;

- (ii) Se podrá invitar a cada Proponente que caiga dentro de la Clasificación Competitiva a una o más reuniones privadas con los Representantes Autorizados para discutir y contestar preguntas respecto a cualquier aspecto de su Propuesta. Los asesores designados del Comité o Equipo Evaluador y el Jefe de División de Suministros podrán participar en tales reuniones a petición de los Representantes Autorizados. El contenido y alcance de cada reunión privada con cada Proponente se determinará por los Representantes Autorizados, según el contenido y las circunstancias relacionadas a la Propuesta del Proponente. El propósito de cada reunión será aclarar dudas sobre los requisitos de la Solicitud de Propuestas y confirmar que los términos del Contrato o Acuerdo de Compras son comprendidos; mejorar aspectos técnicos o de otra índole de la Propuesta en un esfuerzo por garantizar el cumplimiento de las especificaciones y requisitos de desempeño; discutir la base de los términos económicos propuestos, en un esfuerzo por mejorar los términos económicos para la Autoridad; y discutir cualquier otro detalle pertinente de la Propuesta, de manera que resulte en una mejor Propuesta y un mejor Contrato o Acuerdo de Compras para la Autoridad;
- (iii) Si se sostiene una reunión privada con algún Proponente que caiga dentro de la Clasificación Competitiva, se le dará la oportunidad a todos los Proponentes que estén dentro de la Clasificación Competitiva de discutir y repasar sus Propuestas con los Representantes Autorizados. Las discusiones, sin embargo, se basarán en los hechos y las circunstancias relativas a cada Propuesta, según descrito en la Sección 5.1(c)(ii). La información discutida en tales reuniones podrá variar de un Proponente a otro;
- (iv) Los Representantes Autorizados, con la asistencia del Comité o Equipo Evaluador, la Autoridad, sus asesores u otras personas que el Jefe de División de Suministros pueda designar, pueden, a su discreción:
 - (1) Establecer las guías, pautas e itinerarios para llevar a

cabo las discusiones y para controlar las reuniones;

- (2) Asesorar al Proponente sobre las deficiencias de su Propuesta, de manera que tenga la oportunidad de cumplir con los requisitos de la Autoridad;
 - (3) Intentar resolver cualquier incertidumbre respecto a la Propuesta, y en general aclarar los términos y condiciones de la Propuesta;
 - (4) Atender cualquier sospecha de error que pueda existir;
 - (5) Proveerle al Proponente la oportunidad de someter cualquier modificación a los términos económicos, aspectos técnicos o cualquier otro aspecto de su Propuesta que pueda resultar de las discusiones, o la oportunidad de proveer documentación o análisis adicional que asista al Comité o Equipo Evaluador en su evaluación de la viabilidad del Proyecto, Modelo de Negocio o Solución y las cualificaciones del Proponente; y
 - (6) Mantener un acta de las reuniones con la fecha, hora, lugar, y personas que asistieron;
- (v) Tras cada entrevista o reunión con un Proponente, los Representantes Autorizados y/o el Comité o Equipo Evaluador podrán requerirle al Proponente que someta una confirmación por escrito de cualquier aclaración de su Propuesta discutida en la reunión;
- (vi) A discreción del Comité o Equipo Evaluador o de su Representante Autorizado, las discusiones y negociaciones podrán llevarse a cabo totalmente o en parte mediante comunicaciones escritas o por teléfono, sin reuniones o entrevistas en persona;
- (vii) Después de tales discusiones y negociaciones paralelas, el Comité o Equipo Evaluador podrá, a su discreción, solicitarle a los Proponentes que caigan dentro de la Clasificación Competitiva, que sometan su “mejor y última oferta” (o *BAFO* por sus siglas en inglés) en respuesta a las discusiones y negociaciones celebradas. Únicamente los Proponentes que sometieron Propuestas que caigan dentro de los parámetros establecidos en la Solicitud de Propuestas serán considerados en el proceso de BAFO;

- (viii) Si el Comité o Equipo Evaluador determina no llevar a cabo un proceso de BAFO, el Comité o Equipo Evaluador deberá comenzar negociaciones con el Proponente sometiendo la Propuesta con la más alta clasificación, lo cual podrá culminar en la Adjudicación de un Contrato o Acuerdo de Compras.
- (d) Fase Tres-B: Negociaciones con los Proponentes Clasificados Si el Comité o Equipo Evaluador ha elegido llevar a cabo discusiones y negociaciones únicamente con el Proponente con la clasificación más alta dentro de la Clasificación Competitiva, a dicho Proponente se le enviará una notificación escrita que contenga los nombres y posiciones de los Representantes Autorizados. Los Representantes Autorizados y el Proponente acordarán un horario para llevar a cabo las negociaciones. En cualquier momento, el Comité o Equipo Evaluador puede terminar las negociaciones con el Proponente y comenzar negociaciones con el próximo Proponente con la clasificación más alta. *El Contrato o Acuerdo de Compras será vinculante sobre la Autoridad sólo cuando sean efectivos sus términos.*
- (e) Fase Tres-C: Proceso Regular de Licitación (No-negociado) Si la Autoridad opta por llevar a cabo un proceso regular de licitación, la Autoridad deberá elegir al Proponente que haya sometido la Propuesta con la clasificación más alta, basado en los criterios indicados en la Solicitud de Propuestas. En el proceso de licitación regular, los Proponentes someterán una Propuesta técnica y una Propuesta financiera, debiendo estar la última Propuesta incluida en la plataforma electrónica provista para estos propósitos, antes de ser sometida por el Proponente. Cualquier Propuesta financiera que no haya sido cargada en la plataforma electrónica provista para estos procesos, habrá de descalificar automáticamente al Proponente. La Autoridad no accederá a las propuestas financieras cargadas en la plataforma electrónica, antes de la Fase Tres-C o antes de que las Propuestas de los Proponentes pasen la parte técnica de Evaluación de Criterios de la Fase Dos. La Autoridad no llevará a cabo discusión o negociación alguna con ningún Proponente. Los Representantes Autorizados de la Autoridad llevarán a cabo los siguientes pasos:
- (i) Ninguna declaración hecha o acción tomada por la Autoridad, el Comité o Equipo Evaluador, cualquier empleado o funcionario de la Autoridad, o cualquier asesor o consultor, u otro agente o representante de la Autoridad o del Comité o Equipo Evaluador durante el proceso de evaluación vinculará en forma alguna a la Autoridad o al Comité o Equipo Evaluador. El Contrato o Acuerdo de Compras sólo vinculará a la Autoridad cuando el mismo sea efectivo conforme a sus términos.

- (ii) Los Representantes Autorizados y delegados por el Jefe de la División de Suministros accederán a los archivos de propuestas cargados en el portal electrónico ante los miembros del Comité o Equipo Evaluador, los asesores designados del Comité o Equipo Evaluador y los oficiales de la Autoridad claramente anunciarán la Propuesta financiera de cada Proponente que pasó a la Fase Dos;
- (iii) Sujeto al derecho de la Autoridad de rechazar todas o cualquiera de las Propuestas, ésta seleccionará la Propuesta que obtenga la clasificación más alta, la cual podría culminar en la Adjudicación de un Contrato o Acuerdo de Compras. Si la Propuesta con la clasificación más alta no culmina en la Adjudicación de un Contrato o Acuerdo de Compras, la Autoridad podrá seleccionar la Propuesta que le sigue en la clasificación; y
- (iv) Los Representantes Autorizados llevarán un registro de la fecha, hora, lugar y los presentes al momento de abrir los sobres sellados.

5.2 Enmienda al Proceso de Licitación - Nada en esta Guía limitará el poder de la Autoridad para enmendar el proceso de licitación aquí dispuesto mediante una enmienda a esta Guía o para modificarlo en relación con una Solicitud de Propuestas particular, según se disponga en dicha Solicitud de Propuestas o para integrar nuevos medios de comunicación, tecnología o requisitos y en la medida en que no entre en conflicto con la ley, la ética o la moral.

SECCIÓN 6- SELECCIÓN DE PROPONENTES

6.1 Eventos Descalificadores - El Comité o Equipo Evaluador tratará como inelegible y no seleccionará a un Proponente de acuerdo con esta guía si el Comité o Equipo Evaluador tiene conocimiento real de que el Proponente o una Persona afiliada ha sido convicto o convicta de algún delito establecido en la Ley 458 del 29 de diciembre de 2000, (por ejemplo, si el Proponente o su representante autorizado ha sido formalmente convicto por actos de corrupción, incluyendo cualquiera de los crímenes que aparecen en esta ley, según enmendada, ya sea en Puerto Rico, o en cualquier jurisdicción de los Estados Unidos o en cualquier país y bajo la Ley de Prácticas Corruptas del Extranjero). Toda persona que participe en los procesos de Solicitud de Cualificaciones o Solicitud de Propuestas, por virtud de su participación en éstos, autoriza a la Autoridad a solicitar de la autoridad gubernamental pertinente información adicional respecto al Proponente potencial o Proponente, y en particular, detalles sobre convicciones por los delitos enumerados en esta Ley si

el Comité o Equipo Evaluador lo considera necesario para su proceso de selección o evaluación.

6.2 Otras Bases para Descalificación - El Comité o Equipo Evaluador podrá tratar como inelegible, o decidir no seleccionar a un Proponente o no aprobar la Adjudicación de un Contrato o Acuerdo de Compras a dicho Proponente por una o más de las siguientes razones, es decir, que dicho Proponente:

- (a) esté en bancarrota, insolvencia o los índices de riesgos financieros sean considerados muy altos para el tipo de provecto, modelo de negocio o solución propuesta durante la existencia del contrato o acuerdo de compras, o haya hecho una cesión de bienes a beneficio de sus acreedores, o se haya iniciado un reglamento por éste o en su contra para adjudicarle en quiebra o insolvente, o solicitando una liquidación de sus activos o disolución, protección de sus acreedores, composición de sus deudas o cualquier alivio similar bajo cualquier ley relacionada a quiebra, insolvencia o reorganización o protección de sus acreedores;
- (b) haya sido convicto de un delito relacionado a la manera en que lleva a cabo su negocio o profesión, aparte de los enunciados en la Ley 458 del 29 de diciembre de 2000;
- (b) no haya cumplido sus obligaciones respecto al pago de impuestos bajo las leyes del ELA o la jurisdicción relevante en que mantiene sus operaciones principales;
- (d) sea culpable de haber hecho una falsa representación con relación a cualquier información provista a la Autoridad o al Comité o Equipo Evaluador o provista de otra manera para cumplir con esta Guía o con una Solicitud de Propuesta; o
- (e) haya incumplido con los requisitos éticos establecidos en la Ley 84 del 18 de junio de 2002.

6.3 Información Respecto a la Situación Financiera - Al evaluar si un Proponente potencial o Proponente reúne cualquiera de los parámetros mínimos de condición financiera requeridos por el Comité o Equipo Evaluador para propósitos de la Sección 4.4 de esta guía y al seleccionar a los Proponentes bajo una Solicitud de Cualificaciones o una Solicitud de Propuestas, la Autoridad puede tomar en cuenta cualquiera de la siguiente información:

- (a) declaraciones pertinentes del banco(s) principal del proponente;
- (b) estados financieros de los tres (2) años fiscales anteriores;

- (c) cualquier otra información aceptable para la Autoridad que permita al Proponente demostrar su condición financiera; y
- (d) cualquier otra referencia de corroboración adicional que la Autoridad pueda conseguir de fuentes externas (por ejemplo, *Dun y Bradstreet-D&B*).

El Comité o Equipo Evaluador especificará en la Solicitud de Cualificaciones, la Solicitud de Propuestas y la información financiera que el Proponente tiene que proveer para cumplir con los parámetros mínimos aplicables de condición financiera.

6.4 Mejoramiento de Industria Local - La política de la Autoridad es fomentar la participación de suplidores, contratistas e inversionistas locales como participantes en Contratos, Modelos de Negocio o Soluciones potenciales para promover la actividad económica local y desarrollar pericia local. Al evaluar los Proponentes para proyectos, modelos de negocio o soluciones potenciales, el Comité o Equipo Evaluador tomará en consideración, consistente con la ley aplicable, la presencia de dicho Proponente en y su compromiso con Puerto Rico, en términos de recursos dedicados, inversión en la comunidad, creación de empleos directos e indirectos, movimiento económico local y la participación de entidades locales. Aun así se aclara que en ningún sentido la Autoridad limitará la capacidad de desarrollo y competitividad anteponiendo cualquier otro criterio. La mayor contribución de la Autoridad de Energía Eléctrica de Puerto Rico a la economía local es reducir los costos de energía, elevar los niveles de servicio a los clientes en general, reducir el impacto de sus operaciones al ambiente y el desarrollo de estrategias innovadoras que propicien el servicio y calidad que ofrecemos a los clientes en general. Pero en especial a clientes industriales y comerciales; responsables directos del desarrollo y crecimiento económico fomentando la creación de empleos, la inversión de capital extranjero y el avance en la competitividad global.

6.5 Iniciativa contra la Corrupción - La Autoridad apoya a la *World Economic Forum's Partnering Against Corruption Initiative (PACI)* y fomenta que los Proponentes potenciales mencionen en sus Propuestas si participan en el *PACI*.

6.6 Guías sobre Conflictos de Interés - Periódicamente, la Autoridad podrá adoptar guías para la resolución de conflictos o asuntos sobre ventajas competitivas que puedan surgir dentro de la licitación de un Proyecto. La Autoridad publicará las guías que adopte, si alguna, en su portal de Internet.

SECCIÓN 7- ADJUDICACIÓN DEL CONTRATO

7.1 Comité o Equipo Evaluador - Una vez el Comité o Equipo Evaluador haya recomendado una Propuesta, y el Comité o Equipo Evaluador y el Proponente

hayan finalizado la negociación de un Contrato o Acuerdo de Compras que cumpla con los requisitos, el Comité o Equipo Evaluador preparará y presentará un informe al Jefe de la División de Suministros. El informe deberá incluir las razones para llevar a cabo el Contrato, Modelo de Negocio o Solución, las razones para la selección del Proponente(s) escogido(s), una descripción del proceso efectuado, incluyendo comparaciones del o los Proponentes y el Contrato o Acuerdo de Compras recomendado frente a otras propuestas presentadas y toda aquella otra información pertinente al proceso y a la evaluación llevada a cabo. El informe se le presentará al Jefe de División de Suministros de la Autoridad para su aprobación no más tarde de treinta (30) días calendario después de terminada la negociación del Contrato o Acuerdo de Compras. La mera aprobación del informe y el Contrato o Acuerdo de Compras por la Autoridad no concede el derecho a reclamar indemnización, reembolso, ni pago alguno por concepto de expectativas surgidas en cualquiera de las etapas, ni por los gastos incurridos durante el proceso de cualificación o presentación de propuesta.

7.2 Adjudicación del Contrato o Acuerdo de Compras - Una vez el informe y el borrador del Contrato o Acuerdo de Compras sean aprobados, se presentará al Jefe de la División de Suministros para la aprobación final de este. A menos que se especifique lo contrario en la Solicitud de Propuestas en particular, si un Contrato o Acuerdo de Compras no es otorgado dentro de los noventa (90) días calendario posteriores a la fecha de vencimiento para la radicación de la Propuesta correspondiente a dicho Contrato o Acuerdo de Compras, cualquier Proponente podrá retirar su Propuesta sin penalidad. La Autoridad podrá cancelar la Adjudicación del Contrato o Acuerdo de Compras en cualquier momento antes de que el Contrato o Acuerdo de Compras sea firmado por la Autoridad y por el Proponente, sin que esto le cree una obligación o responsabilidad legal alguna a la Autoridad, al Comité o Equipo Evaluador, a cualquier Representante Autorizado, o a cualquier agente o asesor. En caso de que la Autoridad cancele la Adjudicación del Contrato o Acuerdo de Compras antes de su otorgamiento por la Autoridad y por el Proponente, podrá devolver la Fianza de Propuesta a todos los Proponentes.

7.3 Aviso de la Adjudicación del Contrato o Acuerdo de Compras - Una vez el Jefe de la División de Suministros apruebe el Contrato o Acuerdo de Compras y el otorgamiento por parte de la Autoridad, ésta hará pública la Adjudicación del Contrato o Acuerdo de Compras y la identidad del Proponente ganador. La Autoridad enviará una notificación escrita al resto de los Proponentes. El Jefe de la División de Suministros o su delegado notificará por escrito la decisión de la Autoridad de Adjudicar un Contrato o Acuerdo de Compras a todos los Proponentes participantes de la Fase 2 en adelante. La Autoridad enviará, a través del medio de mensajería electrónica de la plataforma electrónica de publicaciones, el aviso de adjudicación al o los Proponente(s) Seleccionado(s) no más tarde de cinco (5) días calendario después de que el Jefe de la División de

Suministros haya notificado su aprobación al Comité o Equipo Evaluador. Ningún otro acto de la Autoridad se considerará como una aceptación de una Propuesta. La carta de notificación de la adjudicación de la subasta deberá indicar, además, que un proponente no seleccionado puede presentar una Moción de Reconsideración al amparo de la Ley Núm. 170 del 12 de agosto de 1988, según enmendada, y las disposiciones de esta guía. Indicará, además, que en caso de presentarse la Moción de Reconsideración, el proponente deberá enviar copia de la misma a todos los proponentes que participaron de la Solicitud de Propuesta o RFP, certificando en la propia Moción dicho envío.

- 7.4 Firma del Contrato o Acuerdo de Compras** - Una vez se adjudique el Contrato o Acuerdo de Compras, el Proponente tiene que firmar el Contrato o Acuerdo de Compras, someter la Fianza de Propuesta que se haya especificado en la Solicitud de Propuestas para garantizar el cumplimiento por el Proponente con sus obligaciones bajo el Contrato o Acuerdo de Compras y cualquier evidencia de seguro solicitada, y realizará todos los otros actos requeridos para la firma del Contrato o Acuerdo de Compras dentro del período de tiempo establecido por la Autoridad (cuando aplique). El Contrato o Acuerdo de Compras no se podrá hacer cumplir ni tendrá efecto legal alguno hasta que haya sido completado y aprobado, y firmado por todas las partes. Si el Proponente Seleccionado no firma el Contrato o Acuerdo de Compras o no cumple con algún requisito para dicha firma dentro del límite de tiempo especificado por la Autoridad, la Autoridad podrá, a su discreción, extender la fecha de vencimiento para la firma del Contrato o Acuerdo de Compras o adjudicar el Contrato o Acuerdo de Compras al Proponente de la próxima Propuesta con la calificación más alta si la Autoridad y el Comité o Equipo Evaluador determinan que tal adjudicación será en los mejores intereses de la Autoridad y sus clientes. La aprobación de tal contrato con el Proponente de la próxima Propuesta con la calificación más alta cumplirá con los leyes y requisitos establecidos. Una vez dicho contrato sea final, una copia del informe del Comité o Equipo Evaluador deberá enviarse al Jefe de División de Suministros. De igual manera, este informe será publicado en el portal de Internet de la Autoridad y radicado en la Oficina del Contralor de Puerto Rico, según dispuesto por ley.
- 7.5 Documentos del Contrato o Acuerdo de Compras** - La Autoridad determinará el tipo de Contrato o Acuerdo de Compras que mejor convenga para un Proyecto, Modelo de Negocio o Solución en particular y los términos y condiciones que incluirá cada Contrato o Acuerdo de Compras otorgado. Todos los acuerdos ancillares relacionados o necesarios para el desempeño de un Contrato o Acuerdo de Compras o la implementación de una Solución o Modelo de Negocio tienen que ser aprobados por la Autoridad y serán parte del récord público de la empresa.

- 7.6 Estipendio para la Transferencia de Propiedad Intelectual** - La Autoridad podrá, a su entera discreción, proveer un estipendio o compensación parcial a los Proponentes no seleccionados que sometan una Propuesta que cumpla con las normas aplicables. La Autoridad indicará en la Solicitud de Propuestas si el estipendio se pagará para un Proyecto en específico. Además, si un Contrato o Acuerdo de Compras se adjudica a base de un CTA y/o un CFA que haya sido sometido por un Proponente no seleccionado, la Autoridad podrá, caso a caso, y a su entera discreción, pagar el estipendio a los Proponentes no seleccionados a cambio de la transferencia de la propiedad intelectual.

SECCIÓN 8- RECONSIDERACIÓN Y REVISIÓN

- 8.1 No Reconsideración por Parte de la Autoridad** - La Autoridad no aceptará ninguna solicitud de reconsideración de cualquier decisión que tome la Autoridad, el Comité o Equipo Evaluador, el Jefe de la División de Suministros o cualquier Representante Autorizado relacionada al proceso de licitación establecido en la Ley o en esta guía, incluyendo, pero sin limitarse a, las decisiones relacionadas a las calificaciones de Proponentes potenciales bajo una Solicitud de Calificaciones o la Adjudicación de un Contrato o Acuerdo de Compras.
- 8.2 Revisión Judicial** - Las evaluaciones y determinaciones que tome el Comité o Equipo Evaluador, la Autoridad y/o el Jefe de División de Suministros solamente podrán ser resueltas a través de un recurso de revisión judicial.

SECCIÓN 9- MISCELÁNEAS

- 9.1 Alcance de la Ley** - Periódicamente, la Autoridad podrá revisar un proyecto, modelo de negocio o solución, y determinar, por medio del Jefe de la División de Suministros, que una clase de proyecto, modelo de negocio o solución; o que un proyecto, modelo de negocio o solución en específico no cualifica para un RFP según se define en esta guía, y que no está cobijado por las disposiciones de la Ley. Además, la Autoridad podrá revisar el proceso de licitación. Luego de dicha revisión, la Autoridad podrá elegir continuar con el proceso de licitación con aquellas modificaciones, si alguna, que adopte o podrá comenzar un nuevo proceso de licitación.
- 9.2 Cálculo de Períodos** - Donde esta guía o la Ley requieran que se tome una acción: (i) dentro de un período determinado de tiempo después de que una acción es tomada, el día en que se tome la acción no se tomará en cuenta en el cálculo de ese período; (ii) dentro de un período determinado, ese período tiene que incluir por lo menos dos (2) días laborables; y (iii) dentro de un período determinado, cuando el último día de ese período no sea un día laborable, el período se extenderá para incluir el próximo día laborable, siempre que no se establezca lo contrario..

9.3 Confidencialidad - Todas las Propuestas sometidas a la Autoridad o al Comité o Equipo Evaluador se convertirán en propiedad de la Autoridad o del Comité o Equipo Evaluador, excepto aquellos documentos o información sometida por los Proponentes que constituyan secretos de negocio, o información propietaria, privilegiada o confidencial del Proponente. Se aconseja a los Proponentes que se familiaricen con las disposiciones de confidencialidad y publicación contenidas en el Reglamento para la Administración de Documentos de la AEE, para asegurarse de que los documentos identificados por los Proponentes como “confidencial” o “propietario” no estén sujetos a divulgación bajo la Ley.

Si un Proponente tiene inquietudes particulares sobre información confidencial o propietaria que quisiera poner a la disposición de la Autoridad o el Comité o Equipo Evaluador, previo a someter su Propuesta, dicho Proponente podrá: (i) hacer una petición por escrito a la Autoridad para solicitar una reunión para especificar y justificar los documentos confidenciales o propietarios; (ii) hacer una presentación oral al personal y al asesor legal del Comité o Equipo Evaluador; y (iii) recibir notificación por escrito del Comité o Equipo Evaluador aceptando o rechazando las peticiones de confidencialidad. Dejar de tomar dichas precauciones previo a someter una Propuesta podrá dejar información confidencial o propietaria sujeta a divulgación por mandato del Reglamento para la Administración de Documentos de la AEE. La Autoridad recomienda que los Proponentes sometan la información confidencial o propietaria en archivos electrónicos separados y claramente identificados y los cuales son cargados a la aplicación electrónica *PowerAdvocate® Sourcing Portal*; para facilitar la revisión de la información confidencial o propietaria por parte de la Autoridad o del Comité o Equipo Evaluador.

La Autoridad o el Comité o Equipo Evaluador se esforzarán por mantener la confidencialidad de cualquier información que un Proponente señale como propietaria o secreto de negocio, o que por otras razones, conforme al derecho, debe protegerse de publicación, excepto según requerido por ley u orden judicial. El Jefe de la División de Suministros o el Comité o Equipo Evaluador determinarán si los materiales requeridos están exentos de los requisitos de divulgación. En caso de que la Autoridad o el Comité o Equipo Evaluador elija divulgar los materiales requeridos, le notificará al Proponente sobre su intención de divulgar. En ningún caso, el Comité o Equipo Evaluador o la Autoridad serán responsables frente a un Proponente por una divulgación exigida por ley o una orden judicial de toda o una porción de una Propuesta sometida a la Autoridad o al Comité o Equipo Evaluador bajo estas guías.

Una vez el Jefe de la División de Suministros haya aprobado y se haya firmado el Contrato o Acuerdo de Compras, la Autoridad hará público el informe del Comité o Equipo Evaluador que contendrá la información relacionada al proceso de

licitación, selección y negociación, y la información contenida en la Propuesta, según lo requiere el Reglamento para la Administración de Documentos de la AEE, excepto por los secretos de negocio y la información confidencial, propietaria o privilegiada del Proponente claramente identificada como tal por el Proponente, o información que se tiene que proteger de publicación por otras razones según la ley, a menos que una orden judicial disponga algo distinto.

Cada miembro del Comité o Equipo Evaluador, el Jefe de División de Suministros y la Autoridad que participe en un proceso de RFP asociado con revisar o seleccionar las Propuestas sometidas podrá tener acceso a información privilegiada y confidencial. El mal uso de esta información confidencial sería una violación de la responsabilidad fiduciaria que tiene cada miembro del equipo hacia el Comité o Equipo Evaluador y la Autoridad. En un esfuerzo por mantener los más altos niveles de confianza y seguridad en el proceso de licitación, los participantes de los sectores público y privado tienen que ser conscientes de su responsabilidad hacia el público y estar alertas ante cualquier mal uso de información confidencial.

- 9.4 Dispensas** - Mediante el voto afirmativo de tres (3) miembros presentes en una reunión debidamente constituida en la que haya quórum, la Autoridad está autorizada a otorgar dispensas a integrantes anteriores de un Comité o Equipo Evaluador respecto a las prohibiciones de interés económico y afiliación; siempre y cuando dicha dispensa haya sido previamente aprobada por la Oficina de Ética Gubernamental.
- 9.5 Distribución, Notificación o Publicación** - A menos que la Ley o esta guía dispongan otra cosa, en aquellas instancias donde la Ley o esta guía requieran la distribución, notificación o publicación de un documento o decisión de la Autoridad, podrá satisfacerse tal requisito con la publicación de dicho documento o decisión en el portal de Internet de la Autoridad.
- 9.6 Intención** - La intención de esta guía es proveer parámetros flexibles y, por consiguiente, se interpretará liberalmente a fin de efectuar esa intención y sus propósitos. Las desviaciones no materiales de los requisitos de esta guía no deberán, a la entera discreción de la Autoridad, ser causa para descalificación de cualquier proceso de Solicitud de Propuestas.
- 9.7 Negociaciones y Discusiones** - Cualquier negociación, conversación o discusión requerida por cualquier disposición de esta guía podrá llevarse a cabo en persona, por conferencia telefónica o conferencia de vídeo.

9.8 Separabilidad - Si cualquier palabra, oración, sección, párrafo o Artículo de esta guía es declarada inconstitucional o nulo por cualquier tribunal de justicia, tal determinación no afectará, perjudicará o anulará ninguna de las disposiciones y partes restantes de esta guía, y su efecto se limitará a la palabra, oración, sección, párrafo o artículo específico declarado inconstitucional o nulo. La invalidez o nulidad de cualquier palabra, oración, sección, párrafo o Artículo en una instancia no se interpretará como que afecta o perjudica en modo alguno su aplicabilidad o validez en cualquier otra instancia.

Exhibit B

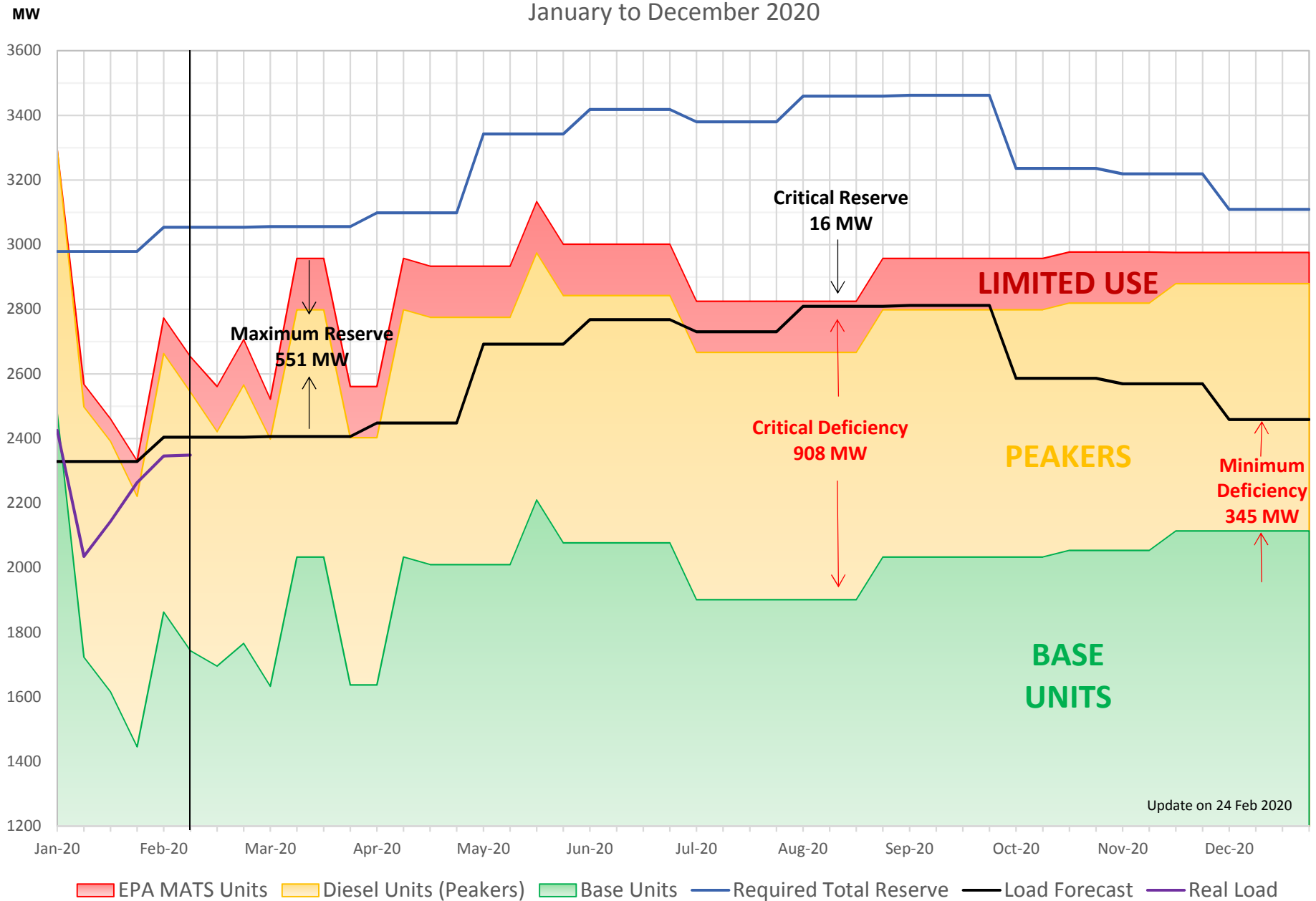
Load Forecast vs Generation Availability
 Generation Availability/Outage Schedule
 Updated 24 Sep 2020

UNIT	DATE OUT	DATE IN	DESCRIPTION	AVAIL IN
AG 2	8-Apr-19	8-Mar-20	Generator Stator Cooling System Inspection	450
SJ STM 5	14-Sep-19	12-Apr-20	Generator Repair	50
SJ 8	10-Jan-20	8-Mar-20	CCWP 8-1 Vibration Repair (Limited to 40 MW pending IDF 8-2 Replacement)	40
SJ STM 6	26-Jan-20	27-Sep-20	Generator Repair	50
SJ Gas 6	29-Feb-20	12-Apr-20	Natural Gas Conversion	150
AG 1	22-Mar-20	4-Apr-20	MPT Maintenance	450
AES 2	20-Apr-20	20-May-20	Annual Maintenance	227
PS 3	23-May-20	23-Aug-20	Environmental Maintenance & Condenser Repair	150
SJ CC 5	4-Jul-20	27-Sep-20	Catalytic Installation	200
ECO CT 2	1-Oct-20	10-Oct-20	Annual Maintenance	257
AES 1	18-Oct-20	18-Nov-20	Annual Maintenance	227
SJ 7	21-Nov-20	3-Jan-21	Environmental Maintenance	70
PS 4	21-Nov-20	3-Jan-21	Environmental Maintenance	160
AG 1			Environmental Maintenance - Last Day on Mid-August (EPA Waiver Required)	

Load Forecast vs Generation Availability

Generation Availability without Costa Sur

January to December 2020



LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dispatchable
[renewable energy] generation and battery energy storage technology,
located at [] Puerto Rico as part of PREPA's
Temporary Generation Program

between

[]
as Lessor

and

**PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee**

dated as of [], []



**Puerto Rico
Electric Power
Authority**

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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of [twelve (12)] months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain [number] [●] MWp photovoltaic solar panel arrays, inverters and [●] MWh integrated battery energy storage systems capable of intermediate load shifting (collectively, the “**Facility**”), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of six (6) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires:

“**Accounting Standards**” means [●].

“**Adjusted Date of Purchase**” has the meaning set forth in Sub-Clause 14.02 (*Purchase Delay*).

¹ Note: Under review.

“Adjusted Purchase Price” means [●].

“Affected Party” has the meaning given to it in paragraph (a) of Sub-Clause 16.01 (*General*).

“Affiliate” means 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 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.

“Agreement” has the meaning given to it in the first paragraph of this document.

“Agreement Date” has the meaning given to it in the first paragraph of this document.

“Agreement Term” has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

“Ancillary Services” has the meaning given to it in Annex 5 (*Ancillary Services*).

“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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

“Applicable Plans” means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

“Automatic Generation Control” or **“AGC”** means the provision of supplementary control that (a) automatically adjusts the power output level of the TGUs, (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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, energy storage reserve computation, and production cost monitoring. Annex 6 (*Design Limits*) specifies the Design Limits applicable to the TGUs for the purpose of AGC. Such limits shall include maximum ramping rates and allowable step changes.

“Available Capacity” means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

“Average Net Derating” means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

“Bankruptcy End Date” means the date on which a plan of adjustment consummated in connection with PREPA’s case under Title III of PROMESA becomes effective pursuant to its terms.

“Bid Submission Date” has the meaning given to it in Recital B.

“Bid Security” means the letter of guarantee procured by Lessor from a bank or financial institution in the amount of US [●] million (US\$ [●]) and otherwise in conformity with the provisions of the RfP referred to in Recital A, submitted to PREPA on the Bid Submission Date.

“Billing Period” has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

“Business Day” means any Day other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico).

“Completion” means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

“Completion Certificate” means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

“Completion Date” means the date on which Lessor achieves Completion as certified in the Completion Certificate.

“Compliance Date” has the meaning given to it in Sub-Clause 18.02 (*Security Requirements*).

“Conditions Precedent” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Contract Capacity” means [*insert the net electric power generating capacity of Facility*].

“Court 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.

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

“Defaulting Party” has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

“Delay” has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

“Derated Hours” means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

“Design Limits” has the meaning given to it in Annex 6 (*Design Limits*).

“Dispatch” means the ability of PREPA’s dispatching centers to schedule and control, directly or indirectly, manually or automatically, the generation of the TGUs in order to increase or decrease the Net Electrical Output delivered to the Grid System in accordance with Prudent Utility Practices, subject to the Operating Procedures and the Design Limits.

“Dispatch Instructions” has the meaning given to it in Sub-Clause 7.01 (*General*).

“Effective Date” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it Part (iii) in Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it Part (iv) in Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 16.01 (*General*).

“Facility” has the meaning given to it in Recital D of the preamble of this Agreement as further detailed in Annex 10 (*Technical Scope*).

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 7 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 7 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 25.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

“Monthly Invoice” has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

“Monthly Lease Payment” has the meaning given to it in Annex 4 (*Monthly Payment and Calculations*).

“MWp” means megawatt-peak.

“Net Electrical Output” means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

“Non-Affected Party” has the meaning given to it in paragraph (d) of Sub-Clause 16.01 (*General*).

“Non-Scheduled Outage” means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

“Operating Procedures” means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 11 (*Operating Procedures*).

“Outage Hours” means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

“P3A” means the Puerto Rico Public-Private Partnership Authority.

“Party” or **“Parties”** has the meaning given to it in the preamble of this Agreement.

“Performance Test” has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

“Period Hours” means all hours in the relevant period.

“Person” means 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.

“Potentially Hazardous Materials” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

“Pre-Existing Environmental Condition” means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any “Pre-Existing Environmental Condition” unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“PREB” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“PREPA” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“PREPA Interconnection Facilities” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 7 (*Interconnection*).

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“Proposed Date of Purchase” has the meaning set forth in Sub-Clause 14.01 (*Option to Purchase*).

“Prudent Electrical Practices” means 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” means 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., including those practices, methods, standards and procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Purchase Notice” has the meaning given to it in Sub-Clause 14.01 (*Option to Purchase*).

“Purchase Price” has the meaning given to it in Sub-Clause 14.01 (*Option to Purchase*).

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Bank Certificate” has the meaning given to it in Sub-Clause 18.01 (*General*).

“Ramp Rates” mean the rate(s) of time required for a TGU to change its per kilowatt output from a particular output level to another output level, determined in accordance with Part III of Annex 6 (*Design Limits*).

“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 that 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.

“Relevant Authority” means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

“Relevant Consent” means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 8 (*Relevant Consents*).

“**RfP**” has the meaning given to it in Recital A.

“**RTU**” has the meaning given to it in in Sub-Clause 7.01 (*General*).

“**S&P**” means S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

“**Scheduled Outage**” means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of TGU*).

“**Scheduled Outage Program**” has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

“**Security**” has the meaning given to it in Sub-Clause 18.01 (*General*).

“**Site**” means the area described in Annex 9 (*Site*).

“**O&M Services**” has the meaning given to it in Sub-Clause 8.01 (*General*).

“**T&D Operator**” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“**Taxes**” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“**Technical Scope**” means the scope of work set forth in Annex 10 (*Technical Scope*).

“**Temporary Generation Program**” has the meaning given to it in Recital A.

“**Temporary Generation Units**” or “**TGUs**” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*), and “**TGU**” means any one of them.

“**Termination Event**” has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

“**Territory**” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“**Tested Capacity**” means the maximum net electric generating capacity of the Facility (gross electric capacity less Facility use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the release of energy from supplementary battery energy storage in addition to energy produced from in situ conditions, as measured by the Performance Test.

“**Third Party**” means any Person other than a Party to this Agreement.

“**Transition Period Program**” means a program to be agreed between the Parties in the event that Lessor transfers the Facility or any TGU to PREPA under Sub-Clause 14.01 (*Option to Purchase*) or Sub-Clause 17.05 (*Purchase by PREPA*).

“**US-CPI**” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

- 1.02 Interpretation. In this Agreement and unless the context otherwise requires:
- a. words importing the singular only also include the plural and vice versa where the context so requires;
 - b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;
 - c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
 - d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
 - e. references to a Party or Person include that Party’s or Person’s successors and permitted assigns;
 - f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
 - g. the Parties shall construe all references to “include” and “including” as “including without limitation”;
 - h. 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,” that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party’s need to comply with its contractual obligations to any Person limit such Party’s actions, 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;
 - i. 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; and
 - j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses [1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), [●]], which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until six (6) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA with the approval of FEMA for up to two (2) additional six (6) months periods (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the initial six (6) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);
- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to [date]. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the “**Effective Date**”) on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (*Conditions*

Precedent) within thirty (30) Days of the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.

- b. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Security.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Security to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. SITE

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.

4.02 Clearance and Consents.

- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities

of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data, documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION²

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission *[[number] [●] MWp [photovoltaic solar panel arrays, inverters] and [●] MWh] integrated battery energy storage systems capable of intermediate load shifting [or other renewable technology]* (collectively, the "Temporary Generation Units" or "TGUs")³ and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the "Installation Works") at Lessor's sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a "Delay"):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA's personnel, or PREPA's contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

² Note to PREPA: We assume PREPA conducts interconnection studies and analysis of the proposed design as part of the RFP process, prior to award and signing of the contract. Please advise if that's not the case, and we can include provisions on those topics.

³ Note: Redraft depending on number of arrays or other renewable energy generation systems at the Site.

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the Completion Date has not timely occurred an amount equal to US \$[] (\$[])⁴; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated Damages for Delay*) for a maximum of thirty (30) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable, documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. each of the Temporary Generation Units conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. each of the Temporary Generation Units is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the TGUs generally accept and follow; and

⁴ Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

- c. Lessor owns good and valid title to the Facility free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.
- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to be filed, or any complementary information required to be furnished, in relation to the Installation Works; and
 - ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period, and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 22.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure.⁵ PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility

⁵ Note to bidders: Battery energy storage capacity will need to accommodate intermediate load shifting.

changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated schedule of operations for the following five (5) weeks, and for each Day of the Lease Period, Lessor shall provide to PREPA a non-binding, hourly estimate of next Day and next week expected NEO and average Available Capacity, based on the previous Day NEO and Available Capacity and estimated strength of the [*solar irradiation or other resource*] for the next Day and week according to the meteorological forecast for the region and site. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown any of the TGUs.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 5 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the "**O&M Services**"). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA's request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with PREPA's AGC system with the [solar panel arrays] 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the "**Scheduled Outage Program**") for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA shall have the right, upon sixty (60) Days' prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage

Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

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

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor's personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA's dispatching centers will notify Lessor's personnel and, if requested by PREPA, Lessor'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 Lessor'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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the Facility with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;
- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment,

revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;

- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and
- 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.

8.08 Certifications. At PREPA's request, Lessor 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 Facility during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor 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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the Facility, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the Facility and Lessor Interconnection

Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. For each TGU, Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for the Facility not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the Facility on such date.

9.04 Testing. Prior to the initial synchronization of the Facility with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of the Facility and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for the Facility, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for the Facility. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify Completion of the Facility as per the requirements of this Agreement and finally determine whether the Facility and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the Facility and Completion of all other Installation Works, Lessor shall notify PREPA of the Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a **"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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.

11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor's issuance of a Monthly Invoice pursuant to paragraph (b) below.
- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a **"Monthly Invoice"**). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire

transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works; leasing of the Facility; and provision of the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on the Facility to establish Tested Capacity, Ramp Rate and [●] for the Facility (each, a “Performance Test”) at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 12 (*Performance Tests*) for the Facility, Lessor shall declare, and provide PREPA with notification of the Tested Capacity 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 Annex 12 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity for the Facility in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$ [●] for each kW of power generation capacity shortfall below the Contract Capacity, such shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof.

13. LIABILITY

13.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of the Facility shall vest with PREPA upon generation. Each

Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 13.02 (*Limitation of Liability*) below.

13.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other provisions of this Agreement. Nothing in this Clause 13 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

14. OPTION TO PURCHASE

14.01 Option to Purchase. Upon the expiration of the initial Lease Period of six (6) months or the expiration of any six (6) month extension of such initial Lease Period (if any), PREPA shall have the option (but not the obligation) to purchase the Facility at the prices set forth in the following table (each, a "**Purchase Price**") by delivering notice thereof (the "**Purchase Notice**") to Lessor at least thirty (30) Days prior to the date on which PREPA desires to purchase the Facility (each, a "**Proposed Date of Purchase**"):

PROPOSED DATE OF PURCHASE	PURCHASE PRICE
Expiration of initial Lease Period	\$ ●
Expiration of first 6 month extension	\$ ●
Expiration of second 6 month extension	\$ ●

Upon the delivery of the Purchase Notice to Lessor: (i) the Parties shall execute and deliver an agreement for the sale and purchase of the Facility in the form set forth in Annex [16] (*Form of Facility Sale & Purchase Agreement*) (ii) PREPA shall remit the Purchase Price to Lessor, and (iii) Lessor shall transfer to PREPA good and marketable title to all rights, title and interest in and to the Facility, including all fixtures, fittings, plant and equipment, free and clear of all liens and encumbrances, in each case on the Proposed Date of Purchase in accordance with the Transition Program.

14.02 Purchase Delay. In the event that the Parties cannot consummate the sale and purchase of the Facility on the Proposed Date of Purchase for any reason other than a breach by a Party of its obligations under Sub-Clause 14.01 (*Option to Purchase*):

- a. the Parties shall mutually agree on a later date for the sale and purchase of the Facility (the "**Adjusted Date of Purchase**") that accounts for the circumstances which prevented such sale and purchase from occurring on the Proposed Date of Purchase;
- b. prior to the Proposed Date of Purchase, Lessor shall deliver to PREPA (i) a replacement Security with a term that extends until at least five (5) Business Days after the Adjusted Date of Purchase, and (ii) Qualified Bank Certificate, duly-signed by an authorized representative of Lessor;

- c. the Lease Period and Agreement Term shall automatically extend until the Adjusted Date of Purchase with (but only to the extent required by Applicable Law) the approval of FEMA;
- d. each Party shall continue performing all of its obligations arising out this Agreement through the Adjusted Date of Purchase; and
- e. PREPA shall pay to Lessor the Adjusted Purchase Price in lieu of the Purchase Price on the Adjusted Date of Purchase.

In the event that the Parties cannot consummate the sale and purchase of the Facility on the Adjusted Date of Purchase for any reason other than a breach by a Party of its obligations under this Sub-Clause 14.02 (*Purchase Delay*), the Parties shall repeat the procedures set forth above.

15. INDEMNIFICATION

15.01 General. 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.

15.02 Notice of Claim. 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.

15.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor's agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

16. EVENTS OF FORCE MAJEURE

16.01 General. Neither Party 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 an act, event or

circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 16.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the “**Affected Party**”) could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act, event or circumstance on the Affected Party’s ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;
- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party (“**Non-Affected Party**”) notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 16.05 (*Notices*);

(each such act, event or circumstance, an “**Event of Force Majeure**”). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

16.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 16.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the Facility;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils, acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

16.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 16.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and

- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority, required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

16.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

16.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 16 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

16.06 Other Matters.

- a. If any Party claims relief under this Clause 16 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 16 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 16 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.
- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.
- e. [For the avoidance of doubt, to the extent required following an Event of a Force Majeure, Lessor shall perform all repairs, restoration, replacement, and maintenance, at its sole cost, to return the Facility to full commercial operations.]

17. TERMINATION

17.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the "**Defaulting Party**") set forth in paragraphs (a) - (k) below (each, a "**Termination Event**"), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. Failure of Lessor to achieve Completion on or before the thirtieth (30th) Day following the Guaranteed Completion Date as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. Declaration by Lessor of a Tested Capacity of less than ninety percent (90%) of the Contract Capacity under Sub-Clause 12.02 (*Declaration*);
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falls below ninety percent (90%) for any period of [three (3)] consecutive months during the Lease Period;

- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;
- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 16.06 (*Other Matters*);
- g. In the case of Lessor only, the conviction of one or more of Lessor's or its contractors' employees or representatives of a crime described in Sub-Clause 26.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 26.03 (*No Convictions Under Certain Other Acts*);
- h. Making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement as contemplated by Sub-Clause 26.04 (*Right of Termination*);
- i. Lessor's failure to cure an actual conflict of interest, or the appearance of such a conflict, to PREPA's satisfaction;
- j. (i) Inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and
- k. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days

provided, however, that paragraph (j) and (k) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date, and provided further, that PREPA shall have the right to terminate this Agreement under paragraph (i) upon thirty (30) Days' prior written notice to Lessor.

17.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to Lessor.

17.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 17.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 17.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

17.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

17.05 Purchase by PREPA. In the event that a Termination Event occurs with Lessor as the Defaulting Party, PREPA shall have the right (but not the obligation) to purchase the Facility from Lessor in accordance with Clause 14 (*Option to Purchase*) by delivering a Purchase Notice to Lessor within thirty (30) Days of the date of the notice of such Termination Event under Sub-Clause 17.01 (*Right of Termination*); provided, that the Parties shall construe (i) “**Proposed Date of Purchase**” as the date thirty (30) Days after the delivery of the notice by PREPA exercising its option under this Sub-Clause 17.05, and (ii) “**Purchase Price**” as an amount expressed in US Dollars equal to eighty percent (80%) of the Adjusted Purchase Price.

17.06 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 17.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party’s right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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.

18. SECURITY

18.01 General. As security for the proper performance of all of Lessor’s obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the “**Security**”) issued by a Qualified Bank in the form set forth in Annex 13 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●] United States Dollars), together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a “**Qualified Bank Certificate**”), and (ii) maintain the Security in full force and effect until the expiration of the Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor’s obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 18.01 (*General*).

18.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and

- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 18.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the “**Compliance Date**”) on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA’s right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA’s right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

18.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the then outstanding Security.

19. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor 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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

20. INSURANCE⁶

20.01 General. Lessor shall obtain and maintain in full force and effect during the Agreement Term and thereafter as provided herein, policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. Workmen’s Compensation Insurance: Lessor shall provide and maintain Workmen’s Compensation Insurance as required by the Workmen’s Compensation Act of the Commonwealth of Puerto Rico. Lessor shall also responsible for the compliance with said Workmen’s Compensation Act by all his subcontractors, agents and invitees. Lessor shall furnish PREPA with a

⁶ Note to PREPA: PREPA to review thresholds.

certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered;

- b. Employer's Liability Insurance: Lessor shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Lessor as a result of bodily injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Commercial General Liability: Lessor shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability;
- d. Automobile Liability Insurance: Lessor shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combine single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos;
- e. Professional Liability Insurance: Lessor shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- f. Pollution Liability Insurance: Lessor shall provide and maintain a Pollution Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- g. All Risk Physical Damage Property Insurance: Lessor shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the proponent (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost. This Policy shall include a Business Interruption and Contingent Business Interruption coverage. The insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work and temporary buildings located at the Site;
- h. Equipment Breakdown Policy (Boiler & Machinery): Lessor shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this policy; and
- i. Builder's All Risk Insurance: Lessor shall provide and maintain a Builder's All Risk Insurance shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Site, and all equipment and materials delivered and stored at the Site which are to be used in the work or incorporated into de Facility. PREPA shall be named Additional Insured under this policy.

20.02 Requirements under the Policies. The Commercial General Liability Insurance and Automobile Liability Insurance required under this agreement shall be endorsed to include:

- a. As Additional Insured:

Puerto Rico Electric Power Authority Risk Management Office
PO Box 364267
San Juan, PR 00936-4267
- b. A 30 days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of subrogation in favor of PREPA.
- e. The breach of any of the warranties or conditions in these policies by the Insured shall not prejudice PREPA'S rights under this policy.

20.03 Structure of Coverage. The amounts of insurance required in Sub-Clause 20.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 20.01 (*General*).

20.04 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (b) of Sub-Clause 20.01 (*General*) and any required umbrella or excess coverage may be "occurrence" form policies if available on commercially reasonable terms. In the event Lessor has "claims-made" form coverage, Lessor shall notify PREPA and the retroactive date established on the first "claims-made" policy shall be maintained on all subsequent renewals.

20.05 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor's Worker's Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor's indemnity obligations set forth elsewhere in this Agreement;
- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

20.06 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (c) and (d) of Sub-Clause 20.01 (*General*) 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 Lessor shall not prejudice PREPA’s right under this policy.” If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

20.07 Certificates of Insurance. Lessor 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 paragraph (f) of Sub-Clause 20.01 (*General*), 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 Facility. Failure of PREPA to obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 20 (*Insurance*) shall in no way relieve or limit Lessor’s obligations and liabilities under other provisions of this Agreement.

21. REPRESENTATIONS, WARRANTIES & LIABILITIES

21.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;
- b. Lessor 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. Lessor’s execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor’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 Lessor’s ability to perform its obligations hereunder, (ii) violate any provision of Lessor’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 Lessor’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; and

- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

21.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority, PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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; and
- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA, in accordance with its terms.

22. ASSIGNMENT

22.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as Lessor, and (ii) comply with the requirements for pre-qualified bidders participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

22.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

22.03 Transfer. 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 Lessor’s consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

23. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 23 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

LESSOR:

[•]

Attention:

[•]

Telephone:

[•]

Email:

[•]

With copy to:

[•]

Telephone:

[•]

Email:

[•]

PREPA:

Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928

Attention:

Attn: [•]

Telephone:

[•]

Facsimile:

[•]

Email:

[•]@prepa.com]

With Copies to:

Attn:

Telephone:

[•]

Facsimile:

[•]

Email:

[•]@prepa.com]

Either Party may change its address details by giving not less than five (5) Days’ written notice to the other Party.

24. CHOICE OF LAW AND DISPUTE RESOLUTION

24.01 Choice of Law. 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.

24.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a “Dispute”), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

25. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

25.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

25.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).
- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.
- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and
 - ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

25.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

25.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

25.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 “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.

25.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

25.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

25.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

25.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

25.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

26. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

26.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

26.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

26.03 No Convictions Under Certain Other Acts. Lessor 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.

26.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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. CONSEQUENCES OF NON-COMPLIANCE

27.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout *Clauses 25 (Compliance with the Commonwealth of Puerto Rico Contracting Requirements)* and *26 (Anti-Corruption Code for a New Puerto Rico)* are essential

requirements of this Agreement. If any of the certifications listed in Sub-Clause 25.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

27.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

28. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

28.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or

subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

28.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, with such certification being provided substantially in the form set forth in Annex 14 (*Certification Regarding Lobbying for Contracts, Grants, Loan, and Cooperative Agreements*) and Annex 15 (*Form of Certification Regarding Debarment, Suspension and Other Responsibility Matters*). Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

28.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

28.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

28.05 Sufficiency of Funds. Lessor acknowledges and agrees that funding for this Agreement is contingent upon the availability of Federal assistance awarded by federal agencies to the Government of Puerto Rico. A failure of PREPA to make any payment under this Agreement due to unavailability of Federal and/or Government of Puerto Rico funding shall not constitute a breach of the Agreement by PREPA or default thereunder and PREPA and the Government of Puerto Rico shall not be held financially liable therefor. If, during the Agreement Term, Federal or local funding is reduced, de-obligated, or withdrawn, PREPA shall have the right to reduce the scope of or terminate any task order or the Agreement. PREPA shall provide Lessor with written notice of the lack of funding within a reasonable time and PREPA reserves all rights to reduce the scope of or terminate the Agreement as a result

of lack of funding. Lessor shall not be entitled to any compensation for any reduction of scope or termination of the Agreement as a result of the lack of funding under this Sub-Clause 28.05 (*Sufficiency of Funds*).

28.06 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

28.07 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

28.08 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

28.09 Debarment, Suspension, and Ineligibility.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- b. Lessor certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

28.10 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

28.11 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in the aforementioned clauses and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

28.12 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.
- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - 1. 2 C.F.R. § 327 (Financial Reporting);
 - 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 - 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

28.13 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Reform Act of 2018, PREPA and Lessor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA or HUD Administrators or the Comptroller General of the United States.

28.14 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than five (5) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
 - 1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - 2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - 3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
 - 4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
 - 5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

28.15 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

28.16 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Lessor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

28.17 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee

or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.

- d. Lessor shall send to each labor union or representative of workers with which he has a collective bargaining contract or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lessor's commitments under Section 202 of the US Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Lessor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.
- h. Lessor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

- i. The applicant further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal

opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

28.18 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

28.19 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

28.20 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

28.21 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

28.22 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

28.23 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R Part 3001.

28.24 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, agency policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

28.25 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

28.26 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

28.27 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

28.28 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

28.29 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and

training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

28.30 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.
- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

28.31 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.

- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.
- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

28.32 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

- 1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
- 2. **Commercially available off-the-shelf (COTS) item** means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and
 - c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
- 3. **Component** means an article, material, or supply incorporated directly into a construction material.
- 4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the

Site. Materials purchased directly by the Government are supplies, not construction material.

5. **Cost of components** means:

- a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

6. **Designated country** means any of the following countries:

- a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
- b. a Free Trade Agreement (FTA) country (as of the Agreement Date, Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
- c. a least developed country (as of the Agreement Date, Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- d. a Caribbean Basin country (as of the Agreement Date, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
8. **Domestic construction material** means:
- a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
9. **Foreign construction material** means a construction material other than a domestic construction material.
10. **Free Trade Agreement country construction material** means a construction material that:
- a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
11. **Least developed country construction material** means a construction material that:
- a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
13. **WTO GPA country construction material** means a construction material that:
- a. is wholly the growth, product, or manufacture of a WTO GPA country; or

- b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]
4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;

- c. quantity;
- d. price;
- e. time of delivery or availability;
- f. location of the Work;
- g. name and address of the proposed supplier; and
- h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.
- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			

Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
4. Include other applicable supporting information.
5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

28.33 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

29. MISCELLANEOUS PROVISIONS

29.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall (i) unless PREPA has opted to purchase the Facility under Clause 14 (*Option to Purchase*) or Sub-Clause 17.05 (*Purchase by PREPA*), demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, instruments, and TGU(s) forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

29.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

29.03 Non-Waiver. 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.

29.04 Third Party Rights. 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.

29.05 No benefits. No officer, employee, or agent of Lessor 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.

29.06 Relationship. 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.

29.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 29.01 (*Demobilization and Final Report*).

29.08 Reasonableness. 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.

29.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

29.10 Waiver. 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.

29.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

29.12 Severability. 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.

29.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

ATTEST:

[•]

By: _____
Title: [•]

By: _____
Title: [•]

ATTEST:

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _____
Title: [•]

Title: [•]

Annex 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of Lessor under this Agreement shall be conditioned upon Lessor having delivered to PREPA:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 20 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 8 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 25 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 26 (*Anti-Corruption Code for a New Puerto Rico*) and Clause 28 (*Compliance with Applicable Federal Law, Regulations and Executive Orders*); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2- PREPA CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of PREPA under this Agreement shall be conditioned upon PREPA having delivered to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Except as set forth in Sub-Clause 3.02 (*Conditions Precedent*), the effectiveness of the rights and obligations of PREPA and Lessor under this Agreement shall be conditioned upon there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

Annex 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Lessor**”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “**LOA**”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

SIGNED: _____
FOR LESSOR

DATE: _____

Annex 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Lessor**”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “**LOA**”). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

ACKNOWLEDGED: _____
FOR LESSOR

DATE: _____

Annex 4

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for Billing Period “n” shall be calculated as follows:

$$MLP (\$) = LP \times FMAF \times EAF$$

where:

LP = Lease Price equal to \$ [●],

FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below

EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below

- (i) Force Majeure Adjustment Factor (FMAF) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA’s ability, to Dispatch the Facility as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

BPH = Hours in Billing Period

ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below

EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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 Event of Force Majeure by the Contract Capacity applicable to that Derated Hour, plus (b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (EGFMH) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

GFMH	=	Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the corresponding Billing Period
CC	=	Contract Capacity made available by Lessor, expressed in MW
ASC	=	the average Lessor capacity placed in service by PREPA's Dispatch of the Facility during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

ANCILLARY SERVICES

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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) Energy Storage Reserve, (v) Supplemental Reserve Services, and (vi) Generator Imbalance Services⁷ (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.

“**Energy Storage Reserve**” means the online energy storage 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.

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

“**Supplemental Reserve**” means the off-line generation or energy storage at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Energy Storage Reserve following a Unit startup order from PREPA’s energy control center.

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

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor shall telemeter the status of its automatic voltage regulating equipment to PREPA on a real time basis.

2. **Regulation and Frequency Response Service**

⁷ Note to PREPA: The RFP says these services / required features of the TGUs should include (i) ramp from standby to full load in no more than thirty (30) minutes; (ii) capable of remote operation; (iii) automatic load following services; and (iv) black start capability. Please advise how to incorporate these services in this Annex. PREPA also to advise on energy storage services / descriptions.

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. Energy Storage Reserve

PREPA shall have the right to (i) nominate the Energy Storage Capacity from time to time and (ii) utilize the Energy Storage 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 6 (*Design Limits*). If at the time of Energy Storage Capacity operation, the Facility is dispatched at less than the Contract 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 Energy Storage Reserve Capacity operation.

For any hour, PREPA shall have the right to nominate Energy Storage 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. Supplemental Reserve

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

Annex 6

DESIGN LIMITS

I. Objective

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

II. Design Limits

The following are preliminary Design Limits for each of the Facility: [●]

III. Ramp Rates

Each TGU shall have a Ramp Rate from standby to full load operation of less than [●] ([●]) minutes.

Annex 7

INTERCONNECTION



Annex 8

RELEVANT CONSENTS

[●]⁸

⁸ NTD: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

Annex 9

SITE



TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, [*photovoltaic solar arrays, inverters, battery energy storage systems*] [*or other renewable technology*], personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas,] *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, [*photovoltaic solar arrays, inverters, battery energy storage systems*], [*or other renewable technology*] *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place [*photovoltaic solar arrays, inverters, and battery energy storage systems*] [*or other renewable technology*] per PREPA requirements;
- b. Install the temporary pump station;
- c. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- d. Install emergency notification system in the event of a shutdown; and
- e. Perform pre-commission of the system to verify system function as the [*photovoltaic solar arrays and battery energy storage*] [*or other generation technology*] [*or other renewable technology*] are being installed.

IV. Pre-Commissioning

Perform and report completion of the following pre-commissioning tasks, as applicable to:

- a. Battery systems;
- b. [*Photovoltaic solar arrays and inverter systems*] [*or other generation technology*];
- c. [*Battery energy storage systems*];
- d. [●];
- e. Fire system;
- f. [●] auxiliaries; and
- g. Any other pre-commissioning tasks based on new or used photovoltaic solar panel factory requirements.

V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
 - vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;

- viii. Lessor shall share the temporary generation units technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the TGU's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, [operation mode];
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as Schedule 1 to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M:
 - i. Power output; and
 - ii. MVAR; and
 - iii. [Other parameters determined appropriate.]

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*

SCHEDULE 1 TO Annex 10

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements (tailored to the applicable generation technology) such as:

- a. Protective Relay Study and its settings for the proposed power system.
- b. Power system protective relay settings criteria.
- c. Grant access to PREPA to protective relay events.
- d. Access to power system proprietary software/program to allow communication with relays.
- e. Power system TGU data sheet.
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
- h. The TGU protection system and its associated equipment connection shall comply with the latest applicable standards for small generators.
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection).
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5.
- k. [The drawings for TGU installation shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel.]
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer.
- m. [Lessor shall provide all the manufacturer information for each solar panel and inverter, such as manuals, data sheets, setting guidelines and curves.]
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the Facility and associated apparatus) that is not covered by the unit differential protection.
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

Annex 11

OPERATING PROCEDURES

[•]

Annex 12

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, to verify the Ramp Rate of the Facility, and [insert any other necessary tests].

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site-specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (30) Days before testing implementation.

Test Duration

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.

Test Conditions

The TGU shall be in its normal base-loaded operation mode with the voltage regulator and governor in service, but not on Automatic Generation Control. All major components shall be operated within their design pressures, temperatures, and flow rates. TGU operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by TGU 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.

FORM OF SECURITY
ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: The Puerto Rico Electric Power Authority



Attn.: Chief Executive Officer


Date: 

LOA / PERFORMANCE SECURITY No. 

We understand that  (the “**Applicant**”) has entered into a contract with you (the “**Beneficiary**”) dated  (as amended from time to time, the “**LOA**”).

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

“**Maximum Amount**” means (i) prior to the Completion Date (as evidenced by the delivery of a certified true and correct copy of the Completion Certificate), \$ , and (ii) thereafter, \$ .

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

SCHEDULE 1 TO ANNEX 13

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:
Authorized Signatory

Annex 14

**FORM OF CERTIFICATION
REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE
AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

**FORM OF CERTIFICATION
REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR Company Name

Contract Number

Name

Title

Signature

Date

Annex 16

FORM OF FACILITY SALE & PURCHASE AGREEMENT

Exhibit C



GOVERNMENT OF PUERTO RICO
Puerto Rico Electric Power Authority

Request for Proposals

RFP 102750
Temporary Emergency Generation
March 5, 2020 **CONFIDENTIAL DRAFT**

Issued by the Puerto Rico Electric Power Authority



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1. Statement of Qualifications

This Request for Proposal (RFP) contains confidential and proprietary information that is the property of the Puerto Rico Electric Power Authority (PREPA), which is provided for the sole purpose of permitting the recipient to respond to the RFP. The recipient agrees to maintain such information as confidential and not to copy nor disclose the RFP information to any person outside the group directly responsible for responding to its contents. The contents of this document may not be used for any purpose other than preparation of a response or proposal to this RFP.

2. Abbreviations, Acronyms and Definitions

Words and terms defined in this Section shall have the same meaning throughout all parts of this RFP and the LOA.

Addenda/Addendum means a supplemental document with additions, deletions, and **modifications** to the provisions of the RFP, after the release date of the RFP.

Contractor or Selected Proponent means a proponent awarded the LOA resulting from this RFP.

EPA means Environmental Protection Agency.

Evaluation Committee means a committee designated by PREPA's Governing Board Officer, which will evaluate all complete proposals pursuant to the criteria listed in this RFP.

Final Acceptance - means the written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.

Government Entity means any department, agency, board, commission, body, bureau, office, public corporation, or instrumentality of the Executive Branch of the Government of Puerto Rico, whether existing or to be created in the future.

Inspection - means a periodic action comprising a careful scrutiny of an item, carried out without dismantling and using all the senses as required, to detect anything that causes the item to fail to meet unacceptable condition. Note: An inspection may be followed by an operational review.

Key Individuals means an individual who will play an important role in the engagement or LOA on behalf of a Team Member resulting from this RFP.

LOA has the meaning defined in Section 4.

Local Parties means local subcontractors or professionals (which may include architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence in Puerto Rico.



Notice to Proceed or NTP means a letter from an authorized PREPA representative to the **contractor(s)** stating the date the contractor(s) can begin work subject to the conditions of the LOA. The performance time of the LOA commences on the NTP date.

PREPA means the Puerto Rico Electric Power Authority.

Proponent - means a (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this RFP that is not currently debarred.

Public Interest - means any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.

Team Member - means a member of a Proponent. Team Members shall be identified in Proponent' submissions and not be changed without the consent of PREPA.

Redacted copy – means a version/copy of the proposal with the information considered confidential and/or proprietary “blackened out” or “edited” as defined Section 22 of this RFP.

Team Member means a member of a Proponent. Team Members shall be identified in the proposals and must not be changed without the prior consent of PREPA.

Unit (or unit) means a module composed of a generator and turbine for power generation purposes. The technology proposed by the Proponents capable of provided the capacity and energy required under this RFP.

3. Introduction

3.1 About PREPA

The Puerto Rico Electric Power Authority (PREPA) is a public corporation and governmental entity of the Commonwealth of Puerto Rico, created pursuant to Act 83 of May 2, 1941, as amended, with the duty of providing electric power in a reliable manner, contributing to the general welfare and the sustainable future of Puerto Rico, maximizing the benefits and minimizing the social, environmental and economic impacts.

PREPA is empowered to make contracts, sell, and buy assets and real estate, borrow money and issue bonds.

PREPA's objectives:

- Reduce energy cost
- Promote smart energy consumption
- Protect the environment, lives, public health and safety

Strategies to achieve these objectives:

- Reduce operating expenses
- Increase efficiency
- Minimize energy theft



- Diversify energy sources
- Establish smart grid for energy control and consumption monitoring
- Maximize use of advanced technology

3.2 Background

On January 6, 2020, a magnitude 5.8 earthquake struck the southwest region of Puerto Rico causing considerable damage to homes and other private and public structures and a partial electric power blackout. Then, on January 7, 2020, Puerto Rico's most destructive earthquake in a century, a magnitude 6.4 earthquake that jolted residents, caused major damage to private and public structures and infrastructure, including mechanical and structural damage to PREPA's Costa Sur power plant, an 820 MW power plant providing nearly 25% of the electric power on the island. The island suffered a complete electric power blackout as a result of the earthquake and the Costa Sur power plant failure. On January 11, 2020, a magnitude 5.9 earthquake once again rattled Puerto Rico's southwestern coast.

Since late December 2019, there have been more than 100 earthquakes or aftershocks of magnitude 3 or higher, which were strong enough for residents near the epicenters to feel, according to the U.S. Geological Survey (USGS). Various earthquakes of magnitude 5 or higher have also struck the island.

3.3 Project Need

At present and with the information available to date, the time to repair the Costa Sur power plant has been estimated at approximately twelve (12) months. The damage assessments are still underway as damages are significant and this is the first event of this magnitude affecting a large power plant in PREPA's fleet. However, a full inspection has not been completed due to the continuing earthquakes/aftershocks affecting the power plant structure. Some experts have preliminarily indicated that the plant may not be viable for use due to safety concerns. The temporary or permanent loss of Costa Sur's 820 MW generation has caused the following:

- Immediate shortage of reserve capacity
- Conditions that threaten lives, public health and safety
- Possible significant damage to improved public or private property Shortage of operating capacity to serve the peak demand months (June onwards)
- Shortage of Primary and Secondary frequency regulation
- Extensive use of less efficient and less flexible generating units using higher cost fuels
- Reduced power system inertia and dynamic and transient stability margins
- Alteration of PREPA's generation fleet maintenance schedules

3.4 Purpose and Intent

Pursuant to the stated objectives and strategies, PREPA publishes this RFP to solicit submittals from interested and qualified firms that can provide the scope of work detailed herein (the Project). The purpose of this RFP is to award qualified firms which shall provide time-critical, dual fuel, low sulfur diesel, liquefied natural gas (LNG), or renewable generation to temporarily power existing switchyards substations in Puerto Rico as part of disaster recovery in response to the Governor of Puerto Rico's Executive Order 2020-01 and the



United States' President's Disaster Declaration of January 16, 2020, and to provide capacity and energy to replace the loss of the 820 MW Costa Sur power plant in Guayanilla until it can be repaired, replaced or alternate solutions have been secured.

LOAs may be awarded to those qualified persons or legal entities whose proposals conform to this RFP and are most advantageous to PREPA. Proponents shall demonstrate in their proposals their capacity to conduct all works in compliance with the Scope of Services indicated herein. PREPA will evaluate and analyze the information provided in the proposals and will determine which companies meet the minimum requirements.

This Project seeks reputable and experienced firms (contractors) that can enter into a lease, installation, operation and maintenance agreement with PREPA for dispatch-able generation capacity. Under the LOA, the Contractor(s) shall lease, transport, place/install, test, commission, operate and maintain up to 500 MW of continuous total net generator output capacity at different locations and divided by generation blocks per site. The Contractor(s) shall be responsible for all equipment, delivery, installation, interconnection, testing, commissioning, operation and maintenance of this generation infrastructure, as well as for its eventual retirement, per PREPA's requirements, all applicable industry codes and standards (latest revisions), and federal and local regulations.

PREPA may consider all non-variable, dispatchable generation, dual fuel, low sulfur diesel, liquefied natural gas, or renewable technologies, in-land based or barge-mounted configurations, including single-cycle aeroderivative gas turbines, RICEs, combined cycles, Battery Energy Storage Systems (BESS) or other renewable sources.

Proponents can propose a combination of these resources (with a required generation of up to approximately 500 MW) to be installed at various locations, described in Appendix A. Additional or alternate sites may be proposed (including Vieques), and will be evaluated by PREPA to determine the interconnection viability to the grid and compliance with the requirements outlined in Appendix A. These additional or alternate sites will be subject to PREPA's approval.

The required generation of up to approximately 500 MW shall be installed at various locations identified by PREPA (see Appendix A).

PREPA reserves the right to award LOA(s) to one or more Contractors.

Due to the emergency circumstances, PREPA expects that the Proponent will not be responsible for the units' operation permitting processes for the sites described in Appendix A. The proposal shall include design emission parameters for required fuels of the units, with and without water injection. See Appendix B for Fuel Specifications. Proponents must clearly identify all environmental requirements and all process inputs. Proposals that do not comply with this requirement will be rejected. Selected Proponents shall be responsible for any other permit required for the installation of the unit. For additional or alternate sites not mentioned in Appendix A and suggested by the Proponents, the Proponent(s) shall be responsible for all permits, all infrastructure, fuel supply, and any other applicable requirement for the successful operation of the units.

PREPA expects to award LOAs per site to the best offers that substantially meet the established requirements and the intent of the RFP. As such, if PREPA does not receive proposals that meet the minimum requirements of this RFP for one or more sites mentioned



in Appendix A, PREPA reserves the right to resolicit proposals for said sites to proponents whose offers complied with this RFP's minimum requirements and that proposed for other sites, per the Evaluation Committee's determination.

The Proponent shall assume a capacity factor of 90%, and all technologies proposed must be capable of providing energy at a 90% capacity factor.

PREPA prefers that the generating units may actively participate in primary and secondary frequency regulation.

PREPA expects the temporary generation units to be installed at existing PREPA facilities except at Costa Sur (see Appendix A). PREPA will be responsible for the fuel supply.

Although the Costa Sur power plant cannot be used to install generation units, its switchyard 230 kV can be used as a transmission center and interconnection point. This site will be considered an alternate site and fuel supply will be the responsibility of the Contractor.

PREPA has preliminarily discussed the Project with FEMA, who has agreed to move forward with a procurement process for temporary generation, in compliance with the appropriate sections of the Stafford Act, for reimbursement of the Project's costs.

The Contractor shall fully comply with Puerto Rico (local) and federal laws and regulations and shall conform to FEMA documentation and audit requirements.

For locations described in Appendix A, there is sufficient space for placing temporary generation units per site of no less than 20 MW each. Although PREPA prefers units of 20 MW or more for these locations, PREPA may consider proposals with units of smaller capacity. Appendix A describes the actual capacity of the output transformers of each possible site, but if a new transformer, breaker and BOP equipment are furnished with the unit, the generator's output could be more. Proposals shall include a top-view layout of the arrangement of all equipment included in it for each proposed site.

PREPA prefers brand new generation units; however, it may consider used units of less than, or equal to, 5,000 hours as an option for evaluation. These used units must be able to meet the operational requirements during the emergency period. Proponents shall include in the proposal evidence of all maintenance records which demonstrate the actual conditions of the units. The units will be subject to PREPA's inspection prior to acceptance. Proponents shall include in the proposal the emissions profile of the required units for the following criteria pollutants – sulfur dioxide (SO₂), oxides of nitrogen (NO_x), particular matter (PM), particular matter less than 10 microns (PM₁₀), particular matter less than 2.5 microns (PM_{2.5}), volatile organic compounds (VOC), sulfuric acid mist (H₂SO₄), carbon monoxide (CO) and Formaldehyde, hazardous or toxic air pollutant emissions (HAPS & TAPS), water requirements, wastewater discharge, solid or hazardous waste. Proponents shall also identify whether the units have inherent emission controls and whether they can be retrofitted with emission controls.

The Proponent shall include in their proposals the necessary components for the BOP, as the output transformers, breakers and BOP, if they are available for immediate delivery. If not, the temporary generation units shall have the capacity to be connected to the existing transformers per site. The bus voltages to connect the transformers are 38 kV, 115 kV and 230 kV, as described in Appendix A.



In addition to transporting, providing and installing the units, the work requirement includes commissioning of the system(s), operation and maintenance of the unit(s) for the period of time required to adequately respond to the emergency situation, and that the Contractor(s) uninstall and demobilize the units. If the need for temporary generation of power remains after an initial twelve (12) month period, PREPA may exercise an option to extend for an additional six (6) month period.

The Contractor shall incorporate necessary and authorized resources to perform this work to applicable engineering, safety, construction standards, and local and federal regulations, in the timeliest manner possible (no later than June 1, 2020), and with optimal cost containment.

4. Form of LOA & Contract Term

As a result of this RFP process and contingent upon the necessary authorizations for current contracting processes, PREPA expects to award the Selected Proponent(s) one or more Lease & Operating Agreements (each, an “**LOA**”). Exhibit 1 sets forth a form of Lease & Operating Agreement for Dual-Fuel Generation and Exhibit 2 sets forth a form of Lease & Operating Agreement for Renewable Energy and Battery Storage Generation. The contract term is expected to be for twelve (12) months with PREPA’s option to extend the contract for six (6) additional months, subject to the availability of funds, any requirements of Puerto Rico Energy Bureau (including, e.g., a contract term of three (3) months, with three (3) month extensions), and required authorizations according to PREPA’s rules and regulations. PREPA reserves the right to re-bid the LOA after the expiration of the original term or under several LOA breach circumstances from the Selected Proponent.

PREPA reserves the right to cancel or modify this RFP process at any time and is not obligated to enter into an LOA even upon its completion, after the selection of the Selected Proponent, or during LOA negotiations.

Proponent must review the form of LOAs set forth in Exhibits 1 and 2, and state any exceptions to its clause(s) and may suggest proposed modifications to the contract language with which the Proponent disagrees or for which Proponent is unable to satisfy the condition or requirement, including an explanation of the review (if any), unless Proponent agrees and can comply with all of the conditions and requirements of the contract. PREPA will evaluate the proposed modifications to the LOA and may, at PREPA’s discretion, affect overall scoring of the proposals. PREPA reserves the right to reject any or all proposed modifications.

5. RFP Timeline

The following are the key dates of the RFP process. Please note that the RFP timeline includes target dates that may change. The Proponents are responsible for monitoring the PowerAdvocate® website for updates to the RFP timeline and other important information.

Milestone	Date Due
Request for Proposal issued	March 10, 2020
Kickoff meeting	March 18, 2020
Site Visits	March 18-20, 2020
Proponents Request for Clarifications	March 26, 2020



PREPA response to Request for Clarification	March 31, 2020
Proposal submittal deadline (RFP Closing Date)	April 7, 2020
Interviews/Presentations with Proponents*	April 16-20, 2020
Selection announcement	April 22, 2020

*May not be required, yet, per PREPA's RFP Guide, the Evaluation Committee may request interviews with proponents in the competitive range.

Submittals that have not been completely uploaded by April 7, 2020, 8:00 PM AST will not be considered. Proponents shall allow themselves enough time to completely upload their proposals and to confirm that the files are available for PREPA's review.

6. Request for Proposal Submission

Proponents shall submit their proposals through the Upload Documents tab of the RFP **102750** event on the PowerAdvocate® Platform. A Redacted Copy as required in Section 22 (*Confidentiality of Responses and Proprietary Information must also be uploaded*). All RFP submissions, inclusive of the pricing, technical information, discounts and other requested details are to be submitted via PowerAdvocate® on or before 8:00 pm AST, April 7, 2020. Proposals must be signed by the Proponent's authorized representative or by the authorized person whose name appears (or will appear) in PREPA's Supplier Registry Office. The signature must be shown along with the name in print and the capacity or position held.

Proponents must also provide hard copies of (i) the uploaded proposal in PowerAdvocate and (ii) the Redacted Copy on or before 3:30 pm AST, April 8, 2020, to the following address:

Postal Address:

Puerto Rico Electric Power Authority
Supplier Registry Office
PO Box 3670151
San Juan, Puerto Rico 00936


or

Physical Address:

Supplier Registry Office
1110 Ponce de Leon Avenue
Third Floor, Office 305
NEOS Building, Santurce, PR

6.1 Proposal Requests for Clarification

A Proponent may submit a Request for Clarification (RFC) to PREPA for explanation or interpretation of any matter contained in this RFP no later than 8:00 p.m. AST, March 26, 2020, via PowerAdvocate® through the Messaging Tab of the event *RFP 102750*. If responses to the RFC constitute a modification or additional information to the original RFP, PREPA will provide such clarification through Addenda posted on PowerAdvocate no later than March 31, 2020. Questions should NOT contain proprietary information, as answers may be published in the public domain to all participants. PREPA does not guarantee answers for all questions or comments received. PREPA will NOT accept or address any questions that are not submitted as stated in this section.

Proponents must submit their questions in the Request for Clarification form included as Attachment . This document must be submitted in Word format and each question must reference the page number, section of the RFP document, attachment or article of the LOA. PREPA will respond to the requests for clarification in the column labeled 'Clarification Response'.



Proponent is solely responsible for monitoring this site for additional information, updates and Addenda concerning the RFP. Any changes or modifications to the RFP terms, conditions or specification will be made through Addenda posted on PowerAdvocate.

The PowerAdvocate Guide is included as part of this RFP as Exhibit 3. For technical assistance with this sourcing platform please contact PowerAdvocate's technical support at (857) 453-5800 or via email at support@poweradvocate.com. Proponent shall be responsible for ensuring that all of their proposal documents are fully uploaded before the closing date and time of the event.

6.2 Communications

Verbal questions will NOT be accepted. All communications must be through the Messaging Tab of PowerAdvocate, and addressed to the following PREPA Procurement Representatives for this RFP:

Delis T. Zambrana
Natalia Martínez Lugo

Neither the Proponents nor the Team Members or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP process, any of the following persons on matters related to the RFP: (a) any member of the Evaluation Committee; (b) any advisor of PREPA for this RFP process; (c) any employee or representative, directors, officers or consultants of PREPA. Proponents Team Members are prohibited from directly or indirectly contacting other Proponents, such as directors, officials, employees, consultants, advisers, agents or representatives, in matters related to its proposal preparation, content, or presentation. Proposals shall be submitted with no connection to, knowledge, information comparison, or arrangement, with other proponents such their directors, officials, employees, consultants, advisers, agents or representatives.

Communications with PREPA representatives, other than the abovementioned procurement representatives, or with relevant entities of the Federal Government or local government, regarding any matter related to the contents of this RFP are prohibited during this RFP process.

Failure to comply with these communications restrictions will result in rejection of the firm's proposal.

6.3 Proposal Modification

PREPA may allow for proposal modifications if they are submitted by the closing date and time established in Section 5 of this RFP, and submitted in accordance with this RFP's proposal submission instructions.

6.4 Expenses and Rejections

Neither PREPA, the Government of Puerto Rico nor any of its instrumentalities, will be responsible for any expenses in the preparation and/or presentation of the proposals, oral interviews or disclosure of any information or material received in connection with this RFP.



PREPA reserves the right to reject any and all proposals received in response to this RFP, when determined to be in PREPA's best interest, and to waive minor noncompliance in a proposal. PREPA further reserves the right to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any and all firms submitting proposals in response to this RFP. The mere appearance of a conflict of interest must constitute sufficient cause for the outright rejection of a proposal(s). In the event that any or all proposals are rejected, PREPA reserves the right to re-solicit proposals.

7. Prohibited Communications

During this RFP, the only communications allowed are with the designated procurement representatives indicated in Section 6 of this RFP. Communications with other PREPA representatives or other persons from the State or Federal Government regarding any matter related to the contents of this RFP are prohibited during the submission, evaluation and selection processes. **Failure to comply with these communications restrictions will result in rejection of the firm's proposal.**

8. Scope of Work

PREPA is pursuing temporary generation at different sites to respond to the current emergency situation due to the aftermath of several earthquakes experienced in January 2020. The temporary generation is to respond to conditions that threaten lives, public health and safety. Through this RFP process, PREPA is seeking temporary generation from qualified firms for the different sites via the LOAs. The Proponents shall maximize the use of the existing systems in place located at each different site as time is of the essence for this Project.

As PREPA recovers from the earthquakes, temporary replacement generation is required to create a more resilient system to enable quicker, more effective recovery. PREPA expects Proponents to consider the latest and most reliable technology which can provide flexible generation while minimizing environmental impacts. A flexible generation resource with fast response to changing conditions would address the current emergency situation.

Upon the preliminary evaluation of the current and foreseen generation capacity, this RFP requires the supply of temporary power generation of up to 500 MW size range based on equivalent operating characteristics (start times, ramp rates, heat rate curves, etc.), designed and capable of operating at a capacity factor of 90% for at least twelve (12) months. The units shall be capable of burning low sulfur diesel and natural gas fuels if shown to be available and acceptable under all local and federal laws and regulations, and compatible with the proposed solution. Solutions may be land-based or floating. BESS using renewable sources may also be considered. The generating units included in the proposal are required to be compliant with all applicable environmental and land use or maritime (if applicable) laws and regulations, including but not limited to, the Clean Air Act and Clean Water Act, the regulations promulgated thereunder, with future permits' required modifications according with state and federal plans. The generating units shall include appropriate emission controls.

The units must have the capability to start from standby to full load in no more than thirty (30) minutes, shall have black-start capability, and must operate at an all-in cost that is as low as possible. The units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.

The following items are requirements for this scope of work:



- a. The power generation facilities shall be located in different locations and shall be connected to the 38 kV, 115 kV or 230 kV (locations described in Appendix A), able to operate in islanded mode in case of an outage and an isolated operation is required. In islanded mode, units shall be black-start capable and be able to provide services such as frequency, voltage control, and be able to respond to deviations in generation.
- b. Units shall be operational, ready to export energy to PREPA on June 1, 2020.
- c. The units shall be compliant with the EPA and Puerto Rico Department of Natural Resources (formerly under the Environmental Quality Board) requirements, that include but are not limited to, New Source Performance Standards and Hazardous Air Pollutant Standards. If the Project has any impact on local marine environment, the Selected Proponent shall ensure compliance with all federal and local marine permitting requirements.
- d. Units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.
- e. The maintenance schedule for the next eighteen (18) months of the power generation units offered as a solution must be included in the proposal.
- f. The Proponent shall furnish documentation showing that the proposed equipment has been commercially demonstrated/successful and provide an experience list of similar model projects with similar delivery schedules.
- g. The units must be individually and collectively capable of being dispatched from standby to full load in no more than thirty (30) minutes. PREPA prefers minimal time from dispatch from standby to full load.
- h. The Project will be connected to the existing transformer. The Proponent shall include in its proposal breakers and all necessary BOP equipment with the existing capacity. If the proposed unit(s) exceeds the capacity of the existing transformer, the Contractor shall supply a new step-up transformer, breaker and BOP equipment, per site.
- i. All units must be capable of synchronizing to the current electrical system and provide automatic load following services.
- j. The units shall be designed and capable of operating at an annual average equivalent availability factor of at least 90 percent (90%) for the contract term.
- k. Proposed solutions shall be a complete and grid connected generating facility including everything required for the operation of the units. The proposal shall include detailed plans for operation during inclement weather and emergency situations.
- l. Time is of the essence for this RFP. PREPA is seeking a complete solution that complies with all requirements of this RFP, including, but not limited to, permitting, installation, interconnection, testing, and commissioning in the shortest possible time (see Scoring Criteria).
- m. Power units shall have the capability of remote operation.
- n. Units shall communicate to PREPA system through SCADA.
- o. Dispatch of the units shall be at PREPA's sole discretion and electric system needs.
- p. All proposed solutions must also be black-start capable.
- q. Operation and maintenance (O&M) portion of the services shall be all-inclusive, including



furnishing and maintaining an adequate inventory of all spare parts throughout the contract term. The O&M services shall be designed to meet the high availability target and expected capacity factor of the units.

- r. The Contractor shall arrange for storage of all spare parts during the term of the O&M services in an appropriate environment to maintain the spare parts in a new condition.
- s. Installation of the units shall be provisional, not permanent.
- t. The units shall be capable of synchronizing with the existing units in each location, if applicable.

The Contractor shall develop and submit the following documents for PREPA evaluation and approval.

Table 1 Submittal Register

Submittal Description
Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Counter-measures Plan (SPCCP)
Barge/Airplane Plan
Transportation Plan to the project site
Emergency Notification Plan for shut down
Life Support Plan, if necessary
Emergency Evacuation Plan
Site Preparation Plan
Fueling Plan (e.g. transfer, storage, line, valves, pressure testing)
Line clearance to connect GT to an operational transformer
Black Start Generator Mfn Commissioning
Installation Plan
Pre-Commissioning Plan
Commissioning plan
AVR and Generator Protection
Operation and Maintenance Plan
Final Report

8.1 Deliverables

Proponents shall outline the types of deliverables and timelines they produce, in performing the services being procured through this RFP. At a minimum, the key deliverables to be provided shall include such items as:

- a. A description of the project scope, generation units, control system and electrical interconnection



- b. Schedule for scope of work to support delivery of electric power to the grid including required time for engineering/design, interconnection tie-in, and startup/commissioning, as appropriate
- c. Permitting plans and schedule
- d. Schematic drawings for the interconnection
- e. Ownership structure
- f. Typical units' characteristics including energy and mass-balance, minimum load, maximum load, ramp rates, start times, minimum down times, and any part load changes in energy cost. Performance curves, including environmental, shall be provided for part and full-load operation of the units.
- g. The price proposals shall include all costs associated with the complete installation of the units including design, procurement, construction, testing, commissioning, consumables, and operation and maintenance of the facility. The pricing proposals shall include a fixed component, as well as the O&M cost. All pricing shall be based on achieving a net equivalent availability factor of at least ninety percent (90%) for the contract term. Proponent shall include any energy cost deviations at part load operation. Costs shall be provided over the range from minimum load to maximum load. Any additional impact to cost due to starting and stopping units shall also be specified.
- h. A list of spare parts with pricing (price paid by the Contractor).
- i. PREPA will apply a penalty of 100% of the proposed daily rate for up to sixty (60) days of delays in the project schedule. Delays of more than sixty (60) days shall result in termination of the LOA.

The selected Proponent shall be required to negotiate an LOA with PREPA. The Contractor shall be responsible for all applicable taxes.

8.2 Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, etc., to the site.
- b. Door-to-door transportation of the units, materials, supplies, instruments, gas, etc., to embarkation location via barge/airplane
- c. Transport materials, supplies, equipment, personnel, etc., from port/air terminal to the project site.
- d. Remove and transport the same, once the project is complete, back to stateside or original locations.
- e. Moore equipment barge, as needed.
- f. Coordinate with the port and/or airport for timely passage.

9. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, etc.



- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, etc.
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award.
- d. Install command posts (trailers, offices, work areas, etc.) for the Contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the contract term.

10. Temporary Power Installation

- a. Place units per PREPA requirements.
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator.
- c. Install flow meters on the generation units' fuel line.
- d. Install the temporary pump station.
- e. Construct medium voltage cable chase at least two (2) feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system.
- f. Install emergency notification system in the event of a shutdown
- g. Perform pre-commission of the system to verify system function as the generation units are being installed

A. Pre-Commissioning

Perform and report completion of the following pre-commissioning tasks, as applicable to:

- a. Battery systems
- b. Control & vibration systems
- c. Ventilation and combustion air systems
- d. Turbine and hydraulic start lubrication systems
- e. Generator lubrication oil system
- f. Fuel system
- g. Fire system
- h. Turbine auxiliaries
- i. Water injection system
- j. Any other pre-commissioning tasks based on new or used units' factory requirements

B. Commissioning

PREPA will accept invoices for the project upon completion of the commissioning of the units and once the units are in successful operation. PREPA will pay on a monthly, leasing basis, and will not prepay costs associated with mobilization or demobilization.



- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 1. Manual start-up and stop
 2. Emergency notifications sent to Site Management Team in the event of shut down mode
 3. Verify voltage, wattage, frequency per the following:
 - net power output of not less than 20 MW
 - Frequency 60 Hz
 - Low voltage connection for transformers at PREPA sites of 13.8 kV
- b. Revisit unit functional needs until criteria is met.
- c. Provide the following information to PREPA regarding protective relays:
 1. Copy of the Protective Relay Study and its settings for the proposed mobile power system.
 2. Mobile power system protective relay settings criteria.
 3. Grant access to PREPA to protective relay events.
 4. Access to mobile power system proprietary software/program to allow communication with relays.
 5. Mobile power system unit data sheet.
 6. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
 7. The Contractor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
 8. The Contractor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements.
 9. The Contractor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the mobile power unit's control room.
 10. The Contractor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode.
 11. The Contractor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid.
 12. Protective Systems Specifications are included as Appendix C.

11. Final Walk Through

Once Commissioning is complete, [PREPA/Contractor] shall perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.



12. Operation and Maintenance (O&M)

- a. The Contractor shall ensure spare parts are on hands and the system operates without interruption
- b. The Contractor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 1. Power output
 2. MVAR
 3. Gas turbine and generator RPM o Other parameters determined appropriate

13. Site Restoration

Restore site to pre-existing conditions to include the following:

- a. Remove unit, barriers, emergency notification system from the site and transport back to the place of leasing
- b. Remove signs and posts

14. Final Report

Provide Final Report, including executive summary, chronology and descriptions for work completed, etc.

15. Proposal Assumptions

The Proponent shall incorporate the following assumptions into their proposals to maintain consistency. Actual quantities/criteria may vary during the construction and verification of assumptions will be made throughout project execution.

Any existing fuel storage tank can be used as a temporary power fuel storage tank and it meets API standards. It can be used as is and no repairs are needed.

- a. Medium voltage and control wiring will be installed over head and not on the ground due to safety concerns
- b. The Contractor shall provide pricing for leasing the units, including control systems, wiring, appurtenant devices, etc.
- c. For fuel burning generation, cutting the existing fuel line to create passage to the temporary generation unit site is needed and fabricating fuel conveyance piping to the generation unit and operational PREPA generator is required.
- d. The Contractor shall provide a first aid competent representative to support basic health needs (e.g. small cuts, surficial burns).
- e. Assume unarmed security at the sites power station is required twelve (12) hours per day during installation. During O&M, assume ten (10) hours of operator on-site time and 14 hours of unarmed security. The Contractor will respond to resolve any operating issues is required within two (2) hours of outage.



- f. No utilities will be identified within the described work zones or will be impacted throughout this work.
- g. No temporary access road improvements will be needed for the execution of this work.
- h. The Evacuation Plan will include required protocols once understood in the submittal item post-award.

Assume the connection point is the 13.8 kV side of these transformers and the Contractor will have to provide a line connection plan to integrate with a transformer that currently operational.

16. Proposal Requirements, Evaluation and Selection Process

The intent of the RFP is to encourage responses to fulfill PREPA's requirements and clearly communicate its approach to successfully provide the services. PREPA will examine all proposals in a proper and timely manner to determine if they meet the proposal submission requirements. Proposals that do not meet the submission requirements or have omitted material documents must be rejected. All proposals submitted before the closing date and time of the RFP will be evaluated.

During each proposal meeting, the Evaluation Committee will independently evaluate all submission requirements. The Evaluation Committee will assign a score for each evaluation criterion listed below in this Section up to the maximum points, unless they are determined to be non-responsive according to the intent of the RFP.

PREPA reserves the right to require additional information or clarifications after the proposals' due date to assist the Evaluation Committee in gaining additional understanding of the proposal.

16.1 Proposal Requirements

All proposals shall address the following items in the order listed below. Proponents must upload in the Technical Data Tab of Power Advocate® the requirements requested in this section. Proponent is responsible for including evidence or information of all the submission requirements of this RFP. The Evaluation Committee will only take into consideration for the evaluation process the information provided by the Proponents in their proposal.

Minimum Requirements:

1. Project Delivery Schedule:

- a. Shall provide a proposed project schedule (Critical Path Method) based on continuous work with key and critical tasks for the proposed due date.
- b. Shall submit a description of the proposed working plan, including working methods, logistics, list of resources (manpower and equipment), permitting process, and subcontractors, if any.

2. Offeror's Experience:

- a. Shall submit a brief description of the firm, including firm name, address, phone



number, email address and authorized primary contact person; brief firm history, including the current permanent staff size as well as local organization structure.

- b. Shall provide evidence of applicable past experience and performance related scope projects for the principal firm and any subcontractors. The subcontractor's role on the project shall be clearly established.

3. Financial Capacity: Proponent must provide the following for the entity that is proposed to guaranty the transaction on an initial and on-going basis:

- a. The Proponent shall provide the latest documentation or reports from any rating agencies or debt analysis entities on the contracting entity (or guarantor). PREPA reserves the right to use its available credit evaluation tools to evaluate financial capacity of the proponent.
- b. Provide information regarding the firm's financial stability, capacity and resources.
- c. Provide a statement confirming awareness of PREPA's standard payment term of net sixty (60) days upon approval of invoice and supporting documents.
- d. Shall provide a Surety Bond-ability Letter establishing that the Proponent has been underwritten with sufficient bonding capacity and approved by a surety company to perform this project. This letter shall include a power of attorney. Proponent must ensure that their bonding company provides the bonds required endorsed in Puerto Rico.

4. Price and Performance Proposal

A. Required Data

Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 12-month LOA
Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 3-month LOA
Unit Dispatch Cost Price (full load)	\$	per MWh for a 12-month LOA
Unit Dispatch Cost Price (full load)	\$	Per MWh for a 3-month LOA
Guaranteed net output per unit		MW
Heat Rate (LHV)		BTU/kW-hr
Guaranteed annual units equivalent availability factor		%
Units minimum load		MW
Ramp Rate		Minutes/MW
Price of the Generation Unit	\$	Per Unit

**This information is required for cost reasonableness analysis pursuant to 2 CFR § 200.404*



Please provide the above for two scenarios: the first assuming a twelve (12) month initial contract term (with one potential six (6) month extension) and the second assuming a three (3) month initial contract term (with multiple potential three (3) month extensions).

PREPA reserves the right to require additional (supplemental) information after the proposals' due date, for evaluation purposes. Proponents shall provide such information within three (3) calendar days after PREPA's notification and request.

B. Delivery and installation time (30 points)

Proposals must include a high-level project schedule and timeline identifying equipment delivery date, construction of needed local infrastructure, commissioning and commercial operation date starting from the Notice to Proceed issuance. Assume construction permits and environmental permits/waivers are available for the purposes of the requested schedule. Proposals with a shorter delivery and installation time will be favored compared to those who need more time or whose responses are vague.

PREPA will score the proposals based on a weighted percentage, up to a maximum of thirty (30) points for the soonest availability for dispatch of the proposed generation.

C. Price Proposal (30 points)

PREPA will evaluate the proposals' price based on a Levelized Cost of Energy (LCOE) formula using the net present value. Proposed units' performance parameters such as low heat rate (LHV) and net capacity shall be included in the proposal to be used for the LCOE calculation, along with the term of the initial LOA and a 90% capacity factor. Price proposals must include a monthly fixed capacity price, including only lease and fixed operation and maintenance, and unit dispatch price (per MWh) for variable O&M (and fuel if self-supplying) as separate line items.

For the LCOE, the price component will be based on the following combination: 90% unit dispatch price and 10% fixed capacity.

PREPA will score the proposals based on a weighted percentage, up to a maximum of thirty (30) points for the lowest LCOE.

D. Hours of Operation (10 points)

PREPA will give higher scores to proposals with newer units compared to those with used units. PREPA will score the proposals based on a weighted percentage, up to a maximum of ten (10) points for the least hours of operation.

E. Experience and Capacity (20 points)

Proponents must demonstrate experience and success installing and maintaining fast-track utility power generation unit(s) projects of at least five (5) years. Proponents shall demonstrate experience and success in fabricating, installing, testing, and commissioning the proposed solution. Proponents that demonstrate that the proposed solution can be dispatched in the required times than specified be favored compared to those who need more time, or whose responses are vague.



As proof of the Proponent's experience, it:

1. Shall submit an abbreviated history of firm.
2. Shall provide evidence of applicable experience and performance in at least two related scope projects within the past five years. Proposals shall include letters of recommendation and references from past projects where the proponent successfully completed within the required time of installation.
3. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the proponent with at least ten (10) years of experience in similar projects.
4. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the installation and/or operation and maintenance subcontractors (if any) with at least five (5) years of experience in similar projects.

F. Approach and Methodology (10 points)

Proposals that outline a clear and straightforward approach to providing fast track generation projects will receive higher scores (PREPA's expected timeline for execution of the project). Proponents shall identify key goals and objectives, and methods for providing the facilities described herein or exceeding these goals. Proponents shall explain how they will be organized to effectively deploy support for this project and clearly identify key personnel responsible for implementing the project.

Proposals will explain the approach to completing the project within the given construction dates and site constraints, include a summary-level Critical Path Method (CPM) schedule detailing all aspects of the project, and include a detailed assessment and response to the site condition restraints.

Proponents shall outline a clear and straightforward approach and demonstrated commitment to accomplishing the schedule goal of completing the project in the least possible time. Proponents shall identify key goals and objectives, and methods for achieving high standards for the delivery of services, in expectation of meeting or exceeding these goals.

Proponents shall describe in detail the methods it will utilize to accomplish the duties at the site, and provide sketches or illustrations to explain the approaches, if necessary. This approach will include:

1. Demonstrating a clear and thorough interpretation and acknowledged assimilation of the project work scope as described herein and that are part of this RFP.
2. Satisfactorily demonstrating how the duties will be staged to minimize impacts to PREPA operations.
3. Presenting a clear and logical approach for the efficient performance of all work tasks across the proponent's entire project team.
4. Describing how the proponent's submitted milestone schedule demonstrates a clear understanding and integration of all the interrelated duties.



5. Describing how the proponent intends to address and mitigate adverse environmental materials.
6. Providing a specific and project-proven approach and plan for effective Quality Assurance/Quality Control across the Proposer's Project Team.
7. The Proposer's outline plan and commitment to safety.

G. Commitment to Complying with all Applicable Federal, and Puerto Rico Regulations

The Proponent shall submit a detailed written description of the Federal and Local process, with specific plans for permitting success. The Proponent must demonstrate an understanding of Federal and local requirements.

H. Proposal Additional Content

Proponents must upload in the Commercial Data Tab of Power Advocate® the requirements requested in this section. Proposals failing to submit all the information requested this Section will be rejected.

a. Cover Letter and Table of Contents

The Proponent must provide a cover letter that includes a certification that the information submitted and the Proposal is true and accurate, and that the person signing the cover letter is authorized to submit the Proposal on behalf of the Proponent. The cover letter must clearly identify the designated contact person for the engagement and provide the telephone number and email address of the contact person.

The Proposal must contain a table of contents that clearly identifies the location of all material within the proposal by section and page number.

b. Local Parties

Explain how the Local Party(ies) will add value to the team and their expected role. Identify the Key Individuals from the Local Party(ies) and provide an indication of the expected level of involvement on the day-to-day activities and interaction with PREPA.

c. Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations

Proponents shall explain their adherence to complying with all applicable Federal and Puerto Rico regulations, including those related to Public Assistance and 2 CFR Part 200 and required LOA provisions, and shall indicate what characteristics of the team set them apart in terms of commitment to comply with all laws and requirements. Proponents must also indicate what specific trainings and expertise reside within the team that reinforces the commitment to compliance. Adherence to strong ethical and integrity practices and unequivocal commitment to solid administrative practices is essential for PREPA.

d. Draft LOA



Proponents must upload in the Commercial Data Tab a statement (if any) of the exceptions to the terms and conditions to the LOA and suggest proposed modifications to the specific LOA language with which the proponent disagrees or for which proponent is unable to satisfy the condition or requirement, including an explanation of the revision. If Proponent agrees with all terms and conditions of the LOA and understands that it can comply with all of the conditions and requirements of the LOA, acknowledgement of such must be included.

e. Supplementary Information

Proponents may provide supplementary facts as they consider may be of assistance in the evaluation of their proposals.

f. Requirement of Legal Entities

Proponents that are corporations, partnerships, or any other legal entity, U.S. or Puerto Rico based, shall be properly registered or capable to be registered or capable and willing to registered to do business in Puerto Rico and the U.S. at the time of the submission of their proposals, and comply with all applicable Puerto Rico or U.S. laws and/or requirements. The Selected Proponent must be part of PREPA's Supplier Registry in order to execute an LOA.

Proponent must submit evidence that the firm is duly and properly organized and is qualified to conduct business in Puerto Rico or provide a statement confirming that the Proponent will be duly organized and qualified prior to LOA award, if selected.

Additionally, the Proponent must provide a sworn statement per Act 2-2018, regarding the Anti-Corruption Code for Puerto Rico. See Appendix D.

g. Required Qualifications of Proponents

Proponents shall provide information in their proposals that demonstrates the following qualifications:

- i. Proponent has evidence of satisfactory performance record.
- ii. Proponent has a satisfactory record of integrity and business ethics.
- iii. Proponent has the necessary organization, experience, accounting and operational controls, and technical skills.
- iv. Neither Proponent nor any person or entity associated who is partnering with Proponents has been the subject of any adverse findings that would prevent PREPA from selecting Proponent. Such adverse findings include, but are not limited to, the following:
 1. Negative findings from a Federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state.



2. Pending or unresolved legal action from the U.S. Attorney General or from the U.S. an attorney general in Puerto Rico or another state.
3. Arson conviction or pending case.
4. Harassment conviction or pending case.
5. Puerto Rico and Federal or private mortgage arrears, default, or foreclosure proceedings.
6. In rem foreclosure.
7. Sale tax lien or substantial tax arrears.
8. Fair Housing violations or current litigation.
9. Defaults under any Federal and Puerto Rico-sponsored program.
10. A record of substantial building code violations or litigation against properties owned and/or managed by Proponents or by any entity or individual that comprises Proponents.
11. Past or pending voluntary or involuntary bankruptcy proceeding.
12. Conviction for fraud, bribery, or grand larceny.

17. Proposal Format and Submission Requirements

Proponents must upload their entire proposal on the tab Number 2. Upload Documents of Power Advocate®. The Proposal must include a summary table, indicating the section and page number where the proposal meets the criteria stated below. In addition, Proponents must upload the requirements in the indicated tab in each section. Non-compliance may affect the score of the proponents.

Proponents must format their proposal as follows:

1. Cover Letter and Table of Contents
2. Local Parties
3. Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations
4. Draft LOA
5. Supplementary Information
6. Requirement of Legal Entities
7. Required Qualifications of Proponents

18. Scoring Criteria

The Evaluation Committee will independently evaluate each proposal meeting all submission requirements stated above, and will assign a score for each evaluation criterion listed, up to the maximum points.

Criteria	Percentage of Total
<i>Delivery and installation time</i>	30%
<i>Price Proposal</i>	30%
<i>Hours of Operation</i>	10%



Experience and Capacity
Approach and Methodology
Total

20%
10%
100%

The LOA will be awarded to those qualified and experienced companies whose proposals, conforming to this RFP, are in accordance with its intent and substantially comply with the established requirements herein.

The Evaluation Committee may choose to reconsider proposals with marginal scores.

The criteria will be graded using a score of 0 to 5:

- 0 = Information in the proposal was not applicable to the criteria, or was omitted.
- 1 = Poor. For example, representing that the criteria presented in the proposal does not meet PREPA requirements.
- 2 = Below Average, negative or disagree. For example, representing that the criteria presented in the proposal is judged to meet most of the requirements.
- 3 = Average, or neutral. For example, criteria judged as meeting all the minimum requirements set by PREPA.
- 4 = Good, positive, or agree. For example, all criteria met and improved when compared to PREPA expectations
- 5 = Excellent, very positive, or strongly agree. For example, representing that the criteria in the proposal best meets the requirements set by PREPA, above all other proposals.

Proponents must clearly describe how they best comply with the standards set, as the Evaluation Committee will judge how a proposal specifically answers the criteria stated in this RFP. Scores shall be higher for specific compliance findings and be lower for general or ambiguous answers.

19. Sites Visits Schedule

PREPA has scheduled visits to the locations included in Appendix A to show the available spaces, access, and electrical and mechanical interconnection points. These are the only visits programmed for this phase of the RFP process as this project is time-sensitive. Access will not be granted to these PREPA facilities on any other dates and times than those established below. Proponents are not required to join the site visits in order to submit a proposal for any specific site, but participation in these visits are strongly recommended.

Participants interested in visiting more than one of the sites shall make arrangements with their own personnel since visits to some of the locations are scheduled for the same date and time. Participants shall present a government issued identification (such as a driver's license) and wear all required safety gear to be granted access to these locations, including, but not limited to, hard hat, safety shoes, safety glasses, hearing protection, and reflective vest. Access to the sites will be denied to those not fully complying with the safety gear requirements. TWIC card holders are encouraged to bring their cards, although these are not required for access.



Location	Date	Time
Palo Seco Power Plant	March 18, 2020	1:00pm
San Juan Power Plant	March 18, 2020	3:00pm
Cambalache Power Plant	March 19, 2020	9:00am
Vega Baja Power Station	March 19, 2020	12:30pm
Aguirre Power Plant	March 19, 2020	8:30am
Jobos Power Station	March 19, 2020	10:30am
Daguao Power Station	March 20, 2020	8:30am
Yabucoa Power Station	March 20, 2020	10:30am

Those interested in joining the site visits shall be at the access gate 20 minutes before the scheduled time. No access shall be allowed after the facility walkaround begins.

20. Local Participation

Pursuant to Law Number 42 of January 21, 2018, as amended, PREPA requires Proponents to engage local contractors, professionals and relevant service providers headquartered in Puerto Rico ("Local Parties") as Team Members and Key Individuals to the greatest extent possible.

Proponents are strongly encouraged as part of this RFP to provide descriptions of their current and/or anticipated business arrangements with Local Parties and, in particular, Local Parties who are Team Members and Key Individuals for the Project, as applicable.

21. Interview

PREPA reserves the right, at its sole discretion, to require Proponents to participate in interviews with the Evaluation Committee. If PREPA elects to conduct interviews, each qualified Proponent will be required to give a strictly timed 30-minute presentation. This presentation shall highlight expertise and prior qualifications provided to similar organizations. The presentation shall also clearly explain the Proponent's approach and entire team composition. The Evaluation Committee may alter the scoring of corresponding criteria of a qualified Proponent's proposal based upon the presentation. Proponents are solely responsible for all costs or expenses incurred to attend and participate in the interview process.

22. Confidentiality of Responses & Proprietary Information

Upon completion of the RFP process, PREPA will make public its report regarding the procurement and selection process, which shall contain certain information related to this RFP process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as



proprietary by the Proponents. In order to ensure that documents identified by Proponents as confidential or proprietary will not be subject to disclosure by PREPA, Proponents are required to submit a Redacted Copy of their proposal. The Redacted Copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by PREPA. PREPA reserves the right to make public the redacted copies of the proposals at the conclusion of the RFP process. If a Redacted Copy is not submitted by a Proponent, PREPA will assume that the original copy of the proposal can be made public. Proposals containing substantial contents marked as confidential or proprietary may be rejected by PREPA. Provision of any information marked as confidential or proprietary shall not prevent PREPA from disclosing such information if required by law. The ultimately awarded LOA(s) and all prices set forth therein shall not be considered confidential or proprietary and such information may be made publicly available.

23. Conflicts of Interest

The award by PREPA of each LOA under this RFP shall preclude the Selected Proponent (or if a consortium, each member of the Selected Proponent consortium) from participating in the procurement by PREPA of new generation under any other RFP issued by PREPA during the LOA Term of such LOA.

Proponents are required to provide a list of any other current or former advisory LOAs the firm has/had with any Government Entity, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico. Further, Proponents must provide a description of any recent historical or ongoing legal proceedings, interviews or investigations being conducted by any U.S. law enforcement agencies involving their firm or team that are related to transactions executed in or on behalf of the Government of Puerto Rico and/or its public corporations. In addition, Proponents must provide a brief description of any work it has performed for any creditors or guarantors of the Government of Puerto Rico or any public corporation debt about their positions in Puerto Rico debt obligations. The Proponent must indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the selection process, PREPA may request information on any perceived conflict of interests. Also, PREPA may in the future request a list of direct or indirect relationships the firm or its professionals have to members of the Puerto Rico Public-Private Partnerships Authority (PPPA) or board members or executives of other Public Corporations.

The mere appearance of a conflict of interest shall constitute sufficient cause for the outright rejection of a proposal(s). PREPA reserves the right to cancel any LOA awarded pursuant to this RFP with thirty (30) days' notice in the event that an actual conflict of interest, or the appearance of such conflict, is not cured to PREPA's satisfaction.

24. Rejection of Submittals; Cancellation of RFP; Waiver Informalities and Withdrawal of Response

Issuance of this RFP, or selection of a Proponent for LOA negotiations, does not constitute a commitment by PREPA to award the LOA. PREPA reserves the right to accept or reject, in whole or in part, and without further explanation, any or all responses submitted and/or cancel



this solicitation and reissue this RFP or another version of it, if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

PREPA reserves the right to waive any informalities and/or irregularities in a response if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

A Proponent may withdraw a proposal at any time up to the closing date and time of the RFP by deleting the documents they have uploaded to PowerAdvocate, or by submitting their intent to withdraw, in writing and addressed to PREPA's Head of Supply Chain (Chief of Procurement), Neftalí González Cruz, through the Messaging Tab before the closing date and time of the RFP.

25. Ownership of Submittal

All materials submitted in response to this RFP shall become the property of PREPA. Selection or rejection of a submittal does not affect this provision.

26. Cost of Preparing Responses

All costs associated with the response to this proposal are the sole responsibility of the Proponent.

27. Errors and Omissions In Responses

PREPA reserves the right to reject a response that contains an error or omission. PREPA also reserves the right to request correction of any errors or omissions and/or to request any clarification or additional information from any Proponent, without opening up clarifications for all Proponents.

28. Insurance – Proof of Coverage

28.1 Insurance

Proponent shall submit along with its Proposal, a Bid Bond, included as Appendix E, of not less than ten percent (10%) of the total price of the Proposal. This Bond will be issued in favor of PREPA by an insurance company that is authorized to do business in Puerto Rico. The Bond may not have a duration of less than ninety days (90) days, securing the validity of the proposal for such term. Proposals that do not include this security will be rejected. If there is an extension of the ninety (90) day term, Proponent will be responsible for keeping the Bid Bond in effect. Proposals that fail to meet this requirement will be rejected outright and the bid will be deemed to be non-responsive.

The Selected Proponent shall obtain and maintain in full force and effect during the contract term and thereafter as provided herein, policies of insurance covering all operations engaged in by the LOA, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. **Workmen's Compensation Insurance:** Proponent shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation



Act of the Commonwealth of Puerto Rico. Proponent shall also be responsible for the compliance with said Workmen's Compensation Act by all his subcontractors, agents, and invitees. Proponent shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under the LOA are covered.

- b. **Employer's Liability Insurance:** Proponent shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon the Proponent as a result of body injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico.
- c. **Commercial General Liability:** Proponent shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability.
- d. **Automobile Liability Insurance:** Proponent shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos.
- e. **Professional Liability Insurance:** Proponent shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate.
- f. **All Risk Physical Damage Property Insurance:** Proponent shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the Proponent (including earthquake and hurricane occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. This insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site.
- g. **Equipment Breakdown Policy (Boiler & Machinery):** Proponent shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this Policy.
- h. **Builder's All Risk Insurance:** Proponent shall provide and maintain a Builder's All Risk Insurance which shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the site, and all equipment and materials delivered and stored at the site, and all equipment and materials delivered and stored at the Job Site which have to be used in the work or incorporated into the Facility. PREPA shall be named Additional Insured under this Policy.

28.2 Requirements under the Policies



The Commercial General Liability Insurance and Automobile Liability Insurance required under the LOA shall be endorsed to include:

- a. As additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 362467
San Juan, PR 00936-4267

- b. A thirty (30)-days cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including the LOA under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of Subrogation in favor of PREPA.
- e. The Breach of any of the Warranties or Conditions in these policies by the Proponent shall not prejudice PREPA's rights under this policy.

Bonds

Proponent shall furnish at any time before the execution of the Contract:

A Performance Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to the Authority guaranteeing that the contractor will well and faithfully perform the contract work within the time specified.

A Payment Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.

All bonds shall be presented to PREPA before commencement of any work and shall be executed in the required official form of PREPA.

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer.

Proponent must ensure that their Bonding Company provides the bonds required herein endorsed in Puerto Rico.

29. Payment Terms & Method Of Payments

The payment provisions will be defined in the LOA which PREPA expects will be negotiated and executed with the Selected Proponent(s). Notwithstanding the foregoing, PREPA's standard payment term is net sixty (60) days upon approval of invoices and supporting documents. Invoicing for this Project will commence upon the commissioning and successful operation of the units.



30. Process Rules & PREPA's General Instruction RFP Guide

This process will be regulated and executed according to Exhibit B "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016 (Request for Proposals)". Please see the Download Documents tab for this Guide.

Proponents shall certify compliance with Section 4.17 of the "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016".

31. Attachments and Appendices



Appendix A – Sites for Temporary Generation



Appendix B – Low Sulfur Fuel (diesel) Specifications



Appendix C – GT Protection Requirements



Appendix D – Act 2-2018 Sworn Statement Anti-Corruption Code



Appendix E – PREPA Bid Bond Form



Exhibit 1 - Lease & Operating Agreement for Dual-Fuel Generation



**Exhibit ~~2~~ - Lease & Operating Agreement for Renewable Energy and Battery Storage
Generation**



Exhibit 3 – PREPA’s RFP Guide

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LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dual-fuel
fired, dispatchable power generation technology, located
at [REDACTED] Puerto Rico as part of PREPA's Temporary
Generation Program

between

[REDACTED]
as Lessor

and

**PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee**

dated as of [REDACTED], [REDACTED]



**Puerto Rico
Electric Power
Authority**

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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of [twelve (12)] months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain [●] MW of power generation capacity from [insert number] Temporary Generation Units (as defined below), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of six (6) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires:

“**Accounting Standards**” means [●];

“**Affected Party**” has the meaning given to it in paragraph (a) of Sub-Clause 16.01 (*General*).

¹ Note: Under review

“Affiliate” means 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 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.

“Agreement” has the meaning given to it in the first paragraph of this document.

“Agreement Date” has the meaning given to it in the first paragraph of this document.

“Agreement Term” has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

“Ancillary Services” has the meaning given to it in Annex 7 (*Ancillary Services*).


“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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

“Applicable Plans” means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Fueling Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

“Automatic Generation Control” or **“AGC”** means the provision of supplementary control that (a) automatically adjusts the power output level of the TGUs, (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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, spinning reserve computation, and production cost monitoring. Annex 8 (*Design Limits*) specifies the Design Limits applicable to the TGUs for the purpose of AGC. Such limits shall include maximum ramping rates and allowable step changes.

“Available Capacity” means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

“Average Net Derating” means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

“Backup Fuel” means  or any other type of fuel or fuel arrangements as mutually agreed by the Parties.

“Bankruptcy End Date” means the date on which a plan of adjustment consummated in connection with PREPA’s case under Title III of PROMESA becomes effective pursuant to its terms.

“Bid Bond” means the surety bond submitted in conformity with the provisions of the RfP.

“Bid Submission Date” has the meaning given to it in Recital B.

“Billing Period” has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

“Business Day” means any Day other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico).

“Completion” means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

“Completion Certificate” means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

“Completion Date” means the date on which Lessor achieves Completion as certified in the Completion Certificate.

“Compliance Date” has the meaning given to it in Sub-Clause 18.02 (*Security Requirements*).

“Conditions Precedent” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Contract Capacity” means [*insert the net electric power generating capacity of Facility*].

“Court 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.

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

“Defaulting Party” has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

“Delay” has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

“Derated Hours” means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

“Design Limits” has the meaning given to it in Annex 8 (*Design Limits*).

“Dispatch” means the ability of PREPA’s dispatching centers to schedule and control, directly or indirectly, manually or automatically, the generation of the TGUs in order to increase or decrease the Net Electrical Output delivered to the Grid System in accordance with Prudent Utility Practices, subject to the Operating Procedures and the Design Limits.

“Dispatch Instructions” has the meaning given to it in Sub-Clause 7.01 (*General*).

“Effective Date” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated by Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it in Part (iii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 16.01 (*General*).

“Facility” means, collectively, the [●] TGU and all auxiliary equipment (including environmental control equipment, unit step-up transformers, breakers and balance of plant equipment) located at the Site on Lessor’s side of the Interconnection Point, used to make the Contract Capacity and each of the Ancillary Services available at the Interconnection Point.

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Fuel” means Primary Fuel or Backup Fuel, as applicable.

“Fuel Delivery Point” means the position of the Fuel Measurement Facilities located on the Site at [●], as further detailed in Annex 4 (*Fuel Delivery Point*).


“Fuel Measurement Facilities” means the main and backup meter and other equipment as necessary to measure the volume and energy of Primary Fuel delivered pursuant to this Agreement, and the on-line chromatographs installed and maintained by Lessor, which measure the quality of Primary Fuel delivered pursuant to this Agreement.

“Fuel Specifications” means the specifications set forth in Annex 6 (*Fuel Specifications*).

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Heat Rate” means  Btu per kWh.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“Heat Rate” means, for a TGU, the consumption of energy from Primary Fuel expressed in Btu (Higher Heating Value) required for such TGU to generate, and deliver to the Interconnection Point, one (1) kWh of net electrical output.

“Higher Heating Value” means the amount of heat released by the unit mass or volume of Primary 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.

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 9 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 9 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 25.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

“Monthly Invoice” has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

“Monthly Lease Payment” has the meaning given to it in Annex 4 (*Monthly Payment and Calculations*).

“Net Electrical Output” means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

“Non-Affected Party” has the meaning given to it in paragraph (d) of Sub-Clause 16.01 (*General*).

“Non-Conforming Fuel” has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

“Non-Scheduled Outage” means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

“Operating Procedures” means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 13 (*Operating Procedures*).

“Outage Hours” means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

“P3A” means the Puerto Rico Public-Private Partnership Authority.

“Party” or **“Parties”** has the meaning given to it in the preamble of this Agreement.

“Performance Test” has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

“Period Hours” means all hours in the relevant period.

“Person” means 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.

“Potentially Hazardous Materials” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

“Pre-Existing Environmental Condition” means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any “Pre-Existing Environmental Condition” unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“PREB” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“PREPA” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“PREPA Interconnection Facilities” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 9 (*Interconnection*).

“Primary Fuel” means [●].

“Prime Commercial Lending Rate” means [●].

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“Prudent Electrical Practices” means 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” means 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, including those practices, methods, standards and procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Bank Certificate” has the meaning given to it in Sub-Clause 18.01 (*General*).

“Ramp Rates” mean the rate(s) of time required for a TGU to change its per kilowatt output from a particular output level to another output level, determined in accordance with Part III of Annex 8 (*Design Limits*).

“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 that 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.

“Relevant Authority” means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

“Relevant Consent” means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 10 (*Relevant Consents*).

“RfP” has the meaning given to it in Recital A.

“RTU” has the meaning given to it in in Sub-Clause 7.01 (*General*).

“S&P” means S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

“Scheduled Outage” means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of TGUs*).

“Scheduled Outage Program” has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

“Security” has the meaning given to it in Sub-Clause 18.01 (*Security*).

“Site” means the area described in Annex 11 (*Site*).

“O&M Services” has the meaning given to it in Sub-Clause 8.01 (*General*).

“T&D Operator” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“Taxes” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“Technical Scope” means the scope of work set forth in Annex 12 (*Technical Scope*).

“Temporary Generation Program” has the meaning given to it in Recital A.

“Temporary Generation Units” or **“TGUs”** has the meaning given to it in Sub-Clause 5.01 (*Installation Works*), and **“TGU”** means any one of them.

“Termination Event” has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

“Territory” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“Tested Capacity” means the maximum net electric generating capacity of the Facility (gross electric capacity less station use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the use of supplementary firing, as measured by the Performance Test.

“Tested Heat Rate” means, for each Performance Test of a TGU, the Heat Rate of such TGU at the Tested Capacity, as measured by such test.

“Third Party” means any Person other than a Party to this Agreement.

“Third-Party Fuel Test” has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

“US-CPI” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

“Year” means the twelve (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31.

- 1.02 Interpretation. In this Agreement and unless the context otherwise requires:
- a. words importing the singular only also include the plural and vice versa where the context so requires;
 - b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;
 - c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
 - d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
 - e. references to a Party or Person include that Party’s or Person’s successors and permitted assigns;
 - f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
 - g. the Parties shall construe all references to “include” and “including” as “including without limitation”;

- h. 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,” that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party’s need to comply with its contractual obligations to any Person limit such Party’s actions, 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;
- i. 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; and
- j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses [1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), 14.02 (*Limitation on Liability*), 21 (*Representations, Warranties & Liabilities*), 23 (*Notices*), 24 (*Choice of Law & Dispute Resolution*), 25 (*Compliance With the Commonwealth of Puerto Rico Contracting Requirements*), 28 (*General*), and Annex 1 (*Conditions Precedent*), which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until twelve (12) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA for one (1) additional six (6) month period (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the twelve (12) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);

- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to **[date]**. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the “**Effective Date**”) on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Bond.
- b. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days of the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Bond to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. **SITE**

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.


4.02 Clearance and Consents.

- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of Fuel, labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data, documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission  MW [*other generation technology*] units (collectively, the "**Temporary Generation Units**" or "**TGUs**" and each, a "**TGU**") and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the "**Installation Works**") at Lessor's sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a “Delay”):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA’s personnel, or PREPA’s contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the Completion Date has not timely occurred an amount equal to US \$[] (\$[])²; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated Damages for Delay*) for a maximum of sixty (60) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable,

² Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. each of the Temporary Generation Units conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. each of the Temporary Generation Units is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the TGUs generally accept and follow; and
- c. Lessor owns good and valid title to the TGUs free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.
- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to be filed, or any complementary information required to be furnished, in relation to the Installation Works; and
 - ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 22.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure. PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated hourly schedule of operations for the following five (5) weeks. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown any of the TGUs.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 7 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the "**O&M Services**"). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA's request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the "**Scheduled Outage Program**") for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA

shall have the right, upon sixty (60) Days' prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

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

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor's personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA's dispatching centers will notify Lessor's personnel and, if requested by PREPA, Lessor'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 Lessor'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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the TGUs with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;

- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;
- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor shall maintain an accurate and up-to-date operating log at each of the TGUs 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and
- 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.

8.08 Certifications. At PREPA's request, Lessor 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 TGUs during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor

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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the TGUs, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the TGUs and Lessor Interconnection Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. For each TGU, Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for such TGU not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the TGUs on such date.

9.04 Testing. Prior to the initial synchronization of a TGU with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of a TGU and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for a TGU, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for such TGU. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify Completion of the Facility as per the requirements of this Agreement and finally determine whether the TGUs and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the TGUs and Completion of all other Installation Works, Lessor shall notify PREPA of the Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a "**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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.

11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor's issuance of a Monthly Invoice pursuant to paragraph (b) below.

- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a “**Monthly Invoice**”). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works, leasing of the Facility and provision of the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on each of the TGUs to establish the Tested Heat Rate, Tested Capacity, Ramp Rate and [●] for such TGU (each, a “**Performance Test**”) at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 14 (*Performance Tests*) for a TGU, Lessor shall declare, and provide PREPA with notification of, the Tested Capacity and Tested Heat Rate of such TGU within five (5) Days after receiving such Performance Test report from the qualified third party contracted to conduct the test according to Annex 14 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity and Tested Heat Rate for such TGU in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$[●] for each kW of power generation capacity shortfall below the Contract Capacity, such

shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof..

13. FUEL SUPPLY³

13.01 General. From the commencement of the testing and commissioning of the TGUs by Lessor until the expiration of the Lease Period, PREPA shall deliver Primary Fuel to the Fuel Delivery Point in compliance with the Fuel Specifications for each day of operation, at such times as may be required by Lessor to satisfy the hourly dispatch requirements issued by PREPA; provided that PREPA shall procure and deliver Backup Fuel to the Facility in compliance with the Fuel Specifications, at such times as may be agreed upon by the Parties in accordance with the Operating Procedures. PREPA shall regularly procure and obtain delivery of Fuel at its own cost, and Lessor shall provide PREPA with a monthly Fuel inventory report, in order to maintain an inventory equivalent to the amount of Fuel necessary to operate the Facility at the Contract Capacity for at least [●] consecutive Days, or such greater quantities as may be mutually agreed to by the Parties. Lessor shall ensure, and hereby guarantees, that the Heat Rate for each TGU, when operating at the Tested Capacity for such TGU, shall not exceed the Guaranteed Heat Rate, at any time during the Lease Period other than during a Scheduled Outage.

13.02 Coordination. Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel to the Facility for the operation of the Facility by: (i) providing the other Party such information as the first Party shall reasonably requests regarding the supply and transportation of the Fuel (on both a historical and estimated future basis), and (ii) 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 so long as such changes do not disrupt Lessor's operations.

13.03 Responsibility and Risk of Loss. Lessor shall be responsible for any losses of Fuel, and any damages or injury caused by such Fuel, at and downstream from the Fuel Delivery Point or located on Site (as applicable). Risk of loss of all Fuel shall transfer from PREPA to Lessor upon delivery to the Fuel Delivery Point or, in the case of Backup Fuel, to Backup Fuel storage facilities located at the Site.

13.04 Daily Nominations. After receiving the daily Dispatch Instructions, Lessor shall provide to PREPA the daily nominations of Fuel as required by Lessor to satisfy the Dispatch Instructions, in accordance with the Operating Procedures.

13.05 Non-Conforming Fuel. If Fuel supplied by PREPA fails to conform with the Fuel Specifications (such Fuel, "**Non-Conforming Fuel**"), Lessor shall, as soon as reasonably practicable, give written notice to PREPA that Lessor has received Non-Conforming Fuel, giving details of the nature and expected magnitude of the variance from the parameters set forth in the Fuel Specifications and the reason Lessor deems the Fuel to be non-compliant. If Lessor informs PREPA that it has received Non-Conforming Fuel, then PREPA shall have the right to request that Lessor send a sample of such Fuel to an independent third party, to be agreed to by the Parties, to determine whether such sample satisfies the criteria for Non-Conforming Fuel ("**Third-Party Fuel Test**"). The final determination made in such Third-Party Fuel Test regarding the Non-Conforming Fuel shall be binding on both Parties. The cost of such Third-Party Fuel Test shall be borne (i) by Lessor if the Third-Party Fuel Test concludes that the Fuel conforms with the Fuel Specifications, or (ii) by PREPA if the Third-Party Fuel Test concludes that the Fuel is Non-Conforming Fuel. PREPA shall, promptly upon becoming

³ Note: To revise this provision if proponent proposes to supply its own fuel.

aware of the delivery of Non-Conforming Fuel or promptly upon receipt of notice from Lessor referenced above, send a notice to Lessor stating, to the extent known to PREPA, the period during which PREPA delivered the Non-Conforming Fuel, the quantity thereof and how such Non-Conforming Fuel departs from the Fuel Specifications.

13.06 Fuel Measurement Facilities. Prior to the commencement of testing and commissioning of the TGUs, Lessor shall install the Fuel Measurement Facilities at the Fuel Delivery Point in accordance with *[[●]] [to provide specific metering specifications, and a reference to the applicable AGA standard]*. If one or more components of the Fuel Measurement Facilities fails to function or a Party reasonably believes that such facilities inaccurately register the volumes of Primary Fuel delivered to the Fuel Delivery Point, the Parties shall determine the volume of Primary 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
- c. by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.

13.07 Disputes. In the event that a Party notifies the other Party of a material discrepancy between the quantity of Primary Fuel delivered to the Fuel Delivery Point as measured by the main meter and backup meter of the Fuel Measurement Facilities, either Party shall have the right to request an adjustment for Primary Fuel delivered up to the later of (i) thirty (30) Days before the notice of any such Primary Fuel measurement discrepancy, and (ii) the date of the last meter reading that preceded such notification. The Parties shall exercise their reasonable efforts to resolve such discrepancy amicably (including with respect to adjustments for Primary Fuel delivered during such fuel measurement review period).

13.08 Storage of Backup Fuel. Lessor shall furnish, maintain and repair at its own cost all storage facilities required for Backup Fuel at the Site.

14. LIABILITY

14.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of the electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of a TGU shall vest with PREPA upon generation. Each Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 14.02 (*Limitation of Liability*) below.

14.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other

provisions of this Agreement. Nothing in this Clause 14 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

15. INDEMNIFICATION

15.01 General. 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.

15.02 Notice of Claim. 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.

15.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor's agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

16. EVENTS OF FORCE MAJEURE

16.01 General. Neither Party 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 an act, event or circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 16.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the "**Affected Party**") could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act,

event or circumstance on the Affected Party's ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;

- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party ("**Non-Affected Party**") notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 16.05 (*Notices*);

(each such act, event or circumstance, an "**Event of Force Majeure**"). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

16.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 16.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the upstream facilities affecting the delivery of Fuel;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils; acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

16.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 16.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and
- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

16.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

16.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 16 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

16.06 Other Matters.

- a. If any Party claims relief under this Clause 16 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 16 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 16 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the

period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.

- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.
- e. [For the avoidance of doubt, to the extent required following an Event of a Force Majeure, Lessor shall perform all repairs, restoration, replacement, and maintenance, at its sole cost, to return the Facility to full commercial operations.]

17. TERMINATION

17.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the "**Defaulting Party**") set forth in paragraphs (a) - (j) below (each, a "**Termination Event**"), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. Failure by Lessor to achieve Completion on or before the sixtieth (60th) Day following the Guaranteed Completion Date, as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. Declaration by Lessor of either (i) a Tested Capacity of less than ninety percent (90%) of the Contract Capacity, or (ii) a Tested Heat Rate of more than two percent (2%) above the Guaranteed Heat Rate, in each case under Sub-Clause 12.02 (*Declaration*);
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falling below ninety percent (90 %) for any period of [three (3)] consecutive months during the Lease Period;
- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;
- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 16.06 (*Other Matters*);

- g. In the case of Lessor only, the conviction of one or more of Lessor's or its contractors' employees or representatives of a crime described in Sub-Clause 26.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 26.03 (*No Convictions Under Certain Other Acts*);
- h. In the case of Lessor only, the making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement, as contemplated by Sub-Clause 26.04 (*Right of Termination*);
- i. (i) The inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) the initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and
- j. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days.

provided, however, that paragraph (i) and (j) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date.

17.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to Lessor.

17.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 17.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 17.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

17.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience, without further liability to PREPA, by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

17.05 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 17.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party's right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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.

18. SECURITY

18.01 General. As security for the proper performance of all of Lessor's obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the "**Security**") issued by a Qualified Bank in the form set forth in Annex 15 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●] United States Dollars),⁴ together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a "**Qualified Bank Certificate**"), and (ii) maintain the Security in full force and effect until the expiration of the Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor's obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 18.01 (*General*).

18.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and
- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 18.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the "**Compliance Date**") on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA's right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA's right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

18.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the Security then outstanding.

19. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor will promptly pay and discharge all lawful taxes, assessments

⁴ Face Amount required by RFP

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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

20. INSURANCE

20.01 General. Lessor shall obtain and maintain in full force and effect during the Agreement Term and thereafter as provided herein, policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. Workmen's Compensation Insurance: Lessor shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Lessor shall also be responsible for the compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees. Lessor shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered;
- b. Employer's Liability Insurance: Lessor shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Lessor as a result of bodily injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Commercial General Liability: Lessor shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability;
- d. Automobile Liability Insurance: Lessor shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combine single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos;
- e. Professional Liability Insurance: Lessor shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- f. Pollution Liability Insurance: Lessor shall provide and maintain a Pollution Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- g. All Risk Physical Damage Property Insurance: Lessor shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover

all real and personal property of the proponent (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. This insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work and temporary buildings located at the Site;

- h. Equipment Breakdown Policy (Boiler & Machinery): Lessor shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this policy; and
- i. Builder's All Risk Insurance: Lessor shall provide and maintain a Builder's All Risk Insurance shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Site, and all equipment and materials delivered and stored at the Site which are to be used in the work or incorporated into de Facility. PREPA shall be named Additional Insured under this policy.

20.02 Requirements under the Policies. The Commercial General Liability Insurance and Automobile Liability Insurance required under this agreement shall be endorsed to include:

- a. As Additional Insured:

Puerto Rico Electric Power Authority Risk Management Office
PO Box 364267
San Juan, PR 00936-4267
- b. A 30 days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of subrogation in favor of PREPA.
- e. The breach of any of the warranties or conditions in these policies by the Insured shall not prejudice PREPA'S rights under this policy.

20.03 Structure of Coverage. The amounts of insurance required in Sub-Clause 20.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 20.01 (*General*).

20.04 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (c) of Sub-Clause 20.01 (*General*) and any required umbrella or excess coverage may be "occurrence" form policies if available on commercially reasonable terms. In the event Lessor has "claims-made" form coverage, Lessor shall notify PREPA and the retroactive date established on the first "claims-made" policy shall be maintained on all subsequent renewals.

20.05 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and, if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor's Worker's Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor's indemnity obligations set forth elsewhere in this Agreement;
- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

20.06 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (d) and (e) of Sub-Clause 20.01 (*General*) 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 Lessor shall not prejudice PREPA's right under this policy." If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

20.07 Certificates of Insurance. Lessor 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 paragraph (f) of Sub-Clause 20.01 (*General*), 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 Facility. Failure of PREPA to obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 20 (*Insurance*) shall in no way relieve or limit Lessor's obligations and liabilities under other provisions of this Agreement.

21. REPRESENTATIONS, WARRANTIES & LIABILITIES

21.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;
- b. Lessor 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. Lessor's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor'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 Lessor's ability to perform its obligations hereunder, (ii) violate any provision of Lessor'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 Lessor'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; and
- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

21.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority, PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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;
and

- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA in accordance with its terms.

22. ASSIGNMENT

22.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as Lessor, and (ii) comply with the requirements for pre-qualified bidders participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

22.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

22.03 Transfer. 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 Lessor's consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

23. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 23 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

LESSOR:



Attention:



Telephone:



Email:



With copy to:



Telephone:



Email:



PREPA:

Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928

Attention:

Attn: [REDACTED]

Telephone:

[REDACTED]

Facsimile:

[REDACTED]

Email:

[REDACTED]@prepa.com]

With Copies to:

Attn: [REDACTED]

Telephone:

[REDACTED]

Facsimile:

[REDACTED]

Email:

[REDACTED]@prepa.com]

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

24. CHOICE OF LAW AND DISPUTE RESOLUTION

24.01 Choice of Law. 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.

24.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a "**Dispute**"), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent that the Parties cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

25. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

25.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

25.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).

- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.

- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and
 - ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

25.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

25.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

25.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "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.

25.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

25.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

25.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

25.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

25.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

26. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

26.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

26.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

26.03 No Convictions Under Certain Other Acts. Lessor 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.

26.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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. CONSEQUENCES OF NON-COMPLIANCE

27.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout Clauses 25 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*) and 26 (*Anti-Corruption Code for a New Puerto Rico*) are essential requirements of this Agreement. If any of the certifications listed in Sub-Clause 25.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

27.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

28. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

28.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers

or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

28.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, with such certification being provided substantially in the form set forth in Annex 16 (Certification Regarding Lobbying for Contracts, Grants, Loan, and Cooperative Agreements) and Annex 17 (Form of Certification Regarding Debarment, Suspension and Other Responsibility Matters). Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

28.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

28.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

28.05 Sufficiency of Funds. Lessor recognizes and agrees that PREPA will derive all or a portion of the funding for this Agreement from assistance awarded to PREPA by Federal agencies of the United States of America or local agencies of the Government of Puerto Rico. As part of its obligations under this Agreement, Lessor shall ensure that the work performed by it under this Agreement and the Facility made available to PREPA by way of a lease remains eligible for funding by complying with all applicable Federal law, regulations, executive orders, Federal agency policy, procedures, directives and guidelines. If during the Agreement Term, such Federal or local agencies reduce, de-obligate or withdraw such funds, then PREPA may reduce the scope of, or terminate, the Agreement, without penalty, by providing written notice to Lessor of the changes in scope or termination. PREPA shall have no obligation to remit any Monthly Lease Payment and have no liability for any work performed by Lessor under this Agreement to the extent that a Federal or local agency declares any part of such work or lease ineligible for funding during the Agreement Term. Lessor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from this Agreement.

28.06 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

28.07 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

28.08 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

28.09 Debarment, Suspension, and Ineligibility.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. Lessor certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

28.10 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

28.11 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in this Agreement and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

28.12 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of

FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.

- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - 1. 2 C.F.R. § 327 (Financial Reporting);
 - 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 - 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

28.13 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Reform Act of 2018, PREPA and Lessor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA or HUD Administrators or the Comptroller General of the United States.

28.14 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than five (5) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report

or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

28.15 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

28.16 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe

providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Lessor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

28.17 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.
- d. Lessor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lessor's commitments under Section 202 of the US Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the administering agency and the Secretary of Labor

for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- g. In the event of Lessor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.
- h. Lessor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

- i. The applicant further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such

applicant; and refer the case to the Department of Justice for appropriate legal proceedings..

28.18 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

28.19 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

28.20 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

28.21 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

28.22 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

28.23 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R Part 3001.

28.24 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, agency policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

28.25 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

28.26 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

28.27 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

28.28 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

28.29 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be

performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

28.30 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.
- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

28.31 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.
- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.
- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

28.32 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

- 1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

2. **Commercially available off-the-shelf (COTS)** item means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and
 - c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
3. **Component** means an article, material, or supply incorporated directly into a construction material.
4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
5. **Cost of components** means:
 - a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
6. **Designated country** means any of the following countries:
 - a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland,

Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

- b. a Free Trade Agreement (FTA) country (as of the Agreement Date Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
 - c. a least developed country (as of the Agreement Date), Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
 - d. a Caribbean Basin country (as of the Agreement Date), Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
8. **Domestic construction material** means:
- a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
9. **Foreign construction material** means a construction material other than a domestic construction material.
10. **Free Trade Agreement country construction material** means a construction material that:

- a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
- 11. **Least developed country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
- 12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
- 13. **WTO GPA country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a WTO GPA country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

- 1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
- 2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
- 3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]

4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;
 - c. quantity;
 - d. price;
 - e. time of delivery or availability;
 - f. location of the Work;
 - g. name and address of the proposed supplier; and
 - h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not

reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.
- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

- 2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
- 3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
- 4. Include other applicable supporting information.
- 5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

28.33 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

29. MISCELLANEOUS PROVISIONS

29.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, instruments, and TGU(s) forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

29.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

29.03 Non-Waiver. 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.

29.04 Third Party Rights. 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.

29.05 No benefits. No officer, employee, or agent of Lessor 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.

29.06 Relationship. 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.

29.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 30.01 (*Demobilization and Final Report*).

29.08 Reasonableness. 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.

29.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

29.10 Waiver. 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.

29.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

29.12 Severability. 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.

29.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

ATTEST:

[•]

By: _
Title: [•]

By: _
Title: [•]

ATTEST:

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _
Title: [•]

Title: [•]

ANNEX 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), Lessor shall deliver to Buyer:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 20 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 10 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 25 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 26 (*Anti-Corruption Code for a New Puerto Rico*), and Clause 28 (Compliance with Applicable Federal Law, Regulations and Executive Orders); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2 - PREPA CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), PREPA shall deliver to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

ANNEX 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [Note: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“PREPA”)

To: [●] (“Lessor”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “LOA”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____ DATE: _____
FOR PREPA

SIGNED: _____ DATE: _____
FOR LESSOR

ANNEX 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [Note: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“PREPA”)

To: [●] (“Lessor”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “LOA”). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____ DATE: _____
FOR PREPA

ACKNOWLEDGED: _____ DATE: _____
FOR LESSOR

ANNEX 4⁵

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for each Billing Period shall be calculated as follows:

$$MLP = (LP \times FMAF \times EAF) + VOMP$$

where:

LP = Lease Price equal to \$ [●] per Billing Period

FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below

EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below

VOMP = Variable O&M Payment as defined in paragraph (v) below

- (i) Force Majeure Adjustment Factor (**FMAF**) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA’s ability, to Dispatch the TGU’s as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

BPH = Hours in Billing Period

ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below

EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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

⁵ Note: Payment structure drafted in line with discussions with PREPA on Monday, February 10, 2020. We note that the RFP now includes references to Capacity Payments and Energy Payments, which deviate from our discussions. To be discussed.

Average Net Deratings during such Derated Hour attributable to such Event of Force Majeure by the Contract Capacity applicable to that Derated Hour, plus (b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (**EGFMH**) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the applicable Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

- GFMH = Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the corresponding Billing Period
- CC = Contract Capacity made available by Lessor, expressed in MW
- ASC = the average Lessor capacity placed in service by PREPA's Dispatch of the TGUs during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

- (v) The "**Variable O&M Payment**" or "**VOMP**" for each Billing Period shall be calculated as follows:

$$VOMP (\$) = (NEO \times VOMC)$$

where:

NEO = Net Electrical Output for such Billing Period, expressed in kWh

VOMC = Variable O&M Charge equal to \$[●] / kWh

ANNEX 5

FUEL DELIVERY POINT



ANNEX 6

FUEL SPECIFICATIONS

Primary Fuel delivered at the Fuel Delivery Point:



Backup Fuel delivered at the Site:



ANNEX 7

ANCILLARY SERVICES⁶

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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 Lessor at the Interconnection Point as spinning reserve for immediate dispatch by PREPA.

“**Supplemental Spinning Reserve**” means the off-line generation at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Spinning Reserve following a Unit startup order from PREPA’s energy control center.

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

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor 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**

⁶ Note: Under review to align with RfP

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 Contract 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 8 (*Design Limits*). If, at the time of Spinning Reserve Capacity operation, PREPA Dispatches the Facility at less than the Contract 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 under frequency disturbance which caused the Spinning Reserve Capacity operation.

For any hour, 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. Supplemental Spinning Reserve

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

ANNEX 8

DESIGN LIMITS

I. Objective

This Annex specifies the Design Limits applicable to the TGU's for the purpose of Automatic Generation Control, including Ramp Rates.

II. Design Limits

The following are preliminary Design Limits for each of the TGU's:



III. Ramp Rates

Each TGU shall have a Ramp Rate from standby to full load operation of less than ten (10) minutes.

ANNEX 9

INTERCONNECTION



ANNEX 10

RELEVANT CONSENTS

[•]⁷

⁷ Note: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

ANNEX 11

SITE



ANNEX 12

TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas], *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place units per PREPA requirements;
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator;
- c. Install flow meters on the generation units' fuel line;
- d. Install the temporary pump station;
- e. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- f. Install emergency notification system in the event of a shutdown; and

- g. Perform pre-commission of the system to verify system function as the generation units are being installed.

IV. Pre-Commissioning

- a. Perform and report completion of the following pre-commissioning tasks, as applicable to: Battery systems;
- b. Control & vibration systems;
- c. Ventilation and combustion air systems;
- d. Turbine and hydraulic start lubrication systems;
- e. Generator lubrication oil system;
- f. Fuel systems for both Primary Fuel and Backup Fuel;
- g. Fire system;
- h. Turbine auxiliaries;
- i. Water injection system; and
- j. Any other pre-commissioning tasks based on new or used units' factory requirements.

V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;

- vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;
- viii. Lessor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the TGU's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode;
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as **Schedule 1** to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 - i. Power output;
 - ii. MVAR; and
 - iii. Turbine and generator RPM or other parameters determined appropriate.

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*]

SCHEDULE 1 TO ANNEX 12

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements such as:

- a. Protective Relay Study and its settings for the proposed power system;
- b. Power system protective relay settings criteria;
- c. Grant access to PREPA to protective relay events;
- d. Access to power system proprietary software/program to allow communication with relays;
- e. Power system generator data sheet;
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation;
- h. The generator protection and its associated equipment connection shall comply with the latest applicable standards for small generators;
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection);
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5;
- k. The drawings for the generator installation shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel;
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer;
- m. Lessor shall provide all the manufacturer information for each generator, such as manuals, data sheets, setting guidelines and curves;
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the generator and associated apparatus) that is not covered by the unit differential protection; and
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

ANNEX 13

OPERATING PROCEDURES

[•]⁸

⁸ Among other things, to include detailed procedures for: (i) daily nominations, management and coordination of the supply of Fuel, (ii) the reading of the Fuel Measurement Facilities (when installed in accordance with Sub-Clause 13.06 (Fuel Measurement Facilities)) and (iii) the resolution of disputes regarding material discrepancies between the quantity of Fuel delivered to the Fuel Delivery Point as registered by the Fuel Measurement Facilities.

ANNEX 14

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, Tested Heat Rate, the Ramp Rate of a TGU, and *[insert any other necessary tests]*.

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (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 TGU.

c. [others]

Test Conditions

a. Tested Capacity

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

b. Tested Heat Rate

For each Heat Rate test load point, the TGU 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 TGU.] All major components shall be operated within their design pressures, temperatures, and flow rates. TGU operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by TGU operating data. All necessary safety and environmental equipment shall be in service.

c. [others]

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.

ANNEX 15

FORM OF SECURITY

ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: The Puerto Rico Electric Power Authority



Attn.: Chief Executive Officer

Date: 

LOA / PERFORMANCE SECURITY No. 

We understand that  (the “**Applicant**”) has entered into a contract with you (the “**Beneficiary**”) dated  (as amended from time to time, the “**LOA**”).

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

“**Maximum Amount**” means \$ .

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

SCHEDULE 1 TO ANNEX 15

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:
Authorized Signatory

ANNEX 16

FORM OF CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official Date

ANNEX 17

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR Company Name Contract Number

Name

Title

Signature Date

LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dispatchable
[renewable energy] generation and battery energy storage technology,
located at [●] Puerto Rico as part of PREPA's
Temporary Generation Program

between

[●]
as Lessor

and

**PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee**

dated as of [●], [●]



**Puerto Rico
Electric Power
Authority**

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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of [twelve (12)] months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain [number] [●] MWp photovoltaic solar panel arrays, inverters and [●] MWh integrated battery energy storage systems capable of intermediate load shifting (collectively, the “**Facility**”), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of six (6) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires:

“**Accounting Standards**” means [●].

“**Affected Party**” has the meaning given to it in paragraph (a) of Sub-Clause 15.01 (*General*).

¹ Note: Under review.

“Affiliate” means 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 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.

“Agreement” has the meaning given to it in the first paragraph of this document.

“Agreement Date” has the meaning given to it in the first paragraph of this document.

“Agreement Term” has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

“Ancillary Services” has the meaning given to it in Annex 5 (*Ancillary Services*).

“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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

“Applicable Plans” means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

“Automatic Generation Control” or **“AGC”** means the provision of 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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, energy storage reserve computation, and production cost monitoring. Annex 6 (*Design Limits*) 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” means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

“Average Net Derating” means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

“Bankruptcy End Date” means the date on which a plan of adjustment consummated in connection with PREPA’s case under Title III of PROMESA becomes effective pursuant to its terms.

“Bid Bond” means the surety bond submitted in conformity with the provisions of the RfP.

“Bid Submission Date” has the meaning given to it in Recital B.

“Billing Period” has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

“Business Day” means any Day other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico).

“Completion” means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

“Completion Certificate” means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

“Completion Date” means the date on which Lessor achieves Completion as certified in the Completion Certificate.

“Compliance Date” has the meaning given to it in Sub-Clause 17.02 (*Security Requirements*).

“Conditions Precedent” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Contract Capacity” means [*insert the net electric power generating capacity of Facility*].

“Court 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.

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

“Defaulting Party” has the meaning given to it in Sub-Clause 16.01 (*Right of Termination*).

“Delay” has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

“Derated Hours” means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

“Design Limits” has the meaning given to it in Annex 6 (*Design Limits*).

“Dispatch” means 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 Grid System in accordance with Prudent Utility Practices, subject to the Operating Procedures and the Design Limits.

“Dispatch Instructions” has the meaning given to it in Sub-Clause 7.01 (*General*).

“Effective Date” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it Part (iii) in Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it Part (iv) in Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 15.01 (*General*).

“Facility” has the meaning given to it in Recital D of the preamble of this Agreement as further detailed in Annex 10 (*Technical Scope*).

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 15.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 15.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 7 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 7 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 24.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

“Monthly Invoice” has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

“Monthly Lease Payment” has the meaning given to it in Annex 4 (*Monthly Payment and Calculations*).

“MWp” means megawatt-peak.

“Net Electrical Output” means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

“Non-Affected Party” has the meaning given to it in paragraph (d) of Sub-Clause 15.01 (*General*).

“Non-Scheduled Outage” means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

“Operating Procedures” means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 11 (*Operating Procedures*).

“Outage Hours” means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

“P3A” means the Puerto Rico Public-Private Partnership Authority.

“Party” or **“Parties”** has the meaning given to it in the preamble of this Agreement.

“Performance Test” has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

“Period Hours” means all hours in the relevant period.

“Person” means 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.

“Potentially Hazardous Materials” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

“Pre-Existing Environmental Condition” means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any “Pre-Existing Environmental Condition” unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“PREB” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“PREPA” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“PREPA Interconnection Facilities” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 7 (*Interconnection*).

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“Prudent Electrical Practices” means 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” means 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., including those practices, methods, standards and

procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Bank Certificate” has the meaning given to it in Sub-Clause 17.01 (*General*).

“Ramp Rates” mean 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 Part III of Annex 6 (*Design Limits*).

“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 that 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.

“Relevant Authority” means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

“Relevant Consent” means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 8 (*Relevant Consents*).

“RfP” has the meaning given to it in Recital A.

“RTU” has the meaning given to it in in Sub-Clause 7.01 (*General*).

“S&P” means S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

“Scheduled Outage” means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of the Facility*).

“Scheduled Outage Program” has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

“Security” has the meaning given to it in Sub-Clause 17.01 (*General*).

“Site” means the area described in Annex 9 (*Site*).

“O&M Services” has the meaning given to it in Sub-Clause 8.01 (*General*).

“T&D Operator” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“Taxes” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“Technical Scope” means the scope of work set forth in Annex 10

“Temporary Generation Program” has the meaning given to it in Recital A.

“Termination Event” has the meaning given to it in Sub-Clause 16.01 (*Right of Termination*).

“Territory” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“Tested Capacity” means the maximum net electric generating capacity of the Facility (gross electric capacity less Facility use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the release of energy from supplementary battery energy storage in addition to energy produced from in situ conditions, as measured by the Performance Test.

“Third Party” means any Person other than a Party to this Agreement.

“US-CPI” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

“Year” means the twelve (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31.

1.02 Interpretation. In this Agreement and unless the context otherwise requires:

- a. words importing the singular only also include the plural and vice versa where the context so requires;
- b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;

- c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
- d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
- e. references to a Party or Person include that Party's or Person's successors and permitted assigns;
- f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
- g. the Parties shall construe all references to "include" and "including" as "including without limitation";
- h. 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," that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party's need to comply with its contractual obligations to any Person limit such Party's actions, 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;
- i. 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; and
- j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses 1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), 16.03 (Limitation on Liability), 20 (*Representations, Warranties & Liabilities*), 22 (*Notices*), 23 (*Choice of Law & Dispute*

Resolution), 24 (Compliance With the Commonwealth of Puerto Rico Contracting Requirements), 28 (General), and Annex 1 (Conditions Precedent), which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until twelve (12) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA for one (1) additional six (6) month period (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the twelve (12) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);
- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to **[date]**. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the “**Effective Date**”) on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (Conditions Precedent) within thirty (30) Days of the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Bond.
- b. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (Conditions Precedent) within thirty (30) Days after the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Bond to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. SITE

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.

4.02 Clearance and Consents.

- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data, documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission *[[number] [●] MWp [photovoltaic solar panel arrays, inverters] and [[●] MWh] integrated battery energy storage systems capable of intermediate load shifting [or other renewable technology]* and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the “**Installation Works**”) at Lessor’s sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a “**Delay**”):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA’s personnel, or PREPA’s contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the Completion Date has not timely occurred an amount equal to US [●] (\$[●])²; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated*

² Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

Damages for Delay) for a maximum of sixty (60) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable, documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. the Facility conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. the Facility is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the Facility generally accept and follow; and
- c. Lessor owns good and valid title to the Facility free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.
- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to be filed, or any complementary information required to be furnished, in relation to the Installation Works; and

- ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period, and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 21.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure.³ PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated schedule of operations for the following five (5) weeks, and for each Day of the Lease Period, Lessor shall provide to PREPA a non-binding, hourly estimate of next Day and next week expected NEO and average Available Capacity, based on the previous Day NEO and Available Capacity and estimated strength of the [*solar irradiation or other resource*] for the next Day and week according to the meteorological forecast for the region and site. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown the Facility.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 5 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric

³ Note to bidders: Battery energy storage capacity will need to accommodate intermediate load shifting.

Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the "**O&M Services**"). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA's request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with PREPA's AGC system with the [solar panel arrays] 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the "**Scheduled Outage Program**") for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA shall have the right, upon sixty (60) Days' prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

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

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor's personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA's dispatching centers will notify Lessor's personnel and, if requested by PREPA, Lessor'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 Lessor'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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the Facility with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;
- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;
- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and

- 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.

8.08 Certifications. At PREPA's request, Lessor 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 Facility during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor 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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the Facility, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the Facility and Lessor Interconnection Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for the Facility not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the Facility on such date.

9.04 Testing. Prior to the initial synchronization of the Facility with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of the Facility and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for the Facility, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for the Facility. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify

Completion of the Facility as per the requirements of this Agreement and finally determine whether the Facility and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the Facility and Completion of all other Installation Works, Lessor shall notify PREPA of the Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a "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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.


11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor's issuance of a Monthly Invoice pursuant to paragraph (b) below.
- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a **"Monthly Invoice"**). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works; leasing of the Facility; and provision of the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on the Facility to establish Tested Capacity, Ramp Rate and  for the Facility (each, a **"Performance Test"**) at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The

Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 12 (*Performance Tests*) for the Facility, Lessor shall declare, and provide PREPA with notification of the Tested Capacity 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 Annex 12 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity for the Facility in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$ [REDACTED] for each kW of power generation capacity shortfall below the Contract Capacity, such shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof.

13. LIABILITY

13.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of the Facility shall vest with PREPA upon generation. Each Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 13.02 (*Limitation of Liability*) below.

13.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other provisions of this Agreement. Nothing in this Clause 13 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

14. INDEMNIFICATION

14.01 General. 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.

14.02 Notice of Claim. 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.

14.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor's agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

15. EVENTS OF FORCE MAJEURE

15.01 General. Neither Party 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 an act, event or circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 15.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the "**Affected Party**") could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act, event or circumstance on the Affected Party's ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;
- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party ("**Non-Affected Party**") notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 15.05 (*Notices*);

(each such act, event or circumstance, an “**Event of Force Majeure**”). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

15.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 15.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the Facility;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils, acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

15.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 15.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and
- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority, required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

15.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

15.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 15 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

15.06 Other Matters.

- a. If any Party claims relief under this Clause 15 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 15 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 15 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.
- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.

- e. [For the avoidance of doubt, to the extent required following an Event of a Force Majeure, Lessor shall perform all repairs, restoration, replacement, and maintenance, at its sole cost, to return the Facility to full commercial operations.]

16. TERMINATION

16.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the “**Defaulting Party**”) set forth in paragraphs (a) - (k) below (each, a “**Termination Event**”), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. Failure of Lessor to achieve Completion on or before the sixtieth (60th) Day following the Guaranteed Completion Date as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. Declaration by Lessor of a Tested Capacity of less than ninety percent (90%) of the Contract Capacity under Sub-Clause 12.02 (*Declaration*);
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falls below ninety percent (90%) for any period of [three (3)] consecutive months during the Lease Period;
- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;
- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 15.06 (*Other Matters*);
- g. In the case of Lessor only, the conviction of one or more of Lessor’s or its contractors’ employees or representatives of a crime described in Sub-Clause 25.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 25.03 (*No Convictions Under Certain Other Acts*);
- h. Making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement as contemplated by Sub-Clause 25.04 (*Right of Termination*);
- i. Lessor’s failure to cure an actual conflict of interest, or the appearance of such a conflict, to PREPA’s satisfaction;
- j. (i) Inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or

a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and

- k. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days

provided, however, that paragraph (j) and (k) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date, and provided further, that PREPA shall have the right to terminate this Agreement under paragraph (i) upon thirty (30) Days' prior written notice to Lessor.

16.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to Lessor.

16.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 16.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 16.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

16.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience, without further liability to PREPA, by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

16.05 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 16.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party's right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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.

17. SECURITY

17.01 General. As security for the proper performance of all of Lessor's obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the "**Security**") issued by a Qualified Bank in the form set forth in Annex 13 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●] United States Dollars), together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a "**Qualified Bank Certificate**"), and (ii) maintain the Security in full force and effect until the expiration of the

Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor's obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 17.01 (*General*).

17.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and
- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 17.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the "**Compliance Date**") on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA's right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA's right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

17.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the then outstanding Security.

18. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor 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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

19. INSURANCE

19.01 General. Lessor shall obtain and maintain in full force and effect during the Agreement Term and thereafter as provided herein, policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. Workmen's Compensation Insurance: Lessor shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Lessor shall also be responsible for the compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees. Lessor shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered;
- b. Employer's Liability Insurance: Lessor shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Lessor as a result of bodily injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Commercial General Liability: Lessor shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability;
- d. Automobile Liability Insurance: Lessor shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combine single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos;
- e. Professional Liability Insurance: Lessor shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- f. Pollution Liability Insurance: Lessor shall provide and maintain a Pollution Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- g. All Risk Physical Damage Property Insurance: Lessor shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the proponent (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. The insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work and temporary buildings located at the Site;
- h. Equipment Breakdown Policy (Boiler & Machinery): Lessor shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of

the Proponent. PREPA shall be named Additional Insured under this policy; and

- i. Builder's All Risk Insurance: Lessor shall provide and maintain a Builder's All Risk Insurance shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Site, and all equipment and materials delivered and stored at the Site which are to be used in the work or incorporated into de Facility. PREPA shall be named Additional Insured under this policy.

19.02 Requirements under the Policies. The Commercial General Liability Insurance and Automobile Liability Insurance required under this agreement shall be endorsed to include:

- a. As Additional Insured:

Puerto Rico Electric Power Authority Risk Management Office
PO Box 364267
San Juan, PR 00936-4267
- b. A 30 days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of subrogation in favor of PREPA.
- e. The breach of any of the warranties or conditions in these policies by the Insured shall not prejudice PREPA'S rights under this policy.

19.03 Structure of Coverage. The amounts of insurance required in Sub-Clause 19.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 19.01 (*General*).

19.04 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (b) of Sub-Clause 19.01 (*General*) and any required umbrella or excess coverage may be "occurrence" form policies if available on commercially reasonable terms. In the event Lessor has "claims-made" form coverage, Lessor shall notify PREPA and the retroactive date established on the first "claims-made" policy shall be maintained on all subsequent renewals.

19.05 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor's Worker's Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor's indemnity obligations set forth elsewhere in this Agreement;

- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

19.06 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (c) and (d) of Sub-Clause 19.01 (*General*) 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 Lessor shall not prejudice PREPA's right under this policy." If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

19.07 Certificates of Insurance. Lessor 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 paragraph (f) of Sub-Clause 19.01 (*General*), 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 Facility. Failure of PREPA to obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 19 (*Insurance*) shall in no way relieve or limit Lessor's obligations and liabilities under other provisions of this Agreement.

20. REPRESENTATIONS, WARRANTIES & LIABILITIES

20.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;

- b. Lessor 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. Lessor's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor'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 Lessor's ability to perform its obligations hereunder, (ii) violate any provision of Lessor'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 Lessor'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; and
- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

20.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority, PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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; and
- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA, in accordance with its terms.

21. ASSIGNMENT

21.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by

Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as Lessor, and (ii) comply with the requirements for pre-qualified bidders participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

21.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

21.03 Transfer. 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 Lessor's consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

22. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 22 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

LESSOR:



Attention:



Telephone:



Email:



With copy to:



Telephone:



Email:



PREPA:

Puerto Rico Electric Power Authority
Apartado 363928

San Juan, Puerto Rico 00936-3928

Attention:

Attn: [●]

Telephone:



Facsimile:



Email:

[[●]@prepa.com]

With Copies to:

Attn:

Telephone:



Facsimile:
Email:


@prepa.com]

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

23. CHOICE OF LAW AND DISPUTE RESOLUTION

23.01 Choice of Law. 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.

23.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a "**Dispute**"), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

24. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

24.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

24.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).
- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.
- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and
 - ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.

- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

24.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

24.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

24.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 “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.

24.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

24.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

24.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

24.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

24.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

25. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

25.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

25.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

25.03 No Convictions Under Certain Other Acts. Lessor 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.

25.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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.

26. CONSEQUENCES OF NON-COMPLIANCE

26.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout Clauses 24 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*) and 25 (*Anti-Corruption Code for a New Puerto Rico*) are essential requirements of this Agreement. If any of the certifications listed in Sub-Clause 24.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

26.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

27. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

27.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages.

In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

27.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, with such certification being provided substantially in the form set forth in Annex 14 (*Certification Regarding Lobbying for Contracts, Grants, Loan, and Cooperative Agreements*) and Annex 15 (*Form of Certification Regarding Debarment, Suspension and Other Responsibility Matters*). Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

27.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

27.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as

amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

27.05 Sufficiency of Funds. Lessor recognizes and agrees that PREPA will derive all or a portion of the funding for this Agreement from assistance awarded to PREPA by Federal agencies of the United States of America or local agencies of the Government of Puerto Rico. As part of its obligations under this Agreement, Lessor shall ensure that the work performed by it under this Agreement and the Facility made available to PREPA by way of a lease remains eligible for funding by complying with all applicable Federal law, regulations, executive orders, Federal agency policy, procedures, directives and guidelines. If during the Agreement Term, such Federal or local agencies reduce, de-obligate or withdraw such funds, then PREPA may reduce the scope of, or terminate, the Agreement, without penalty, by providing written notice to Lessor of the changes in scope or termination. PREPA shall have no obligation to remit any Monthly Lease Payment and have no liability for any work performed by Lessor under this Agreement to the extent that a Federal or local agency declares any part of such work or lease ineligible for funding during the Agreement Term. Lessor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from this Agreement.

27.06 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

27.07 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

27.08 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

27.09 Debarment, Suspension, and Ineligibility.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. Lessor certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

27.10 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

27.11 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in this Agreement and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

27.12 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.

- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - 1. 2 C.F.R. § 327 (Financial Reporting);
 - 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 - 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

27.13 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Reform Act of 2018, PREPA and Lessor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA or HUD Administrators or the Comptroller General of the United States.

27.14 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than five (5) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
 - 1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

27.15 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

27.16 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Lessor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

27.17 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.
- d. Lessor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lessor's commitments under Section 202 of the US Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Lessor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.

- h. Lessor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

- i. The applicant further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

27.18 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

27.19 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

27.20 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and

any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

27.21 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

27.22 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

27.23 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R Part 3001.

27.24 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, agency policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

27.25 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

27.26 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

27.27 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

27.28 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

27.29 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent

feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

27.30 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with

each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.

- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

27.31 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.
- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.
- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

27.32 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

- 1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
- 2. **Commercially available off-the-shelf (COTS) item** means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and

- c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
- 3. **Component** means an article, material, or supply incorporated directly into a construction material.
- 4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
- 5. **Cost of components** means:
 - a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
- 6. **Designated country** means any of the following countries:
 - a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
 - b. a Free Trade Agreement (FTA) country (as of the Agreement Date, Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

- c. a least developed country (as of the Agreement Date, Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
 - d. a Caribbean Basin country (as of the Agreement Date, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
- 7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
- 8. **Domestic construction material** means:
 - a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
- 9. **Foreign construction material** means a construction material other than a domestic construction material.
- 10. **Free Trade Agreement country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

11. **Least developed country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
13. **WTO GPA country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a WTO GPA country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]
4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute

is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

- b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
- c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;
 - c. quantity;
 - d. price;
 - e. time of delivery or availability;
 - f. location of the Work;
 - g. name and address of the proposed supplier; and
 - h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the

Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.

- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

- 2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
- 3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
- 4. Include other applicable supporting information.
- 5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

- 1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit

such a transaction by a person subject to the jurisdiction of the United States.

2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

27.33 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

28. MISCELLANEOUS PROVISIONS

28.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, and instruments forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

28.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

28.03 Non-Waiver. 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.

28.04 Third Party Rights. 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.

28.05 No benefits. No officer, employee, or agent of Lessor 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.

28.06 Relationship. 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.

28.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 28.01 (*Demobilization and Final Report*).

28.08 Reasonableness. 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.

28.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

28.10 Waiver. 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.

28.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

28.12 Severability. 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.

28.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

ATTEST:

[•]

By: _____
Title: [•]

By: _____
Title: [•]

ATTEST:

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _____
Title: [•]

Title: [•]

ANNEX 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), Lessor shall deliver to Buyer:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 19 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 8 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 24 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 25 (*Anti-Corruption Code for a New Puerto Rico*) and Clause 27 (*Compliance with Applicable Federal Law, Regulations and Executive Orders*); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2- PREPA CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), PREPA shall deliver to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

ANNEX 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Lessor**”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “**LOA**”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

SIGNED: _____
FOR LESSOR

DATE: _____

ANNEX 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“**PREPA**”)

To: [●] (“**Lessor**”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “**LOA**”). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

ACKNOWLEDGED: _____
FOR LESSOR

DATE: _____

ANNEX 4

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for each Billing Period shall be calculated as follows:

$$MLP (\$) = (LP \times FMAF \times EAF) + VOMP$$

where:

LP = Lease Price equal to \$ [●] per Billing Period

FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below

EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below

VOMP = Variable O&M Payment as defined in paragraph (v) below

- (i) Force Majeure Adjustment Factor (FMAF) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA’s ability, to Dispatch the Facility as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

BPH = Hours in Billing Period

ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below

EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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 Event of

Force Majeure by the Contract Capacity applicable to that Derated Hour, plus
(b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (EGFMH) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the applicable Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

GFMH	=	Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the corresponding Billing Period
CC	=	Contract Capacity made available by Lessor, expressed in MW
ASC	=	the average Lessor capacity placed in service by PREPA's Dispatch of the Facility during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

- (v) The "Variable O&M Payment" or "VOMP" for each Billing Period shall be calculated as follows:

$$VOMP (\$) = (NEO \times VOMC)$$

where:

NEO	=	Net Electrical Output for such Billing Period, expressed in kWh
VOMC	=	Variable O&M Charge equal to \$[●] / kWh

ANNEX 5

ANCILLARY SERVICES⁴

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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) Energy Storage Reserve, (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.

“**Energy Storage Reserve**” means the online energy storage 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.

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

“**Supplemental Reserve**” means the off-line generation or energy storage at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Energy Storage Reserve following a Unit startup order from PREPA’s energy control center.

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

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor 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**

⁴ Note: Under review to align with RfP.

Energy Imbalance Services will be provided following PREPA's ECC instructions via either AGC or verbal Dispatch Instructions.

4. **Energy Storage Reserve**

PREPA shall have the right to (i) nominate the Energy Storage Capacity from time to time and (ii) utilize the Energy Storage 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 6 (*Design Limits*). If at the time of Energy Storage Capacity operation, the Facility is dispatched at less than the Contract 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 Energy Storage Reserve Capacity operation.

For any hour, PREPA shall have the right to nominate Energy Storage 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. **Supplemental Reserve**

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

ANNEX 6

DESIGN LIMITS

I. Objective

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

II. Design Limits

The following are preliminary Design Limits for each of the Facility: [●]

III. Ramp Rates

The Facility shall have a Ramp Rate from standby to full load operation of less than [●] ([●]) minutes.

ANNEX 7

INTERCONNECTION



ANNEX 8

RELEVANT CONSENTS

[●]⁵

⁵ NTD: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

ANNEX 9

SITE



ANNEX 10

TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, [*photovoltaic solar arrays, inverters, battery energy storage systems*] [*or other renewable technology*], personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas,] *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, [*photovoltaic solar arrays, inverters, battery energy storage systems*], [*or other renewable technology*] *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place [*photovoltaic solar arrays, inverters, and battery energy storage systems*] [*or other renewable technology*] per PREPA requirements;
- b. Install the temporary pump station;
- c. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- d. Install emergency notification system in the event of a shutdown; and
- e. Perform pre-commission of the system to verify system function as the [*photovoltaic solar arrays and battery energy storage*] [*or other generation technology*] [*or other renewable technology*] are being installed.

IV. Pre-Commissioning

Perform and report completion of the following pre-commissioning tasks, as applicable to:

- a. Battery systems;
- b. [*Photovoltaic solar arrays and inverter systems*] [*or other generation technology*];
- c. [*Battery energy storage systems*];
- d. [●];
- e. Fire system;
- f. [●] auxiliaries; and
- g. Any other pre-commissioning tasks based on new or used photovoltaic solar panel factory requirements.

V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
 - vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;

- viii. Lessor shall share the Facility's technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the Facility's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, [operation mode];
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as Schedule 1 to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M:
 - i. Power output; and
 - ii. MVAR; and
 - iii. [Other parameters determined appropriate.]

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*

SCHEDULE 1 TO ANNEX 10

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements (tailored to the applicable generation technology) such as:

- a. Protective Relay Study and its settings for the proposed power system.
- b. Power system protective relay settings criteria.
- c. Grant access to PREPA to protective relay events.
- d. Access to power system proprietary software/program to allow communication with relays.
- e. Power system data sheet.
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
- h. The Facility protection system and its associated equipment connection shall comply with the latest applicable standards for small generators.
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection).
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5.
- k. [The drawings for the Facility shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel.]
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer.
- m. [Lessor shall provide all the manufacturer information for each solar panel and inverter, such as manuals, data sheets, setting guidelines and curves.]
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the Facility and associated apparatus) that is not covered by the unit differential protection.
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

ANNEX 11

OPERATING PROCEDURES

[•]

ANNEX 12

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, to verify the Ramp Rate of the Facility, and [insert any other necessary tests].

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site-specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (30) Days before testing implementation.

Test Duration

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.

Test Conditions

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. 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 Facility 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.

ANNEX 13

FORM OF SECURITY ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

_____ [Bank's Name, and Address of Issuing Branch or Office]



Beneficiary: The Puerto Rico Electric Power Authority



Attn.: Chief Executive Officer

Date: 

LOA / PERFORMANCE SECURITY No. 

We understand that  (the “**Applicant**”) has entered into a contract with you (the “**Beneficiary**”) dated  (as amended from time to time, the “**LOA**”).

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

“**Maximum Amount**” means (i) prior to the Completion Date (as evidenced by the delivery of a certified true and correct copy of the Completion Certificate), \$ , and (ii) thereafter, \$ .

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

SCHEDULE 1 TO ANNEX 13

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:
Authorized Signatory

ANNEX 14

FORM OF CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ANNEX 15

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR Company Name

Contract Number

Name

Title

Signature

Date

Exhibit D



Sourcing Intelligence

Profile Logout

Help

102750 : RFP for Temporary Emergency Generation

Puerto Rico Electric Power Authority (PREPA)

Open: 03/12/20 11:40 AM (AST) Close: 04/07/20 08:00 PM (AST) Time Remaining: 28 days

Setup **Status** RFX Submittals Commercial Technical Pricing Messaging

Supplier Preview

March, 2020						
Today						
wk	Sun	Mon	Tue	Wed	Thu	Fri
9	1	2	3	4	5	6
10	8	9	10	11	12	13
11	15	16	17	18	19	20
12	22	23	24	25	26	27
13	29	30	31			

Select date

Schedule

Description	Assignee	Status	Date	Status Updated
Open			03/12/2020 11:40 AM AST	
KICKOFF MEETING			03/18/2020 9:00 AM AST	
SITE VISIT 1			03/18/2020 1:00 PM AST	
SITE VISIT 2			03/19/2020 9:00 AM AST	
SITE VISIT 3			03/20/2020 8:30 AM AST	
Close			04/07/2020 8:00 PM AST	

Bidding Summary



View

All

Bidding Team	Bid Intention	Requests	Last Contact	RFX Accessed	Uploaded Files	Saved Forms	Last Saved	Primary Contact	Last Team Visit
AES PUERTO RICO	Bidding	0		03/12/2020	0	0 of 3		freddy obando	03/12/2020
ANTILLES POWER DEPOT	Bidding	0		03/12/2020	0	0 of 3		milton pimentel	03/12/2020
APR Energy	Bidding	0		03/12/2020	0	0 of 3		Libby Owen	03/12/2020
ARG Precision	Bidding	0		03/12/2020	0	0 of 3		Armando Rodriguez	03/12/2020
Aggreko, LLC	Bidding	0			0	0 of 3		Sergio Rocha	
All Contractors & Services Corp	Bidding	0			0	0 of 3		Neil Borrero	
Ch4 Systems LLC	Bidding	0		03/12/2020	0	0 of 3		Jonathan Vazquez	03/12/2020
EcoElectrica L.P.	Bidding	0		03/12/2020	0	0 of 3		Carlos Reyes	03/12/2020
GE (General Electric)	Bidding	0		03/12/2020	0	0 of 3		Orlando Soto	03/12/2020
Go Green USA	Bidding	0			0	0 of 3		Justino Orozco	
LT Automation, Inc.	Bidding	0		03/12/2020	0	0 of 3		Jorge Acosta	03/12/2020
Louis Berger	Bidding	0		03/12/2020	0	0 of 3		Miguel Torres-Diaz	03/12/2020
Naturgy_	Bidding	0		03/12/2020	0	0 of 3		Xavier Vives	03/12/2020
New Fortress Energy	Bidding	0		03/12/2020	0	0 of 3		Legal Team	03/12/2020
PIC Group, Inc.	Bidding	0		03/12/2020	0	0 of 3		Todd Rudy	03/12/2020
Pratt & Whitney	Bidding	0			0	0 of 3		Eleazar Rodriguez	
RG ENGINEERING, INC.	Bidding	0		03/12/2020	0	0 of 3		Aida Rodriguez	03/12/2020
Sediro Enterprises	Bidding	0			0	0 of 3		Pedro Juan Morales	
Siemens Energy Inc	Bidding	0			0	0 of 3		Jorge A Franceschi	
SoEnergy International	Bidding	0		03/12/2020	0	0 of 3		David Velosa	03/12/2020
Solar Turbines Inc	Bidding	0		03/12/2020	0	0 of 3		Juan Obregon	03/12/2020
Thomassen Amcot International LLCC	Bidding	0			0	0 of 3		Rick Williamson	
Tote Maritime	Bidding	0			0	0 of 3		Eduardo L. Pagan	
Vibra Inc.	Bidding	0			0	0 of 3		Felix Laboy	



GOVERNMENT OF PUERTO RICO
Puerto Rico Electric Power Authority

Request for Proposals

RFP 102750
Temporary Emergency Generation
March 12, 2020

Issued by the Puerto Rico Electric Power Authority



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1. Statement of Requirements

This Request for Proposal (RFP) contains confidential and proprietary information that is the property of the Puerto Rico Electric Power Authority (PREPA), which is provided for the sole purpose of permitting the recipient to respond to the RFP. The recipient agrees to maintain such information as confidential and not to copy nor disclose the RFP information to any person outside the group directly responsible for responding to its contents. The contents of this document may not be used for any purpose other than preparation of a response or proposal to this RFP.

2. Abbreviations, Acronyms and Definitions

Words and terms defined in this Section shall have the same meaning throughout all parts of this RFP and the LOA.

Addenda/Addendum means a supplemental document with additions, deletions, and **modifications** to the provisions of the RFP, after the release date of the RFP.

Contractor or Selected Proponent means a proponent awarded the LOA resulting from this RFP.

EPA means Environmental Protection Agency.

Evaluation Committee means a committee designated by PREPA's Governing Board Officer, which will evaluate all complete proposals pursuant to the criteria listed in this RFP.

Final Acceptance means the written approval by PREPA that the entire work has been completed and the final cleaning up of the site has been performed and all Punch List items have been rectified.

Government Entity means any department, agency, board, commission, body, bureau, office, public corporation, or instrumentality of the Executive Branch of the Government of Puerto Rico, whether existing or to be created in the future.

Inspection means a periodic action comprising a careful scrutiny of an item, carried out without dismantling and using all the senses as required, to detect anything that causes the item to fail to meet unacceptable condition. Note: An inspection may be followed by an operational review.

Key Individuals means an individual who will play an important role in the engagement or LOA on behalf of a Team Member resulting from this RFP.

LOA has the meaning defined in Section 4.

Local Parties means local subcontractors or professionals (which may include architects and consulting engineers) and relevant service providers who are based in or have a significant on-going business presence in Puerto Rico.



Notice to Proceed or **NTP** means a letter from an authorized PREPA representative to the **contractor(s)** stating the date the contractor(s) can begin work subject to the conditions of the LOA. The performance time of the LOA commences on the NTP date.

PREPA means the Puerto Rico Electric Power Authority.

Proponent means a (i) natural person, (ii) legal person, (iii) joint venture, or (iv) partnership, or (v) consortium of individuals, and/or partnerships, and/or companies or other entities that submit a response to this RFP that is not currently debarred.

Public Interest means any government action directed to protecting and benefiting citizens at large, whereby essential goods and services are provided for the welfare of the population.

Team Member means a member of a Proponent. Team Members shall be identified in Proponent' submissions and not be changed without the consent of PREPA.

Redacted copy means a version/copy of the proposal with the information considered confidential and/or proprietary "blacked out" or "edited" as defined Section 22 of this RFP.

Team Member means a member of a Proponent. Team Members shall be identified in the proposals and must not be changed without the prior consent of PREPA.

Unit (or unit) means a module composed of a generator and turbine for power generation **purposes**. The technology proposed by the Proponents capable of provided the capacity and energy required under this RFP.

3. Introduction

3.1 About PREPA

The Puerto Rico Electric Power Authority (PREPA) is a public corporation and governmental entity of the Commonwealth of Puerto Rico, created pursuant to Act 83 of May 2, 1941, as amended, with the duty of providing electric power in a reliable manner, contributing to the general welfare and the sustainable future of Puerto Rico, maximizing the benefits and minimizing the social, environmental and economic impacts.

PREPA is empowered to make contracts, sell, and buy assets and real estate, borrow money and issue bonds.

PREPA's objectives:

- Reduce energy cost
- Promote smart energy consumption
- Protect the environment, lives, public health and safety

Strategies to achieve these objectives:

- Reduce operating expenses
- Increase efficiency
- Minimize energy theft



- Diversify energy sources
- Establish smart grid for energy control and consumption monitoring
- Maximize use of advanced technology

3.2 Background

On January 6, 2020, a magnitude 5.8 earthquake struck the southwest region of Puerto Rico causing considerable damage to homes and other private and public structures and a partial electric power blackout. Then, on January 7, 2020, Puerto Rico's most destructive earthquake in a century, a magnitude 6.4 earthquake that jolted residents, caused major damage to private and public structures and infrastructure, including mechanical and structural damage to PREPA's Costa Sur power plant, an 820 MW power plant providing nearly 25% of the electric power on the island. The island suffered a complete electric power blackout as a result of the earthquake and the Costa Sur power plant failure. On January 11, 2020, a magnitude 5.9 earthquake once again rattled Puerto Rico's southwestern coast.

Since late December 2019, there have been more than 100 earthquakes or aftershocks of magnitude 3 or higher, which were strong enough for residents near the epicenters to feel, according to the U.S. Geological Survey (USGS). Various earthquakes of magnitude 5 or higher have also struck the island.

3.3 Project Need

At present and with the information available to date, the time to repair the Costa Sur power plant has been estimated at approximately twelve (12) months. The damage assessments are still underway as damages are significant and this is the first event of this magnitude affecting a large power plant in PREPA's fleet. However, a full inspection has not been completed due to the continuing earthquakes/aftershocks affecting the power plant structure. Some experts have preliminarily indicated that the plant may not be viable for use due to safety concerns. The temporary or permanent loss of Costa Sur's 820 MW generation has caused the following:

- Immediate shortage of reserve capacity
- Conditions that threaten lives, public health and safety
- Possible significant damage to improved public or private property Shortage of operating capacity to serve the peak demand months (June onwards)
- Shortage of Primary and Secondary frequency regulation
- Extensive use of less efficient and less flexible generating units using higher cost fuels
- Reduced power system inertia and dynamic and transient stability margins
- Alteration of PREPA's generation fleet maintenance schedules

3.4 Purpose and Intent

Pursuant to the stated objectives and strategies, PREPA publishes this RFP to solicit submittals from interested and qualified firms that can provide the scope of work detailed herein (the Project). The purpose of this RFP is to award qualified firms which shall provide time-critical, dual fuel, low sulfur diesel, liquefied natural gas (LNG), or renewable generation to temporarily power existing switchyards substations in Puerto Rico as part of disaster recovery in response to the Governor of Puerto Rico's Executive Order 2020-01 and the United States' President's Disaster Declaration of January 16, 2020, and to provide capacity



and energy to replace the loss of the 820 MW Costa Sur power plant in Guayanilla until it can be repaired, replaced or alternate solutions have been secured.

LOAs may be awarded to those qualified persons or legal entities whose proposals conform to this RFP and are most advantageous to PREPA. Proponents shall demonstrate in their proposals their capacity to conduct all works in compliance with the Scope of Services indicated herein. PREPA will evaluate and analyze the information provided in the proposals and will determine which companies meet the minimum requirements.

This Project seeks reputable and experienced firms (contractors) that can enter into a lease, installation, operation and maintenance agreement with PREPA for dispatchable generation capacity. Under the LOA, the Contractor(s) shall lease, transport, place/install, test, commission, operate and maintain up to 500 MW of continuous total net generator output capacity at different locations and divided by generation blocks per site. The Contractor(s) shall be responsible for all equipment, delivery, installation, interconnection, testing, commissioning, operation and maintenance of this generation infrastructure, as well as for its eventual retirement, per PREPA's requirements, all applicable industry codes and standards (latest revisions), and federal and local regulations.

PREPA may consider all non-variable, dispatchable generation, dual fuel, low sulfur diesel, liquefied natural gas, or renewable technologies, in-land based or barge-mounted configurations, including single-cycle aeroderivative gas turbines, RICEs, combined cycles, Battery Energy Storage Systems (BESS) or other renewable sources.

Proponents can propose a combination of these resources (with a required generation of up to approximately 500 MW) to be installed at various locations, described in Appendix A. Additional or alternate sites may be proposed (including Vieques), and will be evaluated by PREPA to determine the interconnection viability to the grid and compliance with the requirements outlined in Appendix A. These additional or alternate sites will be subject to PREPA's approval.

The required generation of up to approximately 500 MW shall be installed at various locations identified by PREPA (see Appendix A).

PREPA reserves the right to award LOA(s) to one or more Contractors.

Due to the emergency circumstances, PREPA expects that the Proponent will not be responsible for the units' operation permitting processes for the sites described in Appendix A. The proposal shall include design emission parameters for required fuels of the units, with and without water injection. See Appendix B for Fuel Specifications. Proponents must clearly identify all environmental requirements and all process inputs. Proposals that do not comply with this requirement will be rejected. Selected Proponents shall be responsible for any other permit required for the installation of the unit. For additional or alternate sites not mentioned in Appendix A and suggested by the Proponents, the Proponent(s) shall be responsible for all permits, all infrastructure, fuel supply, and any other applicable requirement for the successful operation of the units.

PREPA expects to award LOAs per site to the best offers that substantially meet the established requirements and the intent of the RFP. As such, if PREPA does not receive proposals that meet the minimum requirements of this RFP for one or more sites mentioned in Appendix A, PREPA reserves the right to resolicit proposals for said sites to proponents



whose offers complied with this RFP's minimum requirements and that proposed for other sites, per the Evaluation Committee's determination.

The Proponent shall assume a capacity factor of 90%, and all technologies proposed must be capable of providing energy at a 90% capacity factor.

PREPA prefers that the generating units may actively participate in primary and secondary frequency regulation.

PREPA expects the temporary generation units to be installed at existing PREPA facilities except at Costa Sur (see Appendix A). PREPA will be responsible for the fuel supply.

Although the Costa Sur power plant cannot be used to install generation units, its switchyard 230 kV can be used as a transmission center and interconnection point. This site will be considered an alternate site and fuel supply will be the responsibility of the Contractor.

PREPA has preliminarily discussed the Project with FEMA, who has agreed to move forward with a procurement process for temporary generation, in compliance with the appropriate sections of the Stafford Act, for reimbursement of the Project's costs.

The Contractor shall fully comply with Puerto Rico (local) and federal laws and regulations and shall conform to FEMA documentation and audit requirements.

For locations described in Appendix A, there is sufficient space for placing temporary generation units per site of no less than 20 MW each. Although PREPA prefers units of 20 MW or more for these locations, PREPA may consider proposals with units of smaller capacity. Appendix A describes the actual capacity of the output transformers of each possible site, but if a new transformer, breaker and BOP equipment are furnished with the unit, the generator's output could be more. Proposals shall include a top-view layout of the arrangement of all equipment included in it for each proposed site.

PREPA will consider new and used generation units. Used units must be able to meet the operational requirements during the term of the agreement. Proponents shall include in the proposal evidence of all maintenance records which demonstrate the actual conditions of the units. The units will be subject to PREPA's inspection prior to acceptance. Proponents shall include in the proposal the emissions profile of the required units for the following criteria pollutants – sulfur dioxide (SO₂), oxides of nitrogen (NO_x), particular matter (PM), particular matter less than 10 microns (PM₁₀), particular matter less than 2.5 microns (PM_{2.5}), volatile organic compounds (VOC), sulfuric acid mist (H₂SO₄), carbon monoxide (CO) and Formaldehyde, hazardous or toxic air pollutant emissions (HAPS & TAPS), water requirements, wastewater discharge, solid or hazardous waste. Proponents shall also identify whether the units have inherent emission controls and whether they can be retrofitted with emission controls.

The Proponent shall include in their proposals the necessary components for the BOP, as the output transformers, breakers and BOP, if they are available for immediate delivery. If not, the temporary generation units shall have the capacity to be connected to the existing transformers per site. The bus voltages to connect the transformers are 38 kV, 115 kV and 230 kV, as described in Appendix A.



In addition to transporting, providing and installing the units, the work requirement includes commissioning of the system(s), operation and maintenance of the unit(s) for the period of time required to adequately respond to the emergency situation, and that the Contractor(s) uninstall and demobilize the units. If the need for temporary generation of power remains after an initial period, PREPA may exercise an option to extend for an additional period(s).

The Contractor shall incorporate necessary and authorized resources to perform this work to applicable engineering, safety, construction standards, and local and federal regulations, in the timeliest manner possible (no later than June 1, 2020), and with optimal cost containment.

4. Form of LOA & Contract Term

As a result of this RFP process and contingent upon the necessary authorizations for current contracting processes, PREPA expects to award the Selected Proponent(s) one or more Lease & Operating Agreements (each, an “**LOA**”). Exhibit 1 sets forth a form of Lease & Operating Agreement for Dual-Fuel Generation and Exhibit 2 sets forth a form of Lease & Operating Agreement for Renewable Energy and Battery Storage Generation. The contract term is not to exceed eighteen (18) months and is subject to the availability of funds, and the requirements of the Puerto Rico Energy Bureau. The contract term proposals shall be presented as follows:

1. Initial term of twelve- (12) months with PREPA’s option to extend the contract for six (6) additional months,
2. Initial term of nine- (9) months, with PREPA’s option to extend in three- (3) month terms (up to eighteen months),
3. Initial term of six- (6) months, with PREPA’s option to extend in two- (2) month terms (up to eighteen months),
4. Initial term of three-(3) months with PREPA’s option to extend in three- (3) month terms (up to eighteen months),
5. Proponent may offer alternative initial contract terms and extension options (not to exceed eighteen months).

PREPA reserves the right to re-bid the LOA after the expiration of the original term or under several LOA breach circumstances from the Selected Proponent.

PREPA reserves the right to cancel or modify this RFP process at any time and is not obligated to enter into an LOA even upon its completion, after the selection of the Selected Proponent, or during LOA negotiations.

Proponent must review the form of LOAs set forth in Exhibits 1 and 2, and state any exceptions to its clause(s) and may suggest proposed modifications to the contract language with which the Proponent disagrees or for which Proponent is unable to satisfy the condition or requirement, including an explanation of the review (if any), unless Proponent agrees and can comply with all of the conditions and requirements of the contract. PREPA will evaluate the proposed modifications to the LOA and may, at PREPA’s discretion, affect overall scoring of the proposals. PREPA reserves the right to reject any or all proposed modifications.



5. RFP Timeline

The following are the key dates of the RFP process. Please note that the RFP timeline includes target dates that may change. The Proponents are responsible for monitoring the PowerAdvocate® website for updates to the RFP timeline and other important information.

Milestone	Date Due
Request for Proposal issued	March 12, 2020
Kickoff meeting	March 18, 2020
Site Visits	March 18-20, 2020
Proponents Request for Clarifications	March 26, 2020
PREPA response to Request for Clarification	March 31, 2020
Proposal submittal deadline (RFP Closing Date)	April 7, 2020
Interviews/Presentations with Proponents*	April 16-20, 2020
Selection announcement	April 22, 2020

**May not be required, yet, per PREPA's RFP Guide, the Evaluation Committee may request interviews with proponents in the competitive range.*

Submittals that have not been completely uploaded by April 7, 2020, 8:00 PM AST will not be considered. Proponents shall allow themselves enough time to completely upload their proposals and to confirm that the files are available for PREPA's review.

6. Request for Proposal Submission

Proponents shall submit their proposals through the Upload Documents tab of the RFP **102750** event on the PowerAdvocate® Platform. A Redacted Copy as required in Section 22 (*Confidentiality of Responses and Proprietary Information must also be uploaded*). All RFP submissions, inclusive of the pricing, technical information, discounts and other requested details are to be submitted via PowerAdvocate® on or before 8:00 pm AST, April 7, 2020. Proposals must be signed by the Proponent's authorized representative or by the authorized person whose name appears (or will appear) in PREPA's Supplier Registry Office. The signature must be shown along with the name in print and the capacity or position held.

Proponents must also provide hard copies of (i) the uploaded proposal in PowerAdvocate and (ii) the Redacted Copy on or before 3:30 pm AST, April 8, 2020, to the following address:

Postal Address:

Puerto Rico Electric Power Authority
Supplier Registry Office
PO Box 3670151
San Juan, Puerto Rico 00936

Physical Address:

Supplier Registry Office
1110 Ponce de Leon Avenue
Third Floor, Office 305
NEOS Building, Santurce, PR

6.1 Proposal Requests for Clarification

A Proponent may submit a Request for Clarification (RFC) to PREPA for explanation or interpretation of any matter contained in this RFP no later than 8:00 p.m. AST, March 26, 2020, via PowerAdvocate® through the Messaging Tab of the event *RFP 102750*. If responses to the RFC constitute a modification or additional information to the original RFP, PREPA will provide such clarification through Addenda posted on PowerAdvocate no later



than March 31, 2020. Questions should NOT contain proprietary information, as answers may be published in the public domain to all participants. PREPA does not guarantee answers for all questions or comments received. PREPA will NOT accept or address any questions that are not submitted as stated in this section.

Proponents must submit their questions in the Request for Clarification form included as Annex F. This document must be submitted in Word format and each question must reference the page number, section of the RFP document, attachment or article of the LOA. PREPA will respond to the requests for clarification in the column labeled 'Clarification Response'.

Proponent is solely responsible for monitoring this site for additional information, updates and Addenda concerning the RFP. Any changes or modifications to the RFP terms, conditions or specification will be made through Addenda posted on PowerAdvocate.

The PowerAdvocate Guide is included as part of this RFP as Exhibit 3. For technical assistance with this sourcing platform please contact PowerAdvocate's technical support at (857) 453-5800 or via email at support@poweradvocate.com. Proponent shall be responsible for ensuring that all of their proposal documents are fully uploaded before the closing date and time of the event.

6.2 Communications

Verbal questions will NOT be accepted. All communications must be through the Messaging Tab of PowerAdvocate, and addressed to the following PREPA Procurement Representatives for this RFP:

Delis T. Zambrana
Natalia Martínez Lugo

Neither the Proponents nor the Team Members or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP process, any of the following persons on matters related to the RFP: (a) any member of the Evaluation Committee; (b) any advisor of PREPA for this RFP process; (c) any employee or representative, directors, officers or consultants of PREPA. Proponents Team Members are prohibited from directly or indirectly contacting other Proponents, such as directors, officials, employees, consultants, advisers, agents or representatives, in matters related to its proposal preparation, content, or presentation. Proposals shall be submitted with no connection to, knowledge, information comparison, or arrangement, with other proponents such their directors, officials, employees, consultants, advisers, agents or representatives.

Communications with PREPA representatives, other than the abovementioned procurement representatives, or with relevant entities of the Federal Government or local government, regarding any matter related to the contents of this RFP are prohibited during this RFP process.

Failure to comply with these communications restrictions will result in rejection of the firm's proposal.



6.3 Proposal Modification

PREPA may allow for proposal modifications if they are submitted by the closing date and time established in Section 5 of this RFP, and submitted in accordance with this RFP's proposal submission instructions.

6.4 Expenses and Rejections

Neither PREPA, the Government of Puerto Rico nor any of its instrumentalities, will be responsible for any expenses in the preparation and/or presentation of the proposals, oral interviews or disclosure of any information or material received in connection with this RFP.

PREPA reserves the right to reject any and all proposals received in response to this RFP, when determined to be in PREPA's best interest, and to waive minor noncompliance in a proposal. PREPA further reserves the right to make such investigations as it deems necessary as to the qualifications or perceived conflicts of interest of any and all firms submitting proposals in response to this RFP. The mere appearance of a conflict of interest must constitute sufficient cause for the outright rejection of a proposal(s). In the event that any or all proposals are rejected, PREPA reserves the right to re-solicit proposals.

7. Prohibited Communications

During this RFP, the only communications allowed are with the designated procurement representatives indicated in Section 6 of this RFP. Communications with other PREPA representatives or other persons from the State or Federal Government regarding any matter related to the contents of this RFP are prohibited during the submission, evaluation and selection processes. **Failure to comply with these communications restrictions will result in rejection of the firm's proposal.**

8. Scope of Work

PREPA is pursuing temporary generation at different sites to respond to the current emergency situation due to the aftermath of several earthquakes experienced in January 2020. The temporary generation is to respond to conditions that threaten lives, public health and safety. Through this RFP process, PREPA is seeking temporary generation from qualified firms for the different sites via the LOAs. The Proponents shall maximize the use of the existing systems in place located at each different site as time is of the essence for this Project.

As PREPA recovers from the earthquakes, temporary replacement generation is required to create a more resilient system to enable quicker, more effective recovery. PREPA expects Proponents to consider the latest and most reliable technology which can provide flexible generation while minimizing environmental impacts. A flexible generation resource with fast response to changing conditions would address the current emergency situation.

Upon the preliminary evaluation of the current and foreseen generation capacity, this RFP requires the supply of temporary power generation of up to 500 MW size range based on equivalent operating characteristics (start times, ramp rates, heat rate curves, etc.), designed and capable of operating at a capacity factor of 90% for at least twelve (12) months. The units shall be capable of burning low sulfur diesel and natural gas fuels if shown to be available and acceptable under all local and federal laws and regulations, and compatible with the proposed solution. Solutions may be land-based or floating. BESS using renewable sources may also be



considered. The generating units included in the proposal are required to be compliant with all applicable environmental and land use or maritime (if applicable) laws and regulations, including but not limited to, the Clean Air Act and Clean Water Act, the regulations promulgated thereunder, with future permits' required modifications according with state and federal plans. The generating units shall include appropriate emission controls.

The units must have the capability to start from standby to full load in no more than thirty (30) minutes, shall have black-start capability, and must operate at an all-in cost that is as low as possible. The units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.

The following items are requirements for this scope of work:

- a. The power generation facilities shall be located in different locations and shall be connected to the 38 kV, 115 kV or 230 kV (locations described in Appendix A), able to operate in islanded mode in case of an outage and an isolated operation is required. In islanded mode, units shall be black-start capable and be able to provide services such as frequency, voltage control, and be able to respond to deviations in generation.
- b. Units shall be operational, ready to export energy to PREPA on June 1, 2020.
- c. The units shall be compliant with the EPA and Puerto Rico Department of Natural Resources (formerly under the Environmental Quality Board) requirements, that include but are not limited to, New Source Performance Standards and Hazardous Air Pollutant Standards. If the Project has any impact on local marine environment, the Selected Proponent shall ensure compliance with all federal and local marine permitting requirements.
- d. Units shall be equipped with modern environmental control equipment to meet all current state and federal environmental compliance requirements.
- e. Proposals shall include the maintenance schedule for each unit for the next eighteen (18) months of the power generation units offered as a solution must be included in the proposal.
- f. The Proponent shall furnish documentation showing that the proposed equipment has been commercially demonstrated/successful and provide an experience list of similar model projects with similar delivery schedules.
- g. The units must be individually and collectively capable of being dispatched from standby to full load in no more than thirty (30) minutes. PREPA prefers minimal time from dispatch from standby to full load.
- h. The Project will be connected to the existing transformer. The Proponent shall include in its proposal breakers and all necessary BOP equipment with the existing capacity. If the proposed unit(s) exceeds the capacity of the existing transformer, the Contractor shall supply a new step-up transformer, breaker and BOP equipment, per site.
- i. All units must be capable of synchronizing to the current electrical system and provide automatic load following services.
- j. The units shall be designed and capable of operating at an annual average equivalent availability factor of at least 90 percent (90%) for the contract term.
- k. Proposed solutions shall be a complete and grid connected generating facility including



everything required for the operation of the units. The proposal shall include detailed plans for operation during inclement weather and emergency situations.

- l. Time is of the essence for this RFP. PREPA is seeking a complete solution that complies with all requirements of this RFP, including, but not limited to, permitting, installation, interconnection, testing, and commissioning in the shortest possible time (see Scoring Criteria).
- m. Power units shall have the capability of remote operation.
- n. Units shall communicate to PREPA system through SCADA.
- o. Dispatch of the units shall be at PREPA's sole discretion and electric system needs.
- p. All proposed solutions must also be black-start capable.
- q. Operation and maintenance (O&M) portion of the services shall be all-inclusive, including furnishing and maintaining an adequate inventory of all spare parts throughout the contract term. The O&M services shall be designed to meet the high availability target and expected capacity factor of the units.
- r. The Contractor shall arrange for storage of all spare parts during the term of the O&M services in an appropriate environment to maintain the spare parts in a new condition.
- s. Installation of the units shall be provisional, not permanent.
- t. The units shall be capable of synchronizing with the existing units in each location, if applicable.

The Contractor shall develop and submit the following documents for PREPA evaluation and approval.

Table 1 Submittal Register

Submittal Description
Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Counter-measures Plan (SPCCP)
Barge/Airplane Plan
Transportation Plan to the project site
Emergency Notification Plan for shut down
Life Support Plan, if necessary
Emergency Evacuation Plan
Site Preparation Plan
Fueling Plan (e.g. transfer, storage, line, valves, pressure testing)
Line clearance to connect GT to an operational transformer
Black Start Generator Mfn Commissioning
Installation Plan
Pre-Commissioning Plan
Commissioning plan



AVR and Generator Protection
Operation and Maintenance Plan
Final Report

8.1 Deliverables

Proponents shall outline the types of deliverables and timelines they produce, in performing the services being procured through this RFP. At a minimum, the key deliverables to be provided shall include such items as:

- a. A description of the project scope, generation units, control system and electrical interconnection
- b. Schedule for scope of work to support delivery of electric power to the grid including required time for engineering/design, interconnection tie-in, and startup/commissioning, as appropriate
- c. Permitting plans and schedule
- d. Schematic drawings for the interconnection
- e. Ownership structure
- f. Typical units' characteristics including energy and mass-balance, minimum load, maximum load, ramp rates, start times, minimum down times, and any part load changes in energy cost. Performance curves, including environmental, shall be provided for part and full-load operation of the units.
- g. The price proposals shall include all costs associated with the complete installation of the units including design, procurement, construction, testing, commissioning, consumables, and operation and maintenance of the facility. The pricing proposals shall include a fixed component, as well as the O&M cost. All pricing shall be based on achieving a net equivalent availability factor of at least ninety percent (90%) for the contract term. Proponent shall include any energy cost deviations at part load operation. Costs shall be provided over the range from minimum load to maximum load. Any additional impact to cost due to starting and stopping units shall also be specified.
- h. A list of spare parts with pricing (price paid by the Contractor).
- i. PREPA will apply a penalty of 100% of the proposed daily rate for up to sixty (60) days of delays in the project schedule. Delays of more than sixty (60) days shall result in termination of the LOA.

The selected Proponent shall be required to negotiate an LOA with PREPA. The Contractor shall be responsible for all applicable taxes.

8.2 Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, etc., to the site.



- b. Door-to-door transportation of the units, materials, supplies, instruments, gas, etc., to embarkation location via barge/airplane
- c. Transport materials, supplies, equipment, personnel, etc., from port/air terminal to the project site.
- d. Remove and transport the same, once the project is complete, back to stateside or original locations.
- e. Moore equipment barge, as needed.
- f. Coordinate with the port and/or airport for timely passage.

9. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, etc.
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, etc.
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award.
- d. Install command posts (trailers, offices, work areas, etc.) for the Contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the contract term.

10. Temporary Power Installation

- a. Place units per PREPA requirements.
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator.
- c. Install flow meters on the generation units' fuel line.
- d. Install the temporary pump station.
- e. Construct medium voltage cable chase at least two (2) feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system.
- f. Install emergency notification system in the event of a shutdown
- g. Perform pre-commission of the system to verify system function as the generation units are being installed

A. Pre-Commissioning

Perform and report completion of the following pre-commissioning tasks, as applicable to:

- a. Battery systems
- b. Control & vibration systems
- c. Ventilation and combustion air systems
- d. Turbine and hydraulic start lubrication systems



- e. Generator lubrication oil system
- f. Fuel system
- g. Fire system
- h. Turbine auxiliaries
- i. Water injection system
- j. Any other pre-commissioning tasks based on new or used units' factory requirements

B. Commissioning

PREPA will accept invoices for the project upon completion of the commissioning of the units and once the units are in successful operation. PREPA will pay on a monthly, leasing basis, and will not prepay costs associated with mobilization or demobilization.

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - 1. Manual start-up and stop
 - 2. Emergency notifications sent to Site Management Team in the event of shut down mode
 - 3. Verify voltage, wattage, frequency per the following:
 - net power output of not less than 20 MW
 - Frequency 60 Hz
 - Low voltage connection for transformers at PREPA sites of 13.8 kV
- b. Revisit unit functional needs until criteria is met.
- c. Provide the following information to PREPA regarding protective relays:
 - 1. Copy of the Protective Relay Study and its settings for the proposed mobile power system.
 - 2. Mobile power system protective relay settings criteria.
 - 3. Grant access to PREPA to protective relay events.
 - 4. Access to mobile power system proprietary software/program to allow communication with relays.
 - 5. Mobile power system unit data sheet.
 - 6. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
 - 7. The Contractor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
 - 8. The Contractor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements.



9. The Contractor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the mobile power unit's control room.
10. The Contractor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode.
11. The Contractor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid.
12. Protective Systems Specifications are included as Appendix C.

11. Final Walk Through

Once Commissioning is complete, [PREPA/Contractor] shall perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

12. Operation and Maintenance (O&M)

- a. The Contractor shall ensure spare parts are on hands and the system operates without interruption
- b. The Contractor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 1. Power output
 2. MVAR
 3. Gas turbine and generator RPM o Other parameters determined appropriate

13. Site Restoration

Restore site to pre-existing conditions to include the following:

- a. Remove unit, barriers, emergency notification system from the site and transport back to the place of leasing
- b. Remove signs and posts

14. Final Report

Provide Final Report, including executive summary, chronology and descriptions for work completed, etc.

15. Proposal Assumptions

The Proponent shall incorporate the following assumptions into their proposals to maintain consistency. Actual quantities/criteria may vary during the construction and verification of assumptions will be made throughout project execution.

Any existing fuel storage tank can be used as a temporary power fuel storage tank and it meets API standards. It can be used as is and no repairs are needed.



- a. Medium voltage and control wiring will be installed over head and not on the ground due to safety concerns
- b. The Contractor shall provide pricing for leasing the units, including control systems, wiring, appurtenant devices, etc.
- c. For fuel burning generation, cutting the existing fuel line to create passage to the temporary generation unit site is needed and fabricating fuel conveyance piping to the generation unit and operational PREPA generator is required.
- d. The Contractor shall provide a first aid competent representative to support basic health needs (e.g. small cuts, surficial burns).
- e. Assume unarmed security at the sites power station is required twelve (12) hours per day during installation. During O&M, assume ten (10) hours of operator on-site time and 14 hours of unarmed security. The Contractor will respond to resolve any operating issues is required within two (2) hours of outage.
- f. No utilities will be identified within the described work zones or will be impacted throughout this work.
- g. No temporary access road improvements will be needed for the execution of this work.
- h. The Evacuation Plan will include required protocols once understood in the submittal item post-award.

Assume the connection point is the 13.8 kV side of these transformers and the Contractor will have to provide a line connection plan to integrate with a transformer that currently operational.

16. Proposal Requirements, Evaluation and Selection Process

The intent of the RFP is to encourage responses to fulfill PREPA's requirements and clearly communicate its approach to successfully provide the services. PREPA will examine all proposals in a proper and timely manner to determine if they meet the proposal submission requirements. Proposals that do not meet the submission requirements or have omitted material documents must be rejected. All proposals submitted before the closing date and time of the RFP will be evaluated.

During each proposal meeting, the Evaluation Committee will independently evaluate all submission requirements. The Evaluation Committee will assign a score for each evaluation criterion listed below in this Section up to the maximum points, unless they are determined to be non-responsive according to the intent of the RFP.

PREPA reserves the right to require additional information or clarifications after the proposals' due date to assist the Evaluation Committee in gaining additional understanding of the proposal.

16.1 Proposal Requirements

All proposals shall address the following items in the exact order listed below. Proponents must upload the requirements requested herein with a section table of contents containing the titles of the following subsections and the page numbers



where the subsections are located. Proponent is responsible for including evidence or information of all the submission requirements of this RFP. The Evaluation Committee will only take into consideration for the evaluation process the information provided by the Proponents in their proposal.

Minimum Requirements:

1. Project Delivery Schedule:

- a. Shall provide a proposed project schedule (Critical Path Method) based on continuous work with key and critical tasks for the proposed due date.
- b. Shall submit a description of the proposed working plan, including working methods, logistics, list of resources (manpower and equipment), permitting process, and subcontractors, if any.

2. Offeror's Experience:

- a. Shall submit a brief description of the firm, including firm name, address, phone number, email address and authorized primary contact person; brief firm history, including the current permanent staff size as well as local organization structure.
- b. Shall provide evidence of applicable past experience and performance related scope projects for the principal firm and any subcontractors. The subcontractor's role on the project shall be clearly established.

3. Financial Capacity: Proponent must provide the following for the entity that is proposed to guaranty the transaction on an initial and on-going basis:

- a. The Proponent shall provide the latest documentation or reports from any rating agencies or debt analysis entities on the contracting entity (or guarantor). PREPA reserves the right to use its available credit evaluation tools to evaluate financial capacity of the proponent.
- b. Provide information regarding the firm's financial stability, capacity and resources.
- c. Provide a statement confirming awareness of PREPA's standard payment term of net sixty (60) days upon approval of invoice and supporting documents.
- d. Shall provide a Surety Bond-ability Letter establishing that the Proponent has been underwritten with sufficient bonding capacity and approved by a surety company to perform this project. This letter shall include a power of attorney. Proponent must ensure that their bonding company provides the bonds required endorsed in Puerto Rico.



4. Price and Performance Proposal

A. Required Data

Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 12-month LOA
Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 9-month LOA
Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 6-month LOA
Fixed Capacity Price (stand by; price for lease, operation and maintenance)	\$	Per month for a 3-month LOA
Unit Dispatch Cost Price (full load)	\$	Per MWh for a 12-month LOA
Unit Dispatch Cost Price (full load)	\$	Per MWh for a 9-month LOA
Unit Dispatch Cost Price (full load)	\$	Per MWh for a 6-month LOA
Unit Dispatch Cost Price (full load)	\$	Per MWh for a 3-month LOA
Guaranteed net output per unit		MW
Heat Rate (LHV)		BTU/kW-hr
Guaranteed annual units equivalent availability factor		%
Units minimum load		MW
Ramp Rate		Minutes/MW
Price of the Generation Unit*	\$	Per Unit

**This information is required for cost reasonableness analysis pursuant to 2 CFR § 200.404*

PREPA reserves the right to require additional (supplemental) information after the proposals' due date, for evaluation purposes. Proponents shall provide such information within three (3) calendar days after PREPA's notification and request.

B. Delivery and installation time (30 points)

Proposals must include a high-level project schedule and timeline identifying equipment delivery date, construction of needed local infrastructure, commissioning and commercial operation date starting from the Notice to Proceed issuance. Assume construction permits and environmental permits/waivers are available for the purposes of the requested schedule. Proposals with a shorter delivery and installation time will be favored compared to those who need more time or whose responses are vague.



PREPA will score the proposals based on a weighted percentage, up to a maximum of thirty (30) points for the soonest availability for dispatch of the proposed generation.

C. Price Proposal (30 points)

PREPA will evaluate the proposals' price based on a Levelized Cost of Energy (LCOE) formula using the net present value. Proposed units' performance parameters such as low heat rate (LHV) and net capacity shall be included in the proposal to be used for the LCOE calculation, along with the term of the initial LOA and a 90% capacity factor. Price proposals must include a monthly fixed capacity price, including only lease and fixed operation and maintenance, and unit dispatch price (per MWh) for variable O&M (and fuel if self-supplying) as separate line items.

For the LCOE, the price component will be based on the following combination: 90% unit dispatch price and 10% fixed capacity.

PREPA will score the proposals based on a weighted percentage, up to a maximum of thirty (30) points for the lowest LCOE.

D. Experience and Capacity (20 points)

Proponents must demonstrate experience and success installing and maintaining fast-track utility power generation unit(s) projects of at least five (5) years. Proponents shall demonstrate experience and success in fabricating, installing, testing, and commissioning the proposed solution. Proponents that demonstrate that the proposed solution can be dispatched in the required times than specified be favored compared to those who need more time, or whose responses are vague.

As proof of the Proponent's experience, it:

1. Shall submit an abbreviated history of firm.
2. Shall provide evidence of applicable experience and performance in at least two related scope projects within the past five years. Proposals shall include letters of recommendation and references from past projects where the proponent successfully completed within the required time of installation.
3. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the proponent with at least ten (10) years of experience in similar projects.
4. Shall provide qualifications and resumes of experienced key personnel (project manager, engineers, supervisors, etc.) of the installation and/or operation and maintenance subcontractors (if any) with at least five (5) years of experience in similar projects.

E. Approach and Methodology (20 points)

Proposals that outline a clear and straightforward approach to providing fast track generation projects will receive higher scores (PREPA's expected timeline for execution of the project). Proponents shall identify key goals and objectives, and methods for providing the facilities



described herein or exceeding these goals. Proponents shall explain how they will be organized to effectively deploy support for this project and clearly identify key personnel responsible for implementing the project.

Proposals will explain the approach to completing the project within the given construction dates and site constraints, include a summary-level Critical Path Method (CPM) schedule detailing all aspects of the project, and include a detailed assessment and response to the site condition restraints.

Proponents shall outline a clear and straightforward approach and demonstrated commitment to accomplishing the schedule goal of completing the project in the least possible time. Proponents shall identify key goals and objectives, and methods for achieving high standards for the delivery of services, in expectation of meeting or exceeding these goals.

Proponents shall describe in detail the methods it will utilize to accomplish the duties at the site, and provide sketches or illustrations to explain the approaches, if necessary. This approach will include:

1. Demonstrating a clear and thorough interpretation and acknowledged assimilation of the project work scope as described herein and that are part of this RFP.
2. Satisfactorily demonstrating how the duties will be staged to minimize impacts to PREPA operations.
3. Presenting a clear and logical approach for the efficient performance of all work tasks across the proponent's entire project team.
4. Describing how the proponent's submitted milestone schedule demonstrates a clear understanding and integration of all the interrelated duties.
5. Describing how the proponent intends to address and mitigate adverse environmental materials.
6. Providing a specific and project-proven approach and plan for effective Quality Assurance/Quality Control across the Proposer's Project Team.
7. The Proposer's outline plan and commitment to safety.

F. Commitment to Complying with all Applicable Federal, and Puerto Rico Regulations

The Proponent shall submit a detailed written description of the Federal and Local process, with specific plans for permitting success. The Proponent must demonstrate an understanding of Federal and local requirements.

G. Proposal Additional Content

Proponents must upload the requirements requested in this section in the exact order (consecutive) established herein and provide a section table of contents with the following subsection titles and the page numbers where the subsections are located.

a. Cover Letter and Table of Contents



The Proponent must provide a cover letter that includes a certification that the information submitted and the Proposal is true and accurate, and that the person signing the cover letter is authorized to submit the Proposal on behalf of the Proponent. The cover letter must clearly identify the designated contact person for the engagement and provide the telephone number and email address of the contact person.

The Proposal must contain a table of contents that clearly identifies the location of all material within the proposal by section and page number.

b. Local Parties

Explain how the Local Party(ies) will add value to the team and their expected role. Identify the Key Individuals from the Local Party(ies) and provide an indication of the expected level of involvement on the day-to-day activities and interaction with PREPA.

c. Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations

Proponents shall explain their adherence to complying with all applicable Federal and Puerto Rico regulations, including those related to Public Assistance and 2 CFR Part 200 and required LOA provisions, and shall indicate what characteristics of the team set them apart in terms of commitment to comply with all laws and requirements. Proponents must also indicate what specific trainings and expertise reside within the team that reinforces the commitment to compliance. Adherence to strong ethical and integrity practices and unequivocal commitment to solid administrative practices is essential for PREPA.

d. Draft LOA

Proponents must upload a copy of the LOA in Word format and identify (redline), if any, exceptions to the terms and conditions and suggest proposed modifications to the specific LOA language with which the proponent disagrees or for which proponent is unable to satisfy the condition or requirement, including an explanation of the revision. If Proponent agrees with all terms and conditions of the LOA and understands that it can comply with all of the conditions and requirements of the LOA, a written acknowledgement of the acceptance must be included as a cover letter to the uploaded LOA.

e. Supplementary Information

Proponents may provide supplementary facts as they consider may be of assistance in the evaluation of their proposals.



f. Requirement of Legal Entities

Proponents that are corporations, partnerships, or any other legal entity, U.S. or Puerto Rico based, shall be properly registered or capable to be registered or capable and willing to registered to do business in Puerto Rico and the U.S. at the time of the submission of their proposals, and comply with all applicable Puerto Rico or U.S. laws and/or requirements. The Selected Proponent must be part of PREPA's Supplier Registry in order to execute an LOA.

Proponent must submit evidence that the firm is duly and properly organized and is qualified to conduct business in Puerto Rico or provide a statement confirming that the Proponent will be duly organized and qualified prior to LOA award, if selected.

Additionally, the Proponent must provide a sworn statement per Act 2-2018, regarding the Anti-Corruption Code for Puerto Rico. See Appendix D.

g. Required Qualifications of Proponents

Proponents shall provide information in their proposals that demonstrates the following qualifications:

- i. Proponent has evidence of satisfactory performance record.
- ii. Proponent has a satisfactory record of integrity and business ethics.
- iii. Proponent has the necessary organization, experience, accounting and operational controls, and technical skills.
- iv. Neither Proponent nor any person or entity associated who is partnering with Proponents has been the subject of any adverse findings that would prevent PREPA from selecting Proponent. Such adverse findings include, but are not limited to, the following:
 1. Negative findings from a Federal Inspector General or from the U.S. Government Accountability Office, or from an Inspector General in another state.
 2. Pending or unresolved legal action from the U.S. Attorney General or from the U.S. an attorney general in Puerto Rico or another state.
 3. Arson conviction or pending case.
 4. Harassment conviction or pending case.
 5. Puerto Rico and Federal or private mortgage arrears, default, or foreclosure proceedings.
 6. In rem foreclosure.
 7. Sale tax lien or substantial tax arrears.
 8. Fair Housing violations or current litigation.
 9. Defaults under any Federal and Puerto Rico-sponsored program.



10. A record of substantial building code violations or litigation against properties owned and/or managed by Proponents or by any entity or individual that comprises Proponents.
11. Past or pending voluntary or involuntary bankruptcy proceeding.
12. Conviction for fraud, bribery, or grand larceny.

17. Proposal Format and Submission Requirements

Proponents must upload their entire proposal on the tab Number 2. Upload Documents of Power Advocate©. The Proposal must include a summary table, indicating the section and page number where the proposal meets the criteria stated below. In addition, Proponents must upload the requirements in the indicated tab in each section. Non-compliance may affect the score of the proponents.

Proponents must format their proposal as follows:

1. Cover Letter and Table of Contents
2. Local Parties
3. Commitment to Complying with all Applicable Federal and Puerto Rico Local Regulations
4. Draft LOA
5. Supplementary Information
6. Requirement of Legal Entities
7. Required Qualifications of Proponents

18. Scoring Criteria

The Evaluation Committee will independently evaluate each proposal meeting all submission requirements stated above, and will assign a score for each evaluation criterion listed, up to the maximum points.

Criteria	Percentage of Total
<i>Delivery and installation time</i>	30%
<i>Price Proposal</i>	30%
<i>Experience and Capacity</i>	20%
<i>Approach and Methodology</i>	20%
Total	100%

The LOA will be awarded to those qualified and experienced companies whose proposals, conforming to this RFP, are in accordance with its intent and substantially comply with the established requirements herein.

The Evaluation Committee may choose to reconsider proposals with marginal scores.

The criteria will be graded using a score of 0 to 5:



- 0 = Information in the proposal was not applicable to the criteria, or was omitted.
- 1 = Poor. For example, representing that the criteria presented in the proposal does not meet PREPA requirements.
- 2 = Below Average, negative or disagree. For example, representing that the criteria presented in the proposal is judged to meet most of the requirements.
- 3 = Average, or neutral. For example, criteria judged as meeting all the minimum requirements set by PREPA.
- 4 = Good, positive, or agree. For example, all criteria met and improved when compared to PREPA expectations
- 5 = Excellent, very positive, or strongly agree. For example, representing that the criteria in the proposal best meets the requirements set by PREPA, above all other proposals.

Proponents must clearly describe how they best comply with the standards set, as the Evaluation Committee will judge how a proposal specifically answers the criteria stated in this RFP. Scores shall be higher for specific compliance findings and be lower for general or ambiguous answers.

19. Sites Visits Schedule

PREPA has scheduled visits to the locations included in Appendix A to show the available spaces, access, and electrical and mechanical interconnection points. These are the only visits programmed for this phase of the RFP process as this project is time-sensitive. Access will not be granted to these PREPA facilities on any other dates and times than those established below. Proponents are not required to join the site visits in order to submit a proposal for any specific site, but participation in these visits are strongly recommended.

Participants interested in visiting more than one of the sites shall make arrangements with their own personnel since visits to some of the locations are scheduled for the same date and time. Participants shall present a government issued identification (such as a driver's license) and wear all required safety gear to be granted access to these locations, including, but not limited to, hard hat, safety shoes, safety glasses, hearing protection, and reflective vest. Access to the sites will be denied to those not fully complying with the safety gear requirements. TWIC card holders are encouraged to bring their cards, although these are not required for access.

Location	Date	Time
Palo Seco Power Plant	March 18, 2020	1:00pm
San Juan Power Plant	March 18, 2020	3:00pm
Cambalache Power Plant	March 19, 2020	9:00am
Vega Baja Power Station	March 19, 2020	12:30pm
Aguirre Power Plant	March 19, 2020	8:30am
Jobos Power Station	March 19, 2020	10:30am
Daguao Power Station	March 20, 2020	8:30am



Yabucoa Power Station	March 20, 2020	10:30am
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Those interested in joining the site visits shall be at the access gate 20 minutes before the scheduled time. No access shall be allowed after the facility walkaround begins.

20. Local Participation

Pursuant to Law Number 42 of January 21, 2018, as amended, PREPA requires Proponents to engage local contractors, professionals and relevant service providers headquartered in Puerto Rico (“Local Parties”) as Team Members and Key Individuals to the greatest extent possible.

Proponents are strongly encouraged as part of this RFP to provide descriptions of their current and/or anticipated business arrangements with Local Parties and, in particular, Local Parties who are Team Members and Key Individuals for the Project, as applicable.

21. Interview

PREPA reserves the right, at its sole discretion, to require Proponents to participate in interviews with the Evaluation Committee. If PREPA elects to conduct interviews, each qualified Proponent will be required to give a strictly timed 30-minute presentation. This presentation shall highlight expertise and prior qualifications provided to similar organizations. The presentation shall also clearly explain the Proponent’s approach and entire team composition. The Evaluation Committee may alter the scoring of corresponding criteria of a qualified Proponent’s proposal based upon the presentation. Proponents are solely responsible for all costs or expenses incurred to attend and participate in the interview process.

22. Confidentiality of Responses & Proprietary Information

Upon completion of the RFP process, PREPA will make public its report regarding the procurement and selection process, which shall contain certain information related to this RFP process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as proprietary by the Proponents. In order to ensure that documents identified by Proponents as confidential or proprietary will not be subject to disclosure by PREPA, Proponents are required to submit a Redacted Copy of their proposal. The Redacted Copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercial harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by PREPA. PREPA reserves the right to make public the redacted copies of the proposals at the conclusion of the RFP process. If a Redacted Copy is not submitted by a Proponent, PREPA will assume that the original copy of the proposal can be made public. Proposals containing substantial contents marked as confidential or proprietary may be rejected by PREPA. Provision of any information marked as confidential or proprietary shall not prevent PREPA from disclosing such information if required by law. The ultimately awarded LOA(s) and all prices set forth therein shall not be considered confidential or proprietary and such information may be made publicly available.



23. Conflicts of Interest

The award by PREPA of each LOA under this RFP shall preclude the Selected Proponent (or if a consortium, each member of the Selected Proponent consortium) from participating in the procurement by PREPA of new generation under any other RFP issued by PREPA during the LOA Term of such LOA.

Proponents are required to provide a list of any other current or former advisory LOAs the firm has/had with any Government Entity, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico. Further, Proponents must provide a description of any recent historical or ongoing legal proceedings, interviews or investigations being conducted by any U.S. law enforcement agencies involving their firm or team that are related to transactions executed in or on behalf of the Government of Puerto Rico and/or its public corporations. In addition, Proponents must provide a brief description of any work it has performed for any creditors or guarantors of the Government of Puerto Rico or any public corporation debt about their positions in Puerto Rico debt obligations. The Proponent must indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the selection process, PREPA may request information on any perceived conflict of interests. Also, PREPA may in the future request a list of direct or indirect relationships the firm or its professionals have to members of the Puerto Rico Public-Private Partnerships Authority (PPPA) or board members or executives of other Public Corporations.

The mere appearance of a conflict of interest shall constitute sufficient cause for the outright rejection of a proposal(s). PREPA reserves the right to cancel any LOA awarded pursuant to this RFP with thirty (30) days' notice in the event that an actual conflict of interest, or the appearance of such conflict, is not cured to PREPA's satisfaction.

24. Rejection of Submittals; Cancellation of RFP; Waiver Informalities and Withdrawal of Response

Issuance of this RFP, or selection of a Proponent for LOA negotiations, does not constitute a commitment by PREPA to award the LOA. PREPA reserves the right to accept or reject, in whole or in part, and without further explanation, any or all responses submitted and/or cancel this solicitation and reissue this RFP or another version of it, if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

PREPA reserves the right to waive any informalities and/or irregularities in a response if it deems that doing so is in the best interest of the impacted communities or the Government of Puerto Rico.

A Proponent may withdraw a proposal at any time up to the closing date and time of the RFP by deleting the documents they have uploaded to PowerAdvocate, or by submitting their intent to withdraw, in writing and addressed to PREPA's Head of Supply Chain (Chief of Procurement), Neftalí González Cruz, through the Messaging Tab before the closing date and time of the RFP.

25. Ownership of Submittal



All materials submitted in response to this RFP shall become the property of PREPA. Selection or rejection of a submittal does not affect this provision.

26. Cost of Preparing Responses

All costs associated with the response to this proposal are the sole responsibility of the Proponent.

27. Errors and Omissions In Responses

PREPA reserves the right to reject a response that contains an error or omission. PREPA also reserves the right to request correction of any errors or omissions and/or to request any clarification or additional information from any Proponent, without opening up clarifications for all Proponents.

28. Insurance – Proof of Coverage

28.1 Insurance

Proponent shall submit along with its Proposal, a Bid Bond, included as Appendix E, of not less than ten percent (10%) of the total price of the Proposal. This Bond will be issued in favor of PREPA by an insurance company that is authorized to do business in Puerto Rico. The Bond may not have a duration of less than ninety days (90) days, securing the validity of the proposal for such term. Proposals that do not include this security will be rejected. If there is an extension of the ninety (90) day term, Proponent will be responsible for keeping the Bid Bond in effect. Proposals that fail to meet this requirement will be rejected outright and the bid will be deemed to be non-responsive.

The Selected Proponent shall obtain and maintain in full force and effect during the contract term and thereafter as provided herein, policies of insurance covering all operations engaged in by the LOA, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. **Workmen's Compensation Insurance:** Proponent shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Proponent shall also be responsible for the compliance with said Workmen's Compensation Act by all his subcontractors, agents, and invitees. Proponent shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under the LOA are covered.
- b. **Employer's Liability Insurance:** Proponent shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon the Proponent as a result of body injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico.
- c. **Commercial General Liability:** Proponent shall provide and maintain a Commercial



General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability.

- d. Automobile Liability Insurance: Proponent shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combined single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos.
- e. Professional Liability Insurance: Proponent shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate.
- f. All Risk Physical Damage Property Insurance: Proponent shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the Proponent (including earthquake and hurricane occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. This insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site.
- g. Equipment Breakdown Policy (Boiler & Machinery): Proponent shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this Policy.
- h. Builder's All Risk Insurance: Proponent shall provide and maintain a Builder's All Risk Insurance which shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the site, and all equipment and materials delivered and stored at the site, and all equipment and materials delivered and stored at the Job Site which have to be used in the work or incorporated into the Facility. PREPA shall be named Additional Insured under this Policy.

28.2 Requirements under the Policies

The Commercial General Liability Insurance and Automobile Liability Insurance required under the LOA shall be endorsed to include:

- a. As additional insured:

Puerto Rico Electric Power Authority
Risk Management Office
PO Box 362467
San Juan, PR 00936-4267

- b. A thirty (30)-days cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including the LOA under contractual liability coverage and identifying



- it by number, date and the Parties.
- d. Waiver of Subrogation in favor of PREPA.
 - e. The Breach of any of the Warranties or Conditions in these policies by the Proponent shall not prejudice PREPA's rights under this policy.

Bonds

Proponent shall furnish at any time before the execution of the Contract:

A Performance Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to the Authority guaranteeing that the contractor will well and faithfully perform the contract work within the time specified.

A Payment Bond in the amount of one hundred percent (100%) of the contract price, with good and sufficient surety satisfactory to PREPA to guarantee the prompt payment of all labor, supervision, equipment and materials required in the performance of the work.

All bonds shall be presented to PREPA before commencement of any work and shall be executed in the required official form of PREPA.

Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer.

Proponent must ensure that their Bonding Company provides the bonds required herein endorsed in Puerto Rico.

29. Payment Terms & Method Of Payments

The payment provisions will be defined in the LOA which PREPA expects will be negotiated and executed with the Selected Proponent(s). Notwithstanding the foregoing, PREPA's standard payment term is net sixty (60) days upon approval of invoices and supporting documents. Invoicing for this Project will commence upon the commissioning and successful operation of the units.

30. Process Rules & PREPA's General Instruction RFP Guide

This process will be regulated and executed according to Exhibit B "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016 (Request for Proposals)". Please see the Download Documents tab for this Guide.

Proponents shall certify compliance with Section 4.17 of the "GUIAS PARA PROCESOS DE ADQUISICIONES DE BIENES Y SERVICIOS A TRAVES DE RFP EN LA AEE V006032016".

31. Attachments and Appendices



Appendix A – Sites for Temporary Generation



Appendix B – Low Sulfur Fuel (diesel) Specifications



Appendix C – GT Protection Requirements



Appendix D – Act 2-2018 Sworn Statement Anti-Corruption Code



Appendix E – PREPA Bid Bond Form



Appendix F – Request for Clarification Form



Exhibit 1 - Lease & Operating Agreement for Dual-Fuel Generation



**Exhibit 2 - Lease & Operating Agreement for Renewable Energy and Battery Storage
Generation**



Exhibit 3 – PREPA's RFP Guide



Facility	Location	MPT Capacity	Aproximate Allowable Capacity (MW)	Transfomer	Transformer Primary Voltage /Available Bus	Number of Allowable Generators per Site (MW)
Cambalache 1 Power Plant	Arecibo, PR	100 MVA	85	MPT 1	230 kV	2-3
Aguirre Power Plant	Salinas, PR	50 MVA	42	ESST 1-2	115 kV	1-2
Jobos Power Station	Salinas, PR	55 MVA	46	PU MPT	38kV	1-2
Yabucoa Power Station	Humacao, PR	56 MVA	47	PU MPT	115 kV	1-2
Daguao Power Station	Ceiba, PR	62 MVA	52	PU MPT	115 kV	1-2
Vega Baja Power Station	Vega Baja, PR	56 MVA	47	PU MPT	38 kV	1-2
Palo Seco Power Plant	Toa Baja, PR	93 MVA (two transformers)	79	PU MPT 2-1 2-1 MPT 3-2	115 kV	2-3
San Juan Power Plant	San Juan, PR	140 MVA	119	MPT 10	115 kV	3-4
Vieques Power Station	Vieques, PR	14 MVA	10	MPT 1-2	38kV	1-5

Notes:

1. Expected net output does not consider any water injection.
2. As an exception for this RFP, on the Vieques site, PREPA will accept units of less than 20 MW capacity. For this site, PREPA will only accept units with a capacity up to 10 MW.
3. PREPA reserves the right to decrease number of units per site and/or eliminate sites for temporary generation location.

FUEL SPECIFICATIONS
SAN JUAN, PALO SECO, AGUIRRE, MAYAGÜEZ, AND CAMBALACHE
GAS TURBINES GENERATING STATIONS

PARAMETER	ASTM METHOD	MINIMUM	MAXIMUM
Sampling	D-4057	-	-
Gravity, API Degree at 60°	D-287	30.0	42.0
Viscosity, Kinematic CTS at 100° F	D-445 D-2161	2.3	5.8
Water plus Sediment, % volume	D-95-83 D-473		0.1
Water Content, % weight	D-95-13e1		1.0
Flash Point, Degree F, PMCT	D-93	125	
Sulfur, % weight ¹	D-4294		0.050
Ash, % weight	D-482		0.005
Pour Point, Degree F	D-97		15
Sodium plus Potassium, PPM ²	D-1318		0.5
Vanadium, PPM	D-1548		0.5
Calcium, PPM	D-1548		2.0
Heating Value, BTU/lb. (Net) at 60° F	D-240	18,600	
Distillation Temp. 90% Point degree F	D-86		650
Carbon Residue WT. % (10% Bottoms)	D-524		1.0
Filterable Dirt (Particulates) Mg./100 ml.	D-2276		4
Color		Dyed	
Cetane Number	D-975	40	56
Lead PPM	A.A.	0.01	1.0
Fuel Bound Nitrogen Wt. %	4629-91		0.015
Total Glycerin	D-6584	None detected	

¹Reproducibility and repeatability must be taken into consideration in order to comply with the maximum sulfur percent weight specification. ²Latest published ASTM methods shall be used for all tests.

Appendix B – Specifications for Protection System

RFP Temporary Emergency Generation

GTs Protection System

- Protective Relay Study and its settings for the proposed mobile power system.
- Mobile power system protective relay settings criteria.
- Grant access to PREPA to protective relay events.
- Access to mobile power system proprietary software/program to allow communication with relays.
- Mobile power system generator data sheet.
- Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
- Contractor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
- The generator protection and its associate equipment connection shall comply with the latest applicable standards for small generators.
- Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection).
- At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5.
- The drawings for the generator installation shall be submitted for the approval of the Engineering Design Department. The proponent shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel.
- A complete protective relay study must be submitted at least fifteen (15) days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer.
- The proponent shall provide all the manufacturer information for each generator, such as manuals, data sheets, setting guidelines and curves.
- Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by the proponent for any connection or segment (between PREPA's facility and/or the generator and associated apparatus) that is not covered by the unit differential protection.
- The proponent shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.

SWORN STATEMENT

Comes now, (Company Name) organized and existing under the laws of _____, with employer's social security number _____, represented in this act by (Representative's Name), of legal age, (Civil Status) and resident in (dwelling) and under the most Solemn oath declares the following:

1. That my name and other personal circumstances are the aforementioned.
2. That I hold the position of (Title) in the aforementioned company.
3. That the undersigned or (Company Name), its president, vice-president, directors, executive director, members of its board of directors, board of directors, nor any of its officials or person performing equivalent functions for the (Company Name); or its subsidiaries or alter egos,
 - a. Have not pled guilty to, or have not been convicted of, to any of the crimes enumerated in the 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.
 - b. Have not pled guilty or have 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, 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.
4. The undersigned expressly recognizes that the conviction 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, 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
will result in automatic termination of any contract in the Government of Puerto Rico.

5. That this statement is subscribed in compliance with Act 8-2017, as amended, and Act 2-2018.

IN WITNESS WHEREOF, I affirm and sign the herein document in _____, this
_____ day of _____, 20____.

Representative’s Signature

Affidavit No. _____

Duly sworn and subscribed to before me by _____, whose personal
circumstances are the above mentioned and who to me is personally known, or have identified by
means of _____, in _____, this _____ day of
_____, 20____.

Notary Public

Seal



PUERTO RICO ELECTRIC POWER AUTHORITY

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____,
(hereinafter called the Principal) and _____, having its
principal offices at _____

_____ a corporation duly organized and existing under the Laws of the **COMMONWEALTH OF PUERTO RICO** and authorized to transact business in Puerto Rico (hereinafter called the Surety) are held and firmly bound onto the **PUERTO RICO ELECTRIC POWER AUTHORITY**, a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, (hereinafter called the Obligee), in the penal sum of 10% of _____ (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, and successors, jointly and severally firmly by these presents.

WHEREAS, the Principal has submitted a bid for _____

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Obligee the different not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in a good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

IT IS hereby understood and agreed that this bond will be effect for a maximum period of ninety (90) days after the bid date, unless its obligation is fulfilled prior to such date.

IN WITNESS WHEREOF, the above jointly and in solid bound parties have executed this instrument under their several seals this _____ day of _____, the name and corporate seals of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives pursuant to authority of its governing body.

(SEAL)
PRINCIPAL

(SEAL)
SURETY

TITLE

ATTORNEY IN-FACT



GOBIERNO DE PUERTO RICO
Autoridad de Energía Eléctrica de Puerto Rico

RFP 102750
Clarification Request

Issue #	Items Requiring Clarification	Reference	Clarification Request
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Proponent's Name:	Date:
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LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dual-fuel
fired, dispatchable power generation technology, located
at [REDACTED] Puerto Rico as part of PREPA's Temporary
Generation Program

between

[REDACTED]
as Lessor

and

PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee

dated as of [REDACTED], [REDACTED]



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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of ~~twelve~~ (12) months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain [●] MW of power generation capacity from *[insert number]* Temporary Generation Units (as defined below), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of ~~six~~ (6) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires:

“**Accounting Standards**” means [●];

“**Affected Party**” has the meaning given to it in paragraph (a) of Sub-Clause 16.01 (*General*).

¹ Note: Under review

"Affiliate" means 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 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.

"Agreement" has the meaning given to it in the first paragraph of this document.

"Agreement Date" has the meaning given to it in the first paragraph of this document.

"Agreement Term" has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

"Ancillary Services" has the meaning given to it in Annex 7 (*Ancillary Services*).


"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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

"Applicable Plans" means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Fueling Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

"Automatic Generation Control" or "AGC" means the provision of supplementary control that (a) automatically adjusts the power output level of the TGUs, (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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, spinning reserve computation, and production cost monitoring. Annex 8 (*Design Limits*) specifies the Design Limits applicable to the TGUs for the purpose of AGC. Such limits shall include maximum ramping rates and allowable step changes.

"Available Capacity" means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

"Average Net Derating" means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

"Backup Fuel" means  or any other type of fuel or fuel arrangements as mutually agreed by the Parties.

"Bankruptcy End Date" means the date on which a plan of adjustment consummated in connection with PREPA's case under Title III of PROMESA becomes effective pursuant to its terms.

"Bid Bond" means the surety bond submitted in conformity with the provisions of the RfP.

"Bid Submission Date" has the meaning given to it in Recital B.

"Billing Period" has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

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

"Completion" means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

"Completion Certificate" means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

"Completion Date" means the date on which Lessor achieves Completion as certified in the Completion Certificate.

"Compliance Date" has the meaning given to it in Sub-Clause 18.02 (*Security Requirements*).

"Conditions Precedent" has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

"Contract Capacity" means [*insert the net electric power generating capacity of Facility*].

"Court 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.

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

"Defaulting Party" has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

"Delay" has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

"Derated Hours" means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

"Design Limits" has the meaning given to it in Annex 8 (*Design Limits*).

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

"Dispatch Instructions" has the meaning given to it in Sub-Clause 7.01 (*General*).

"Effective Date" has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated by Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it in Part (iii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 16.01 (*General*).

“Facility” means, collectively, the [●] TGUs and all auxiliary equipment (including environmental control equipment, unit step-up transformers, breakers and balance of plant equipment) located at the Site on Lessor’s side of the Interconnection Point, used to make the Contract Capacity and each of the Ancillary Services available at the Interconnection Point.

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Fuel” means Primary Fuel or Backup Fuel, as applicable.

“Fuel Delivery Point” means the position of the Fuel Measurement Facilities located on the Site at [●], as further detailed in Annex 4 (*Fuel Delivery Point*).

“Fuel Measurement Facilities” means the main and backup meter and other equipment as necessary to measure the volume and energy of Primary Fuel delivered pursuant to this Agreement, and the on-line chromatographs installed and maintained by Lessor, which measure the quality of Primary Fuel delivered pursuant to this Agreement.

“Fuel Specifications” means the specifications set forth in Annex 6 (*Fuel Specifications*).

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 16.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Heat Rate” means  Btu per kWh.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“Heat Rate” means, for a TGU, the consumption of energy from Primary Fuel expressed in Btu (Higher Heating Value) required for such TGU to generate, and deliver to the Interconnection Point, one (1) kWh of net electrical output.

“Higher Heating Value” means the amount of heat released by the unit mass or volume of Primary 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.

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 9 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 9 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 25.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

"Monthly Invoice" has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

"Monthly Lease Payment" has the meaning given to it in Annex 4 (*Monthly Payment and Calculations*).

"Net Electrical Output" means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

"Non-Affected Party" has the meaning given to it in paragraph (d) of Sub-Clause 16.01 (*General*).

"Non-Conforming Fuel" has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

"Non-Scheduled Outage" means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

"Operating Procedures" means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 13 (*Operating Procedures*).

"Outage Hours" means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

"P3A" means the Puerto Rico Public-Private Partnership Authority.

"Party" or **"Parties"** has the meaning given to it in the preamble of this Agreement.

"Performance Test" has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

"Period Hours" means all hours in the relevant period.

"Person" means 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.

"Potentially Hazardous Materials" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

"Pre-Existing Environmental Condition" means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any "Pre-Existing Environmental Condition" unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“PREB” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“PREPA” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“PREPA Interconnection Facilities” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 9 (*Interconnection*).

“Primary Fuel” means [●].

“Prime Commercial Lending Rate” means [●].

“PROMESA” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“Prudent Electrical Practices” means 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” means 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, including those practices, methods, standards and procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Bank Certificate” has the meaning given to it in Sub-Clause 18.01 (*General*).

“Ramp Rates” mean the rate(s) of time required for a TGU to change its per kilowatt output from a particular output level to another output level, determined in accordance with Part III of Annex 8 (*Design Limits*).

“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 that 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.

“Relevant Authority” means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

“Relevant Consent” means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 10 (*Relevant Consents*).

“RfP” has the meaning given to it in Recital A.

“RTU” has the meaning given to it in Sub-Clause 7.01 (*General*).

“S&P” means S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

“Scheduled Outage” means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of TGU*s).

“Scheduled Outage Program” has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

“Security” has the meaning given to it in Sub-Clause 18.01 (*Security*).

“Site” means the area described in Annex 11 (*Site*).

“O&M Services” has the meaning given to it in Sub-Clause 8.01 (*General*).

“T&D Operator” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“Taxes” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“Technical Scope” means the scope of work set forth in Annex 12 (*Technical Scope*).

“Temporary Generation Program” has the meaning given to it in Recital A.

“Temporary Generation Units” or **“TGU”** has the meaning given to it in Sub-Clause 5.01 (*Installation Works*), and **“TGU”** means any one of them.

“Termination Event” has the meaning given to it in Sub-Clause 17.01 (*Right of Termination*).

“Territory” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“Tested Capacity” means the maximum net electric generating capacity of the Facility (gross electric capacity less station use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the use of supplementary firing, as measured by the Performance Test.

“Tested Heat Rate” means, for each Performance Test of a TGU, the Heat Rate of such TGU at the Tested Capacity, as measured by such test.

“Third Party” means any Person other than a Party to this Agreement.

“Third-Party Fuel Test” has the meaning given to it in Sub-Clause 13.05 (*Non-Conforming Fuel*).

“US-CPI” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

“Year” means the ~~twelve~~ (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31.

1.02 Interpretation. In this Agreement and unless the context otherwise requires:

- a. words importing the singular only also include the plural and vice versa where the context so requires;
- b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;
- c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
- d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
- e. references to a Party or Person include that Party's or Person's successors and permitted assigns;
- f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
- g. the Parties shall construe all references to “include” and “including” as “including without limitation”;

- h. 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,” that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party’s need to comply with its contractual obligations to any Person limit such Party’s actions, 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;
- i. 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; and
- j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses [1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), 14.02 (*Limitation on Liability*), 21 (*Representations, Warranties & Liabilities*), 23 (*Notices*), 24 (*Choice of Law & Dispute Resolution*), 25 (*Compliance With the Commonwealth of Puerto Rico Contracting Requirements*), 28 (*General*), and Annex 1 (*Conditions Precedent*), which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until ~~twelve~~ (12) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA for one (1) additional ~~six~~ (6) month period (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the ~~twelve~~ (12) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);

- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to **[date]**. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the "**Effective Date**") on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Bond.
- b. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days of the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty (30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Bond to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. SITE

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.

4.02 Clearance and Consents.

- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of Fuel, labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data, documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission [☐] MW [other generation technology] units (collectively, the "**Temporary Generation Units**" or "**TGUs**" and each, a "**TGU**") and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the "**Installation Works**") at Lessor's sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a “Delay”):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA’s personnel, or PREPA’s contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the Completion Date has not timely occurred an amount equal to US \$[●] (\$[●])²; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated Damages for Delay*) for a maximum of sixty (60) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable,

² Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. each of the Temporary Generation Units conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. each of the Temporary Generation Units is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the TGUs generally accept and follow; and
- c. Lessor owns good and valid title to the TGUs free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.
- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to be filed, or any complementary information required to be furnished, in relation to the Installation Works; and
 - ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 22.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure. PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated hourly schedule of operations for the following five (5) weeks. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown any of the TGU's.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 7 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the "**O&M Services**"). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA's request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the "**Scheduled Outage Program**") for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA

shall have the right, upon sixty (60) Days' prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

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

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor's personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA's dispatching centers will notify Lessor's personnel and, if requested by PREPA, Lessor'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 Lessor'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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the TGUs with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;

- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;
- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor shall maintain an accurate and up-to-date operating log at each of the TGUs 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and
- 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.

8.08 Certifications. At PREPA's request, Lessor 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 TGUs during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor

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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the TGUs, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the TGUs and Lessor Interconnection Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. For each TGU, Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for such TGU not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the TGUs on such date.

9.04 Testing. Prior to the initial synchronization of a TGU with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of a TGU and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for a TGU, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for such TGU. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify Completion of the Facility as per the requirements of this Agreement and finally determine whether the TGUs and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the TGUs and Completion of all other Installation Works, Lessor shall notify PREPA of the Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a "**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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.

11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor's issuance of a Monthly Invoice pursuant to paragraph (b) below.

- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a "**Monthly Invoice**"). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works, leasing of the Facility and provision of the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on each of the TGUs to establish the Tested Heat Rate, Tested Capacity, Ramp Rate and [●] for such TGU (each, a "**Performance Test**") at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 14 (*Performance Tests*) for a TGU, Lessor shall declare, and provide PREPA with notification of, the Tested Capacity and Tested Heat Rate of such TGU within five (5) Days after receiving such Performance Test report from the qualified third party contracted to conduct the test according to Annex 14 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity and Tested Heat Rate for such TGU in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$[●] for each kW of power generation capacity shortfall below the Contract Capacity, such

shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof.

13. FUEL SUPPLY³

13.01 General. From the commencement of the testing and commissioning of the TGUs by Lessor until the expiration of the Lease Period, PREPA shall deliver Primary Fuel to the Fuel Delivery Point in compliance with the Fuel Specifications for each day of operation, at such times as may be required by Lessor to satisfy the hourly dispatch requirements issued by PREPA; provided that PREPA shall procure and deliver Backup Fuel to the Facility in compliance with the Fuel Specifications, at such times as may be agreed upon by the Parties in accordance with the Operating Procedures. PREPA shall regularly procure and obtain delivery of Fuel at its own cost, and Lessor shall provide PREPA with a monthly Fuel inventory report, in order to maintain an inventory equivalent to the amount of Fuel necessary to operate the Facility at the Contract Capacity for at least [REDACTED] consecutive Days, or such greater quantities as may be mutually agreed to by the Parties. Lessor shall ensure, and hereby guarantees, that the Heat Rate for each TGU, when operating at the Tested Capacity for such TGU, shall not exceed the Guaranteed Heat Rate, at any time during the Lease Period other than during a Scheduled Outage.

13.02 Coordination. Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel to the Facility for the operation of the Facility by: (i) providing the other Party such information as the first Party shall reasonably requests regarding the supply and transportation of the Fuel (on both a historical and estimated future basis), and (ii) 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 so long as such changes do not disrupt Lessor's operations.

13.03 Responsibility and Risk of Loss. Lessor shall be responsible for any losses of Fuel, and any damages or injury caused by such Fuel, at and downstream from the Fuel Delivery Point or located on Site (as applicable). Risk of loss of all Fuel shall transfer from PREPA to Lessor upon delivery to the Fuel Delivery Point or, in the case of Backup Fuel, to Backup Fuel storage facilities located at the Site.

13.04 Daily Nominations. After receiving the daily Dispatch Instructions, Lessor shall provide to PREPA the daily nominations of Fuel as required by Lessor to satisfy the Dispatch Instructions, in accordance with the Operating Procedures.

13.05 Non-Conforming Fuel. If Fuel supplied by PREPA fails to conform with the Fuel Specifications (such Fuel, "**Non-Conforming Fuel**"), Lessor shall, as soon as reasonably practicable, give written notice to PREPA that Lessor has received Non-Conforming Fuel, giving details of the nature and expected magnitude of the variance from the parameters set forth in the Fuel Specifications and the reason Lessor deems the Fuel to be non-compliant. If Lessor informs PREPA that it has received Non-Conforming Fuel, then PREPA shall have the right to request that Lessor send a sample of such Fuel to an independent third party, to be agreed to by the Parties, to determine whether such sample satisfies the criteria for Non-Conforming Fuel ("**Third-Party Fuel Test**"). The final determination made in such Third-Party Fuel Test regarding the Non-Conforming Fuel shall be binding on both Parties. The cost of such Third-Party Fuel Test shall be borne (i) by Lessor if the Third-Party Fuel Test concludes that the Fuel conforms with the Fuel Specifications, or (ii) by PREPA if the Third-Party Fuel Test concludes that the Fuel is Non-Conforming Fuel. PREPA shall, promptly upon becoming

³ Note: To revise this provision if proponent proposes to supply its own fuel.

aware of the delivery of Non-Conforming Fuel or promptly upon receipt of notice from Lessor referenced above, send a notice to Lessor stating, to the extent known to PREPA, the period during which PREPA delivered the Non-Conforming Fuel, the quantity thereof and how such Non-Conforming Fuel departs from the Fuel Specifications.

13.06 Fuel Measurement Facilities. Prior to the commencement of testing and commissioning of the TGUs, Lessor shall install the Fuel Measurement Facilities at the Fuel Delivery Point in accordance with *[[●]] [to provide specific metering specifications, and a reference to the applicable AGA standard]*. If one or more components of the Fuel Measurement Facilities fails to function or a Party reasonably believes that such facilities inaccurately register the volumes of Primary Fuel delivered to the Fuel Delivery Point, the Parties shall determine the volume of Primary 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
- c. by estimating the quantity of delivery by measuring deliveries during prior periods under similar conditions when any meter was registering accurately.

13.07 Disputes. In the event that a Party notifies the other Party of a material discrepancy between the quantity of Primary Fuel delivered to the Fuel Delivery Point as measured by the main meter and backup meter of the Fuel Measurement Facilities, either Party shall have the right to request an adjustment for Primary Fuel delivered up to the later of (i) thirty (30) Days before the notice of any such Primary Fuel measurement discrepancy, and (ii) the date of the last meter reading that preceded such notification. The Parties shall exercise their reasonable efforts to resolve such discrepancy amicably (including with respect to adjustments for Primary Fuel delivered during such fuel measurement review period).

13.08 Storage of Backup Fuel. Lessor shall furnish, maintain and repair at its own cost all storage facilities required for Backup Fuel at the Site.

14. LIABILITY

14.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of the electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of a TGU shall vest with PREPA upon generation. Each Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party's respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 14.02 (*Limitation of Liability*) below.

14.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other

provisions of this Agreement. Nothing in this Clause 14 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

15. INDEMNIFICATION

15.01 General. 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.

15.02 Notice of Claim. 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.

15.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor's agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

16. EVENTS OF FORCE MAJEURE

16.01 General. Neither Party 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 an act, event or circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 16.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the "**Affected Party**") could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act,

event or circumstance on the Affected Party's ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;

- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party ("**Non-Affected Party**") notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 16.05 (*Notices*);

(each such act, event or circumstance, an "**Event of Force Majeure**"). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

16.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 16.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the upstream facilities affecting the delivery of Fuel;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils; acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

16.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 16.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and
- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

16.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

16.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 16 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

16.06 Other Matters.

- a. If any Party claims relief under this Clause 16 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 16 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 16 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the

period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.

- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.
- e. [For the avoidance of doubt, to the extent required following an Event of a Force Majeure, Lessor shall perform all repairs, restoration, replacement, and maintenance, at its sole cost, to return the Facility to full commercial operations.]

17. TERMINATION

17.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the "**Defaulting Party**") set forth in paragraphs (a) - (j) below (each, a "**Termination Event**"), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. Failure by Lessor to achieve Completion on or before the sixtieth (60th) Day following the Guaranteed Completion Date, as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. Declaration by Lessor of either (i) a Tested Capacity of less than ninety percent (90%) of the Contract Capacity, or (ii) a Tested Heat Rate of more than two percent (2%) above the Guaranteed Heat Rate, in each case under Sub-Clause 12.02 (*Declaration*);
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falling below ninety percent (90 %) for any period of [three (3)] consecutive months during the Lease Period;
- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;
- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 16.06 (*Other Matters*);

- g. In the case of Lessor only, the conviction of one or more of Lessor's or its contractors' employees or representatives of a crime described in Sub-Clause 26.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 26.03 (*No Convictions Under Certain Other Acts*);
- h. In the case of Lessor only, the making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement, as contemplated by Sub-Clause 26.04 (*Right of Termination*);
- i. (i) The inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) the initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and
- j. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days.

provided, however, that paragraph (i) and (j) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date.

17.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to Lessor.

17.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 17.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 17.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

17.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience, without further liability to PREPA, by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

17.05 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 17.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party's right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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.

18. SECURITY

18.01 General. As security for the proper performance of all of Lessor's obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the "**Security**") issued by a Qualified Bank in the form set forth in Annex 15 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●]) United States Dollars);⁴ together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a "**Qualified Bank Certificate**"), and (ii) maintain the Security in full force and effect until the expiration of the Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor's obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 18.01 (*General*).

18.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and
- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 18.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the "**Compliance Date**") on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA's right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA's right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

18.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the Security then outstanding.

19. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor will promptly pay and discharge all lawful taxes, assessments

⁴ Face Amount required by RFP

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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

20. INSURANCE

20.01 General. Lessor shall obtain and maintain in full force and effect during the Agreement Term and thereafter as provided herein, policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. Workmen's Compensation Insurance: Lessor shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Lessor shall also be responsible for the compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees. Lessor shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered;
- b. Employer's Liability Insurance: Lessor shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Lessor as a result of bodily injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Commercial General Liability: Lessor shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability;
- d. Automobile Liability Insurance: Lessor shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combine single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos;
- e. Professional Liability Insurance: Lessor shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- f. Pollution Liability Insurance: Lessor shall provide and maintain a Pollution Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- g. All Risk Physical Damage Property Insurance: Lessor shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover

all real and personal property of the proponent (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. This insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work and temporary buildings located at the Site;

- h. Equipment Breakdown Policy (Boiler & Machinery): Lessor shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this policy; and
- i. Builder's All Risk Insurance: Lessor shall provide and maintain a Builder's All Risk Insurance shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Site, and all equipment and materials delivered and stored at the Site which are to be used in the work or incorporated into de Facility. PREPA shall be named Additional Insured under this policy.

20.02 Requirements under the Policies. The Commercial General Liability Insurance and Automobile Liability Insurance required under this agreement shall be endorsed to include:

- a. As Additional Insured:

Puerto Rico Electric Power Authority Risk Management Office
PO Box 364267
San Juan, PR 00936-4267
- b. A 30 days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of subrogation in favor of PREPA.
- e. The breach of any of the warranties or conditions in these policies by the Insured shall not prejudice PREPA'S rights under this policy.

20.03 Structure of Coverage. The amounts of insurance required in Sub-Clause 20.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 20.01 (*General*).

20.04 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (c) of Sub-Clause 20.01 (*General*) and any required umbrella or excess coverage may be "occurrence" form policies if available on commercially reasonable terms. In the event Lessor has "claims-made" form coverage, Lessor shall notify PREPA and the retroactive date established on the first "claims-made" policy shall be maintained on all subsequent renewals.

20.05 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and, if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor's Worker's Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor's indemnity obligations set forth elsewhere in this Agreement;
- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

20.06 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (d) and (e) of Sub-Clause 20.01 (*General*) 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 Lessor shall not prejudice PREPA's right under this policy." If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

20.07 Certificates of Insurance. Lessor 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 paragraph (f) of Sub-Clause 20.01 (*General*), 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 Facility. Failure of PREPA to obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 20 (*Insurance*) shall in no way relieve or limit Lessor's obligations and liabilities under other provisions of this Agreement.

21. REPRESENTATIONS, WARRANTIES & LIABILITIES

21.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;
- b. Lessor 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. Lessor's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor'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 Lessor's ability to perform its obligations hereunder, (ii) violate any provision of Lessor'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 Lessor'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; and
- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

21.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority, PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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;
and

- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA in accordance with its terms.

22. ASSIGNMENT








22.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as Lessor, and (ii) comply with the requirements for pre-qualified bidders participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

22.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

22.03 Transfer. 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 Lessor's consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

23. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 23 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

<u>LESSOR:</u>	
Attention:	
Telephone:	
Email:	
With copy to:	
Telephone:	
Email:	

PREPA: Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928
Attn: [REDACTED]
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [[REDACTED]@prepa.com]

With Copies to: Attn: [REDACTED]

Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [[REDACTED]@prepa.com]

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

24. CHOICE OF LAW AND DISPUTE RESOLUTION

24.01 Choice of Law. 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.

24.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a "**Dispute**"), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent that the Parties cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

25. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

25.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

25.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).

- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.
- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and
 - ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

25.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

25.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

25.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "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.

25.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

25.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

25.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

25.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

25.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

25.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

26. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

26.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

26.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

26.03 No Convictions Under Certain Other Acts. Lessor 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.

26.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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. CONSEQUENCES OF NON-COMPLIANCE

27.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout Clauses 25 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*) and 26 (*Anti-Corruption Code for a New Puerto Rico*) are essential requirements of this Agreement. If any of the certifications listed in Sub-Clause 25.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

27.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

28. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

28.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers

or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 28.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

28.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, with such certification being provided substantially in the form set forth in Annex 16 (Certification Regarding Lobbying for Contracts, Grants, Loan, and Cooperative Agreements) and Annex 17 (Form of Certification Regarding Debarment, Suspension and Other Responsibility Matters). Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

28.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

28.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

28.05 Sufficiency of Funds. Lessor recognizes and agrees that PREPA will derive all or a portion of the funding for this Agreement from assistance awarded to PREPA by Federal agencies of the United States of America or local agencies of the Government of Puerto Rico. As part of its obligations under this Agreement, Lessor shall ensure that the work performed by it under this Agreement and the Facility made available to PREPA by way of a lease remains eligible for funding by complying with all applicable Federal law, regulations, executive orders, Federal agency policy, procedures, directives and guidelines. If during the Agreement Term, such Federal or local agencies reduce, de-obligate or withdraw such funds, then PREPA may reduce the scope of, or terminate, the Agreement, without penalty, by providing written notice to Lessor of the changes in scope or termination. PREPA shall have no obligation to remit any Monthly Lease Payment and have no liability for any work performed by Lessor under this Agreement to the extent that a Federal or local agency declares any part of such work or lease ineligible for funding during the Agreement Term. Lessor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from this Agreement.

28.06 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

28.07 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

28.08 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

28.09 Debarment, Suspension, and Ineligibility.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. Lessor certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

28.10 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

28.11 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in this Agreement and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

28.12 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of

FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.

- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - 1. 2 C.F.R. § 327 (Financial Reporting);
 - 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 - 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

28.13 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Reform Act of 2018, PREPA and Lessor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA or HUD Administrators or the Comptroller General of the United States.

28.14 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than five (5) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report

or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.
8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

28.15 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

28.16 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe

providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Lessor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

28.17 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.
- d. Lessor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lessor's commitments under Section 202 of the US Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the administering agency and the Secretary of Labor.

for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- g. In the event of Lessor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.
- h. Lessor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

- i. The applicant further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such

applicant; and refer the case to the Department of Justice for appropriate legal proceedings..

28.18 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

28.19 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

28.20 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

28.21 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

28.22 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

28.23 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R Part 3001.

28.24 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, agency policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

28.25 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

28.26 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

28.27 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

28.28 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

28.29 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be

performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

28.30 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.
- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

28.31 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.
- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.
- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

28.32 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

2. **Commercially available off-the-shelf (COTS)** item means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and
 - c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
3. **Component** means an article, material, or supply incorporated directly into a construction material.
4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
5. **Cost of components** means:
 - a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
6. **Designated country** means any of the following countries:
 - a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland,

Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

- b. a Free Trade Agreement (FTA) country (as of the Agreement Date Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
 - c. a least developed country (as of the Agreement Date), Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
 - d. a Caribbean Basin country (as of the Agreement Date), Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
- 7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
- 8. **Domestic construction material** means:
 - a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
- 9. **Foreign construction material** means a construction material other than a domestic construction material.
- 10. **Free Trade Agreement country construction material** means a construction material that:

- a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
- 11. **Least developed country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
- 12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
- 13. **WTO GPA country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a WTO GPA country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

- 1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
- 2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
- 3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]

4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;
 - c. quantity;
 - d. price;
 - e. time of delivery or availability;
 - f. location of the Work;
 - g. name and address of the proposed supplier; and
 - h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not

reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.
- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

- 2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
- 3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
- 4. Include other applicable supporting information.
- 5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

28.33 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

29. MISCELLANEOUS PROVISIONS

29.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, instruments, and TGU(s) forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

29.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

29.03 Non-Waiver. 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.

29.04 Third Party Rights. 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.

29.05 No benefits. No officer, employee, or agent of Lessor 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.

29.06 Relationship. 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.

29.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 30.01 (*Demobilization and Final Report*).

29.08 Reasonableness. 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.

29.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

29.10 Waiver. 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.

29.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

29.12 Severability. 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.

29.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

ATTEST:

●

By: _____
Title: ●

By: _____
Title: ●

ATTEST:

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _____
Title: ●

By: _____
Title: ●

ANNEX 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), Lessor shall deliver to Buyer:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 20 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 10 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 25 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 26 (*Anti-Corruption Code for a New Puerto Rico*), and Clause 28 (Compliance with Applicable Federal Law, Regulations and Executive Orders); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2 - PREPA CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), PREPA shall deliver to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

ANNEX 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [Note: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority ("PREPA")

To: [●] ("Lessor")

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the "LOA"). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____ DATE: _____
FOR PREPA

SIGNED: _____ DATE: _____
FOR LESSOR

ANNEX 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [Note: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority ("PREPA")

To: [●] ("Lessor")

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the "LOA"). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____ DATE: _____
FOR PREPA

ACKNOWLEDGED: _____ DATE: _____
FOR LESSOR

ANNEX 4⁵

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for each Billing Period shall be calculated as follows:

$$MLP = (LP \times FMAF \times EAF) + VOMP$$

where:

- LP = Lease Price equal to \$ [●] per Billing Period
- FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below
- EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below
- VOMP = Variable O&M Payment as defined in paragraph (v) below

- (i) Force Majeure Adjustment Factor (**FMAF**) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA’s ability, to Dispatch the TGU’s as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

- BPH = Hours in Billing Period
- ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

- EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below
- EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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

⁵ Note: Payment structure drafted in line with discussions with PREPA on Monday, February 10, 2020. We note that the RFP now includes references to Capacity Payments and Energy Payments, which deviate from our discussions. To be discussed.

Average Net Deratings during such Derated Hour attributable to such Event of Force Majeure by the Contract Capacity applicable to that Derated Hour, plus (b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (**EGFMH**) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the applicable Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

- GFMH = Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the TGUs during the corresponding Billing Period
- CC = Contract Capacity made available by Lessor, expressed in MW
- ASC = the average Lessor capacity placed in service by PREPA's Dispatch of the TGUs during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

- (v) The "**Variable O&M Payment**" or "**VOMP**" for each Billing Period shall be calculated as follows:

$$VOMP (\$) = (NEO \times VOMC)$$

where:

- NEO = Net Electrical Output for such Billing Period, expressed in kWh
- VOMC = Variable O&M Charge equal to \$[•] / kWh

ANNEX 5

FUEL DELIVERY POINT



ANNEX 6

FUEL SPECIFICATIONS

Primary Fuel delivered at the Fuel Delivery Point:



Backup Fuel delivered at the Site:

[•]

ANNEX 7

ANCILLARY SERVICES⁶

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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 Lessor at the Interconnection Point as spinning reserve for immediate dispatch by PREPA.

"Supplemental Spinning Reserve" means the off-line generation at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Spinning Reserve following a Unit startup order from PREPA's energy control center.

The following requirements shall apply to the provision of Ancillary Services by Lessor (the **"General Technical Requirements"**):

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor 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**

⁶ Note: Under review to align with RfP

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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 Contract 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 8 (*Design Limits*). If, at the time of Spinning Reserve Capacity operation, PREPA Dispatches the Facility at less than the Contract 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 under frequency disturbance which caused the Spinning Reserve Capacity operation.

For any hour, 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. **Supplemental Spinning Reserve**

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

ANNEX 8

DESIGN LIMITS

I. Objective

This Annex specifies the Design Limits applicable to the TGU's for the purpose of Automatic Generation Control, including Ramp Rates.

II. Design Limits

The following are preliminary Design Limits for each of the TGU's:



III. Ramp Rates

Each TGU shall have a Ramp Rate from standby to full load operation of less than ten (10) minutes.

ANNEX 9

INTERCONNECTION

■

ANNEX 10

RELEVANT CONSENTS

■⁷

⁷ Note: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

ANNEX 11

SITE



ANNEX 12

TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, generator(s), personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas], *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

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II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, generator, units, *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place units per PREPA requirements;
- b. If applicable for the technology proposed, cut, fabricate the temporary fuel line from the storage tank to the generation units and from the tank to the operational generator;
- c. Install flow meters on the generation units' fuel line;
- d. Install the temporary pump station;
- e. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- f. Install emergency notification system in the event of a shutdown; and

- g. Perform pre-commission of the system to verify system function as the generation units are being installed.

IV. Pre-Commissioning

- a. Perform and report completion of the following pre-commissioning tasks, as applicable to: Battery systems;
- b. Control & vibration systems;
- c. Ventilation and combustion air systems;
- d. Turbine and hydraulic start lubrication systems;
- e. Generator lubrication oil system;
- f. Fuel systems for both Primary Fuel and Backup Fuel;
- g. Fire system;
- h. Turbine auxiliaries;
- i. Water injection system; and
- j. Any other pre-commissioning tasks based on new or used units' factory requirements.

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V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;

- vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;
- viii. Lessor shall share the temporary generation units' technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the TGU's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, turbine operation mode;
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as **Schedule 1** to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M.
 - i. Power output;
 - ii. MVAR; and
 - iii. Turbine and generator RPM or other parameters determined appropriate.

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*]

SCHEDULE 1 TO ANNEX 12

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements such as:

- a. Protective Relay Study and its settings for the proposed power system;
- b. Power system protective relay settings criteria;
- c. Grant access to PREPA to protective relay events;
- d. Access to power system proprietary software/program to allow communication with relays;
- e. Power system generator data sheet;
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation;
- h. The generator protection and its associated equipment connection shall comply with the latest applicable standards for small generators;
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection);
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5;
- k. The drawings for the generator installation shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel;
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer;
- m. Lessor shall provide all the manufacturer information for each generator, such as manuals, data sheets, setting guidelines and curves;
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the generator and associated apparatus) that is not covered by the unit differential protection; and
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

ANNEX 13

OPERATING PROCEDURES

[•]⁸

⁸ Among other things, to include detailed procedures for: (i) daily nominations, management and coordination of the supply of Fuel, (ii) the reading of the Fuel Measurement Facilities (when installed in accordance with Sub-Clause 13.06 (Fuel Measurement Facilities)) and (iii) the resolution of disputes regarding material discrepancies between the quantity of Fuel delivered to the Fuel Delivery Point as registered by the Fuel Measurement Facilities.

ANNEX 14

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, Tested Heat Rate, the Ramp Rate of a TGU, and [*insert any other necessary tests*].

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (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 TGU.

c. [others]

Test Conditions

a. Tested Capacity

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

b. Tested Heat Rate

For each Heat Rate test load point, the TGU 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 TGU.] All major components shall be operated within their design pressures, temperatures, and flow rates. TGU operation during the test will be consistent with continuous operation parameters and in accordance with Prudent Utility Practices, as confirmed by TGU operating data. All necessary safety and environmental equipment shall be in service.

c. [others]

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.

ANNEX 15

FORM OF SECURITY

ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: The Puerto Rico Electric Power Authority

[●]

Attn.: Chief Executive Officer

Date: [●]

LOA / PERFORMANCE SECURITY No. [●]

We understand that [●] (the "**Applicant**") has entered into a contract with you (the "**Beneficiary**") dated [●] (as amended from time to time, the "**LOA**").

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

"**Maximum Amount**" means \$ [●].

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

SCHEDULE 1 TO ANNEX 15

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:

Authorized Signatory

ANNEX 16

**FORM OF CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS,
LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official Date

ANNEX 17

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the "prospective lower tier participant") is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR Company Name Contract Number

Name

Title

Signature Date

LEASE & OPERATING AGREEMENT

relating to the emergency installation, lease and operation of dispatchable
[renewable energy] generation and battery energy storage technology,
located at [●] Puerto Rico as part of PREPA's
Temporary Generation Program

between

[●]
as Lessor

and

**PUERTO RICO ELECTRIC POWER AUTHORITY
as Lessee**

dated as of [●], [●]



**Puerto Rico
Electric Power
Authority**

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THIS LEASE AND OPERATING AGREEMENT (this “**Agreement**”) dated as of [●], 2020 (the “**Agreement Date**”),

BETWEEN:

1. **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**” or “**Lessee**”); and
2. [●], a company incorporated under the laws of [●], with a place of business at [●] (“**Lessor**”);

(each, a “**Party**”, and together, the “**Parties**”);

WHEREAS:

- A. to replace the temporary loss of generation capacity arising from recent earthquakes, PREPA has conducted a competitive procurement process by a Request for Proposals (the “**RfP**”) to select one or more contractors to (i) deliver, install, interconnect, test, commission, power generation technology at selected sites across Puerto Rico on an emergency basis, and (ii) enter into a Lease and Operating Agreement with PREPA under which each winning bidder agrees to lease, operate and maintain such power generation technology, and PREPA agrees to pay for such lease and operation and maintenance services, based on the availability of such generation for a period of ~~twelve~~ (12) months (collectively, the “**Temporary Generation Program**”);
- B. Lessor, among other bidders, submitted a proposal to participate in the Temporary Generation Program in response to the RfP issued by PREPA on [●] 2020 (the “**Bid Submission Date**”), and PREPA selected Lessor as one of the preferred bidders following the submission and evaluation of all proposals;
- C. the Financial Oversight and Management Board (“**FOMB**”), the Puerto Rico Energy Bureau (“**PREB**”) and [Puerto Rico Public-Private Partnerships Authority (“**P3A**”)]¹ have approved this Agreement as part of the Temporary Generation Program; and
- D. the Parties desire to enter into this Agreement under which (i) Lessor agrees to install, lease, operate and maintain *[number]* [●] MWp photovoltaic solar panel arrays, inverters and [●] MWh integrated battery energy storage systems capable of intermediate load shifting (collectively, the “**Facility**”), and (ii) PREPA agrees to pay for such lease and operation and maintenance services for an initial term of ~~six~~ (6) months;

NOW THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.01 Definitions. In each Agreement, and unless the context otherwise requires: “**Accounting Standards**” means [●].

¹ Note: Under review.

“Affected Party” has the meaning given to it in paragraph (a) of Sub-Clause 15.01 (*General*).

“Affiliate” means 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 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.

“Agreement” has the meaning given to it in the first paragraph of this document.

“Agreement Date” has the meaning given to it in the first paragraph of this document.

“Agreement Term” has the meaning given to it in Sub-Clause 3.01 (*Agreement Term*).

“Ancillary Services” has the meaning given to it in Annex 5 (*Ancillary Services*).

“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 Relevant Authority by which such legal Person is bound or having application to the property, transaction or event in question, including the Puerto Rico Electric Power Authority Revitalization Act, PROMESA, the U.S. Environmental Protection Agency and Puerto Rico Environmental Quality Board requirements (including New Source Performance Standards and Hazardous Air Pollutant Standards), and all federal and local marine permitting requirements as applicable.

“Applicable Plans” means collectively the Work Plan, QCP, Safety Plan, Security Plan, Facility Response Plan (FRP); Spill Prevention, Control and Countermeasures Plan (SPCCP), Barge/Airplane Plan, Transportation Plan, Emergency Notification Plan, Life Support Plan, Emergency Evacuation Plan, Site Preparation Plan, Line Clearance and Connection plan, Black Start Commissioning Plan, Installation Plan, Pre-Commissioning Plan, Commissioning Plan, AVR and Generator Protection, and Operation and Maintenance Plan, in each case as approved by PREPA.

“Automatic Generation Control” or **“AGC”** means the provision of 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 in accordance with the requirements of economic dispatch. AGC includes load frequency control, economic dispatch, energy storage reserve computation, and production cost monitoring. Annex 6 (*Design Limits*) 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” means, for any hour, the average net electric generating capacity of the Facility made available at the Interconnection Point for Dispatch by PREPA for that hour, expressed in kilowatts.

“Average Net Derating” means, for any hour, the difference expressed in kilowatts between the Contract Capacity and the Available Capacity, including deratings attributable to an Event of Force Majeure claimed by Lessor, for such hour; provided that, where Available Capacity exceeds Contract Capacity for any hour, the Average Net Derating shall equal zero (0) for such hour.

“Bankruptcy End Date” means the date on which a plan of adjustment consummated in connection with PREPA’s case under Title III of PROMESA becomes effective pursuant to its terms.

“Bid Bond” means the surety bond submitted in conformity with the provisions of the RfP.

“Bid Submission Date” has the meaning given to it in Recital B.

“Billing Period” has the meaning given to it in Sub-Clause 10.03 (*Billing Period*).

“Business Day” means any Day other than a Saturday, Sunday or a public holiday in San Juan (Puerto Rico).

“Completion” means the complete performance in full of the Installation Works, including passing of all tests on completion, final clean-up of the Site and rectification of all punch list items, in accordance with this Agreement as evidenced by a Completion Certificate.

“Completion Certificate” means a written certificate, executed by PREPA, substantially in the form set forth in Annex 3 (*Form of Completion Certificate*).

“Completion Date” means the date on which Lessor achieves Completion as certified in the Completion Certificate.

“Compliance Date” has the meaning given to it in Sub-Clause 17.02 (*Security Requirements*).

“Conditions Precedent” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Contract Capacity” means [*insert the net electric power generating capacity of Facility*].

“Court 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.

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

“Defaulting Party” has the meaning given to it in Sub-Clause 16.01 (*Right of Termination*).

“Delay” has the meaning given to it in Sub-Clause 5.03 (*Guaranteed Completion Date*).

“Derated Hours” means the hour or those hours, exclusive of Outage Hours, when the Facility fails to make available one hundred percent (100%) of its Contract Capacity, including hours attributable to an Event of Force Majeure claimed by Lessor.

“Design Limits” has the meaning given to it in Annex 6 (*Design Limits*).

“Dispatch” means 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 Grid System in accordance with Prudent Utility Practices, subject to the Operating Procedures and the Design Limits.

“Dispatch Instructions” has the meaning given to it in Sub-Clause 7.01 (*General*).

“Effective Date” has the meaning given to it in Sub-Clause 3.02 (*Conditions Precedent*).

“Electrical Metering Equipment” means 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.

“Environment” means any air (including air within natural or man-made structures above or below ground), water (including territorial, coastal and inland waters and ground water in drains and sewers), land (including the sea or river bed under any water), surface land and sub-surface land.

“Environmental Costs” mean any and all fixed and variable costs incurred by Lessor resulting from the imposition or assessment on or as a result of the ownership or operations of the Facility by Applicable Law relating to the Environment issued or promulgated Relevant Authorities.

“Equivalent Availability Factor” has the meaning given to it in Part (iv) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Derated Hours” means, 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 Contract Capacity applicable to such hour.

“Equivalent Grid Force Majeure Hours” has the meaning given to it Part (iii) in Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Force Majeure Hours” has the meaning given to it in Part (ii) of Annex 4 (*Monthly Payment and Calculations*).

“Equivalent Total Force Majeure Hours” has the meaning given to it Part (iv) in Annex 4 (*Monthly Payment and Calculations*).

“Event of Force Majeure” has the meaning given to it in Sub-Clause 15.01 (*General*).

“Facility” has the meaning given to it in Recital D of the preamble of this Agreement as further detailed in Annex 10 (*Technical Scope*).

“FEMA” means the Federal Emergency Management Agency.

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

“FOMB” means the Financial Oversight and Management Board of Puerto Rico, established under the Puerto Rico Oversight, Management and Stability Act of 2016.

“Grid Force Majeure Event” has the meaning given to it in Sub-Clause 15.04 (*Grid Force Majeure Event*).

“Grid Restoration Period” has the meaning given to it in Sub-Clause 15.04 (*Grid Force Majeure Event*).

“Grid System” means the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations, owned by PREPA, which transmits / distributes electricity to consumers in the Territory.

“Guaranteed Completion Date” means [June 1, 2020], as extended in accordance with Sub-Clause 5.04 (*Time Extensions*).

“HUD” means the U.S. Department of Housing and Urban Development.

“Installation Works” has the meaning given to it in Sub-Clause 5.01 (*Installation Works*).

“Interconnection Point” means the physical point where the Facility interconnects with the Grid System, as set forth on Annex 7 (*Interconnection*).

“Interest” means 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.

“Lease Period” means the period that extends from the Day immediately following the Completion Date until the expiration of the Agreement Term.

“Lessee” has the meaning given to it in the preamble of this Agreement.

“Lessor” has the meaning given to it in the preamble of this Agreement.

“Lessor Interconnection Facilities” means all equipment and facilities, located on Lessor’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set forth in Annex 7 (*Interconnection*).

“Maximum Recovery Period” means a period of [thirty (30)] consecutive Days following the occurrence of a Grid Force Majeure Event.

“MRCC” has the meaning given to it in paragraph (d) of Sub-Clause 24.02 (*Compliance Requirements*).

“Moody’s” means Moody’s Investor’s Service, Inc. or any successor thereto.

“Monthly Invoice” has the meaning given to it in paragraph (b) of Clause 11 (*Compensation, Payment and Billing*).

“Monthly Lease Payment” has the meaning given to it in Annex 4 (*Monthly Payment and Calculations*).

“MWp” means megawatt-peak.

“Net Electrical Output” means the net electrical energy output of the Facility, expressed in kWh, delivered by the Facility to the Interconnection Point.

“Non-Affected Party” has the meaning given to it in paragraph (d) of Sub-Clause 15.01 (*General*).

“Non-Scheduled Outage” means a planned interruption of all or a portion of the Net Electrical Output coordinated with PREPA by Lessor and required for any purpose including inspection, preventive maintenance, or corrective maintenance, other than a Scheduled Outage.

“Operating Procedures” means the operating procedures for the interconnection, testing, commissioning, and operation of the Facility, as set forth in Annex 11 (*Operating Procedures*).

“Outage Hours” means the number of hours, including hours attributable to an Event of Force Majeure claimed by Lessor, during which the Available Capacity of the Facility equals zero (0).

“**P3A**” means the Puerto Rico Public-Private Partnership Authority.

“**Party**” or “**Parties**” has the meaning given to it in the preamble of this Agreement.

“**Performance Test**” has the meaning given to it in Sub-Clause 12.01 (*Performance Test*).

“**Period Hours**” means all hours in the relevant period.

“**Person**” means 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.

“**Potentially Hazardous Materials**” means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor) capable of causing harm to any human or any other living organism supported by the Environment, or capable of damaging the Environment or public health or posing a threat to public safety including any pollutants and any hazardous, toxic, radioactive, noxious, corrosive or dangerous substances and all substances regulated, for which in each case liability or responsibility is imposed under applicable environmental law.

“**Pre-Existing Environmental Condition**” means (i) any condition of the Environment within the Site existing prior to the Effective Date, and, in any case, relating to or arising from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, (ii) any condition of the Environment within the Site existing prior to the Effective Date relating to or arising from the presence of any munitions or ordnance, and (iii) any condition of the Environment outside the Site existing prior to the Effective Date which condition relates to or arises from the presence, handling, use, transport, storage, release or disposal of any Potentially Hazardous Materials, provided that any continuation, exacerbation or aggravation of any such condition referred to in paragraph (ii) above after the Effective Date shall be considered part of any “Pre-Existing Environmental Condition” unless, and to the extent, any such continuation, exacerbation or aggravation results from the negligence, bad faith or willful misconduct of Lessor or any contractor thereof at any tier.

“**PREB**” means the Puerto Rico Energy Bureau, established by Puerto Rico Act 57-2014 (as amended).

“**PREPA**” has the meaning given to it in the preamble of this Agreement, and includes any successor thereto.

“**PREPA Interconnection Facilities**” means all equipment and facilities, located on PREPA’s side of the Interconnection Point, constructed and installed for the purpose of interconnecting the Facility with the Grid System, as set out in Annex 7 (*Interconnection*).

“**PROMESA**” means the Puerto Rico Oversight, Management, and Economic Stability Act.

“**Prudent Electrical Practices**” means 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**” means 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., including those practices, methods, standards and procedures which are set forth in the Technical Scope, with commensurate standards of safety, performance, dependability, efficiency and economy.

“Qualified Bank” means a commercial bank or other financial institution located within Puerto Rico or a country (or other jurisdiction) reasonably acceptable to PREPA, which has, as of the date of issuance or renewal of such guarantee, a long-term counterparty credit rating of at least “A” by S&P, a long-term foreign currency deposit rating of “A2” by Moody’s, or, if either such rating agency is no longer in business or no longer rating the obligations in question, an equivalent rating from another internationally recognized rating agency selected by Lessor with the written consent of PREPA; provided that, if such financial institution’s ratings match such minimum ratings, no other credit rating agency shall have placed such financial institution on credit watch with negative implications.

“Qualified Bank Certificate” has the meaning given to it in Sub-Clause 17.01 (*General*).

“Ramp Rates” mean 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 Part III of Annex 6 (*Design Limits*).

“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 that 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.

“Relevant Authority” means any federal, Puerto Rico, local, regional, provincial, municipal, national or supra-national governmental agency, authority, department, body, instrumentality, inspectorate, ministry, official, court, tribunal or public or statutory Person (whether autonomous or not) which has jurisdiction in relation to the Facility or 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.

“Relevant Consent” means any administrative act, resolution, authorization, consent, approval, license, decision, permit, exemption, waiver, certification or registration containing an administrative act granted or effected before, on or after the Agreement Date by Puerto Rico or any Relevant Authority in connection with this Agreement or the Project and any other consent, permit, approval, administrative act, license, resolution, decision, exemption, waiver, certification or authorization of, or registration with, Puerto Rico, the Federal Energy Regulatory Commission, the P3A or any other Relevant Authority required to be obtained, maintained, renewed or made by any Applicable Law or by any agreement entered into in connection with the Project, including those set forth in Annex 8 (*Relevant Consents*).

“RfP” has the meaning given to it in Recital A.

“RTU” has the meaning given to it in in Sub-Clause 7.01 (*General*).

“S&P” means S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

“Scheduled Outage” means a planned interruption of the operation of the Facility, coordinated in advance by Lessor with PREPA with mutually agreed start and duration pursuant to Clause 8 (*Control and Operation of the Facility*).

“Scheduled Outage Program” has the meaning given to it in Sub-Clause 8.02 (*Scheduled Outages*).

“Security” has the meaning given to it in Sub-Clause 17.01 (*General*).

“Site” means the area described in Annex 9 (*Site*).

“O&M Services” has the meaning given to it in Sub-Clause 8.01 (*General*).

“T&D Operator” means any future operator of the interconnected network of high voltage transmission lines, low voltage distribution lines and associated electric substations in the Territory.

“Taxes” means 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 Facility by Relevant Authorities responsible for implementing tax laws, rules, regulations or orders.

“Technical Scope” means the scope of work set forth in Annex 10

“Temporary Generation Program” has the meaning given to it in Recital A.

“Termination Event” has the meaning given to it in Sub-Clause 16.01 (*Right of Termination*).

“Territory” means the unincorporated and organized territory of the United States officially known as the Commonwealth of Puerto Rico.

“Tested Capacity” means the maximum net electric generating capacity of the Facility (gross electric capacity less Facility use) made available to PREPA at the Interconnection Point, which includes the capacity obtained through the release of energy from supplementary battery energy storage in addition to energy produced from in situ conditions, as measured by the Performance Test.

“Third Party” means any Person other than a Party to this Agreement.

“US-CPI” means 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 is substantially altered, 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.

“Vacant Possession” means the right to use the Site for purposes of carrying out the Installation Works without undue interference by any third party (including any Relevant Authority) and free and clear of any monetary claim or demand that may have arisen prior to the Effective Date.

“Year” means the twelve (12) month period beginning 12:00 midnight on January 1 and ending at 12:00 midnight on the subsequent December 31.

1.02 Interpretation. In this Agreement and unless the context otherwise requires:

- a. words importing the singular only also include the plural and vice versa where the context so requires;

- b. all periods of time referred to in this Agreement shall be based on, and computed according to, the Gregorian calendar;
- c. in the event of an inconsistency or incompatibility between the provisions of this Agreement and its Annexes, this Agreement shall prevail;
- d. references to Clauses and Annexes refer to Clauses and Annexes of this Agreement and the Parties have incorporated all Annexes herein as an integral part of this Agreement;
- e. references to a Party or Person include that Party's or Person's successors and permitted assigns;
- f. headings of Clauses, Sub-Clauses and Annexes describe subject matter for convenience only and shall not affect the construction or interpretation of this Agreement;
- g. the Parties shall construe all references to "include" and "including" as "including without limitation";
- h. 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," that such obligation shall include 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, such Party shall not be in breach of its obligations to the other Party to the extent that such Party's need to comply with its contractual obligations to any Person limit such Party's actions, 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;
- i. 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; and
- j. if at any time during the Agreement Term 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.

2. LEASE & OPERATION

Lessor agrees to (i) lease the Facility to PREPA, and (ii) operate, maintain and repair such Facility to ensure that it makes available the Contract Capacity, Net Electric Output and Ancillary Services for Dispatch, and PREPA agrees to pay for such lease and services, in each case during the Lease Period and subject to the terms and conditions of this Agreement and in accordance with FEMA guidelines and regulations.

3. AGREEMENT TERM & CONDITIONS PRECEDENT

3.01 Agreement Term. This Agreement (other than Sub-Clauses 1 (*Definitions and Interpretation*), 3 (*Agreement Term & Conditions Precedent*), 16.03 (Limitation on Liability), 20 (*Representations, Warranties & Liabilities*), 22 (*Notices*), 23 (*Choice of Law & Dispute Resolution*), 24 (Compliance With the Commonwealth of Puerto Rico Contracting Requirements), 28 (General), and Annex 1 (Conditions Precedent), which shall enter into full force and effect on the Agreement Date) shall (i) enter into force and effect on the Effective Date, and (ii) continue in full force and effect until ~~twelve~~____(~~12~~) months after the Completion Date, unless terminated earlier in accordance with its terms or extended by PREPA for one (1) additional ~~six~~____(~~6~~) month period (the “**Agreement Term**”). PREPA shall notify Lessor in writing of any such extension no later than thirty (30) Days prior to the expiration of the ~~twelve~~____(~~12~~) month term.

3.02 Conditions Precedent. The Parties shall use reasonable efforts to satisfy or waive the following conditions precedent to their performance of this Agreement (the “**Conditions Precedent**”):

- a. for satisfaction by Lessor, the Conditions Precedent set forth in Part 1 of Annex 1 (*Conditions Precedent*);
- b. for satisfaction by PREPA, the Conditions Precedent set forth in Part 2 of Annex 1 (*Conditions Precedent*); and
- c. for satisfaction jointly by both Parties, the Conditions Precedent set forth in Part 3 of Annex 1 (*Conditions Precedent*).

Each Party shall exercise reasonable efforts to satisfy, or procure the satisfaction of, each Condition Precedent for which it has responsibility prior to **[date]**. Upon (i) the satisfaction of all of the Conditions Precedent, (ii) in case of any non-satisfaction under paragraph (a) above, waiver by PREPA of one or more of such Conditions Precedent, and/or (ii) in case of non-satisfaction under paragraphs (b) or (c) above, agreement by the Parties to waive one or more of the Conditions Precedent as the case may be, each of the Parties shall promptly execute a certificate in substantially the form attached as Annex 2 (*Form of Condition Precedent Certificate*) confirming the satisfaction or waiver of all Conditions Precedent and the occurrence of the date (the “**Effective Date**”) on which such confirmation occurred. 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 for which it has responsibility will be satisfied no less than seven (7) Days prior to such anticipated date.

3.03 Failure to Satisfy Conditions Precedent.

- a. In the event that Lessor fails to satisfy, or PREPA declines to waive, the Conditions Precedent set forth in paragraph (a) of Sub-Clause 3.02 (Conditions Precedent) within thirty (30) Days of the Agreement Date, PREPA shall have the right, but not the obligation, to terminate this Agreement in its entirety and draw the full face amount of the Bid Bond.
- b. In the event that PREPA fails to satisfy, or Lessor declines to waive, the Conditions Precedent set forth in paragraph (b) of Sub-Clause 3.02 (Conditions Precedent) within thirty (30) Days after the Agreement Date, Lessor shall have the right, but not the obligation, to terminate this Agreement in its entirety.
- c. In the event that the Parties fail to satisfy or waive the Conditions Precedent set forth in paragraph (c) of Sub-Clause 3.02 (*Conditions Precedent*) within thirty

(30) Days after the Agreement Date, either Party shall have the right, but not the obligation, to terminate this Agreement in its entirety.

- d. Promptly upon any termination of this Agreement by a Party pursuant to paragraphs (a) or (c) above, PREPA shall return the Bid Bond to Lessor.

3.04 No Liability. If a Party terminates this Agreement in accordance with Sub-Clause 3.03 (*Failure to Satisfy Conditions Precedent*), then PREPA shall not have any liability whatsoever for any loss to Lessor.

4. SITE

4.01 Possession. PREPA shall, at all times during the Agreement Term, (i) ensure that Lessor shall have Vacant Possession of the Site, and (ii) not transfer any real property rights over any parcel of land within the Site in favor of any Third Party other than in accordance with this Agreement.

4.02 Clearance and Consents.

- a. Lessor shall remove and dispose of all structures, buildings and other impediments hindering the Installation Works on a Site at its own cost and risk in accordance with Applicable Law and the Applicable Plans. In the event that such removal or disposal requires one or more Relevant Consents, PREPA shall apply for, and obtain, such consent from the Relevant Authorities, and Lessor shall provide reasonable assistance upon PREPA's request, unless PREPA has the responsibility to apply for and obtain such consent under any other provision of this Agreement or Applicable Law.
- b. Lessor shall have the sole responsibility of satisfying itself concerning the nature and location of the Installation Works, and the general and local conditions, particularly those conditions affecting transportation, access, disposal, availability and quality of labor, water and electric power; availability and condition of roads, climatic conditions and seasons, physical conditions at the Site as a whole; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials encountered; equipment and facilities needed before and during the performance of this Agreement and the Installation Works; and all other matters which can in any way affect performance of this Agreement. The failure of Lessor to acquaint itself with any applicable condition or Applicable Law shall not relieve Lessor from the responsibility for performing its obligations arising under this Agreement in full.

4.03 Access. During the Agreement Term, Lessor shall ensure that representatives of PREPA and/or its advisors have access to the Site for the purpose of observing the activities of Lessor and ensuring Lessor's compliance with its obligations hereunder; provided that PREPA or its representatives or advisors, as applicable, shall be subject to, and shall comply with, applicable safety and security procedures generally applied by Lessor to individuals given access to the Site and shall not impede, hinder, interfere with or otherwise delay the execution of the Installation Works.

4.04 Pre-Existing Environmental Conditions. If in the course of the performance of this Agreement, Lessor encounters a Pre-Existing Environmental Condition at the Site that requires remedial measures under Applicable Law, then Lessor shall take remedial measures as required to allow the performance of the Installation Works and/or the operations of the Facility to continue at Lessor's cost and expense, provided that Lessor shall have the right to

recover such increased costs upon the submission by Lessor to PREPA of data, documents and information substantiating the amount of such increased costs, including any data, documents or information reasonably requested by PREPA, in all cases certified by Lessor as being accurate and complete.

5. INSTALLATION

5.01 Installation Works. Lessor shall procure, design, permit, deliver, provisionally install, interconnect, test and commission *[[number] [●] MWp [photovoltaic solar panel arrays, inverters] and [[●] MWh] integrated battery energy storage systems capable of intermediate load shifting [or other renewable technology]* and other aspects of the Facility at the Site in accordance with the Applicable Plans, Technical Scope, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement (collectively, the “**Installation Works**”) at Lessor’s sole cost and expense on or before the Guaranteed Completion Date.

5.02 Commencement. Lessor shall commence the Installation Works on a date that occurs no later than three (3) Days after the Effective Date.

5.03 Guaranteed Completion Date. Lessor agrees, and undertakes to ensure, that Completion shall occur on or before the Guaranteed Completion Date; provided that the occurrence of any of the following events during the performance of the Installation Works, which delays, or will delay, Completion shall entitle Lessor to an extension of the Guaranteed Completion Date (each, a “**Delay**”):

- a. an Event of Force Majeure affecting Lessor; or
- b. any impediment or prevention of the performance of the Installation Works caused by, or attributable to, PREPA, PREPA’s personnel, or PREPA’s contractors at the Site other than any act or omission by PREPA permitted under this Agreement;

but only on the condition that (i) such delay affects the critical path activities of such work, (ii) such delay will cause Completion to occur beyond the Guaranteed Completion Date then in effect immediately prior to the grant of an extension of time, (iii) Lessor cannot proceed with other portions of the Installation Works which would avoid a delay in Completion, and (iv) Lessor complies with the requirements set forth in Sub-Clause 5.04 (*Time Extensions*).

5.04 Time Extensions. If Lessor desires to assert a claim for an extension of the Guaranteed Completion Date under Sub-Clause 5.03 (*Guaranteed Completion Date*) above arising out of a Delay, then Lessor shall, within ten (10) Days from the commencement of such Delay, notify PREPA in writing of the causes of such Delay. PREPA shall ascertain the facts and the extent of such Delay and extend the Guaranteed Completion Date for such Delay when, in its commercially reasonable judgment, the findings of facts justify such an extension as permitted in accordance with the terms of this Agreement, and its findings of facts thereon shall be final and conclusive on the Parties. Lessor acknowledges and agrees that (i) the extensions of time as provided above constitute the sole and exclusive remedy of Lessor in respect of any damages or costs incurred in connection with a Delay, and (ii) notwithstanding anything to the contrary contained in the Agreement, Lessor shall have no right to claim an extension of a Guaranteed Completion Date for (A) any event that arises prior to the occurrence of the Effective Date, (B) Delays in which the negligence, omission or default by Lessor contributed to such Delay, or (C) that portion of Delay to the extent that Lessor could have taken, but failed to take, reasonable actions to mitigate such Delay.

5.05 Liquidated Damages for Delay. If the Completion Date fails to occur by the Guaranteed Completion Date as extended in accordance with Sub-Clause 5.04 (*Time Extensions*), then Lessor shall pay to PREPA for each Day or portion thereof that the Completion Date has not timely occurred an amount equal to US \$[●] (\$[●])²; provided, however, that damages for delay shall accrue and be paid under this Sub-Clause 5.05 (*Liquidated Damages for Delay*) for a maximum of sixty (60) Days. PREPA shall submit invoices to Lessor for each Day or for such number of days, as PREPA shall in its sole discretion determine, as to which delay damages are payable. Each such invoice shall be due and payable by Lessor within seven (7) Days of receipt. PREPA shall not attempt to terminate this Agreement on the basis of any such failure to achieve the Completion Date as long as Lessor has an obligation to pay, and has paid, any such penalty. If, at the end of the seven (7) Day period set forth above, Lessor has not paid all or any part of the delay damages invoiced by PREPA, PREPA shall have the right to draw upon the Security to satisfy such payment obligation of Lessor.

5.06 Non-Performance. If Lessor fails to perform any of its obligations under this Clause 5 (*Installation*), PREPA may perform such obligation or cause the performance of such obligation if such failure has continued unremedied for a period of thirty (30) Days or more after delivery of notice of such failure by PREPA to Lessor. PREPA shall have the right to draw upon the Security upon the performance of such obligation to recover the reasonable, documented costs and expenses incurred or to be incurred by PREPA to cure any breach or other failure by Lessor to perform any of its obligations under this Clause 5 (*Installation*). PREPA shall notify Lessor in writing of any draw on or execution of the Security and the circumstances leading to such draw.

5.07 Representations & Warranties. Lessor hereby represents and warrants to PREPA on the Completion Date that:

- a. the Facility conforms in all material respects with this Agreement, the Technical Scope, Design Limits and all Applicable Law;
- b. the Facility is (i) fit for its intended purpose and free from material defects and deficiencies of any kind, and (ii) designed, engineered and installed in accordance with those practices, methods, techniques, standards and procedures prevailing during the Agreement Term which prudent, diligent, skilled and experienced owners and operators of generation technology similar to the Facility generally accept and follow; and
- c. Lessor owns good and valid title to the Facility free and clear of any and all liens and Lessor has not received nor become aware of any notice of intention to claim a lien, or proceeding to establish a lien, arising out of or in connection with the Installation Works.

5.08 Reports and Information.

- a. Upon the occurrence of any disruption or suspension of the Installation Works, Lessor shall (i) provide PREPA with immediate written notice thereof, and (ii) within forty-eight (48) hours of such occurrence, provide PREPA with a report detailing the circumstances of such disruption or suspension. PREPA shall have the right to request from Lessor all information it deems necessary or reasonable relating to any disruption or suspension of the Installation Works, and Lessor shall comply with such requests within five (5) Business Days following the receipt thereof.

² Note: Insert amount equal to 1/30th of the Monthly Lease Payment, assuming 100% Equivalent Availability Factor.

- b. Lessor shall provide to PREPA:
 - i. at the time of submission to any Relevant Authority, a copy of any environmental study required to be undertaken, any report required to be filed, or any complementary information required to be furnished, in relation to the Installation Works; and
 - ii. as soon as practicable, a copy of any other studies undertaken or reports which may be prepared by Lessor with respect to environmental matters related to the Installation Works, all at Lessor's expense.
- c. During the performance of the Installation Works, Lessor shall promptly inform PREPA, in writing, of all material events or developments, which will have, or may reasonably be expected to have, a material adverse effect on the ability of Lessor to achieve Completion by the Guaranteed Completion Date.

6. LEASE

Lessor hereby leases the Facility to PREPA, and PREPA agrees to lease the Facility from Lessor and pay the Monthly Lease Payment, in each case during the Lease Period, and in accordance with this Agreement.

7. DISPATCH

7.01 General. Subject to the Ramp Rates, the Operating Procedures and the other terms of this Agreement, PREPA (or the T&D Operator under the circumstances described in Sub-Clause 21.03 (*Transfer*)), at its sole discretion, shall have the right to Dispatch up to one hundred percent (100%) of the Contract Capacity of the Facility within its Design Limits, twenty-four (24) hours during each Day of the Lease Period other than during any Scheduled Outage period or Event of Force Majeure.³ PREPA's dispatching centers will determine the appropriate level of Dispatch by means of its [Automatic Generation Control] system and in accordance with Prudent Utility Practices, and will communicate the same to Lessor (each, a "**Dispatch Instruction**"). Lessor will give the dispatcher a status report every eight (8) hours of the Facility's conditions, including any restrictions, and the hourly integrated net generation during such period. Lessor shall notify the dispatcher immediately if the status of the Facility changes during such period. Lessor shall make available through a remote terminal unit ("RTU") the actual load limit adjustment for the Facility.

7.02 Schedule of Operations. On the fifteenth (15th) day of each month, PREPA shall provide Lessor with an estimated daily schedule of operations for the following three (3) months. In addition, by Friday of each week PREPA shall provide Lessor with an estimated schedule of operations for the following five (5) weeks, and for each Day of the Lease Period, Lessor shall provide to PREPA a non-binding, hourly estimate of next Day and next week expected NEO and average Available Capacity, based on the previous Day NEO and Available Capacity and estimated strength of the [*solar irradiation or other resource*] for the next Day and week according to the meteorological forecast for the region and site. PREPA shall determine the actual schedule, which may depart in a material way from the schedule provided in accordance with this Sub-Clause 7.02 (*Schedule of Operations*), based on the requirements for operation in accordance with economic dispatch and Prudent Utility Practices. PREPA will immediately provide notice to Lessor at any time that the total level at

³ Note to bidders: Battery energy storage capacity will need to accommodate intermediate load shifting.

which 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 Lessor.

7.03 Start-up and Shut Down. PREPA shall use reasonable efforts to provide Lessor with advance notice of a request to either start-up or shutdown the Facility.

7.04 Ancillary Services. Lessor shall provide PREPA with each of the Ancillary Services set forth in Annex 5 (*Ancillary Services*), which PREPA will utilize to maintain the reliability of the Grid System in accordance with standards of the North American Electric Reliability Council as Puerto Rico adds variable generation into the Territory's generation mix, as contemplated by the Puerto Rico Energy Public Policy Act (SB 1121), enacted April 11, 2019.

8. OPERATION OF THE FACILITY

8.01 General. Lessor shall operate, maintain, repair, and procure / store an adequate inventory of consumables and spare parts (in an appropriate environment to maintain in new condition) for, the Facility in accordance with the Applicable Plans, Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, Applicable Law, Dispatch Instructions and the other provisions of this Agreement during the Lease Period (the "**O&M Services**"). Lessor shall operate the Facility as a dispatchable power generation facility (unless in islanded mode at PREPA's request or in an emergency), synchronized with the Grid System and any existing power generation units at the Site, connected with PREPA's AGC system with the [solar panel arrays] 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.

8.02 Scheduled Outages. Lessor shall submit to PREPA, as part of its satisfaction of the Conditions Precedent, its desired scheduled outage program (the "**Scheduled Outage Program**") for the Agreement Term. Lessor shall only schedule Scheduled Outages during periods approved by PREPA, and such approval shall not be unreasonably withheld. PREPA shall have the right, upon sixty (60) Days' prior written notice, to revise the period during which Lessor shall not schedule a Scheduled Outage. If Lessor proposes a Scheduled Outage during a time period in which PREPA has determined a shutdown should not occur, Lessor shall submit to PREPA, if consistent with Prudent Utility Practices, an alternate date reasonably acceptable to PREPA for the Scheduled Outage. Within thirty (30) days of the receipt of the proposed Scheduled Outage Program, PREPA shall notify Lessor in writing whether it can accept the requested Scheduled Outage periods. If PREPA cannot accept such periods, PREPA shall advise Lessor of the time period closest to the requested period when the outage can be scheduled. Lessor shall use all reasonable efforts to comply with the Scheduled Outage Program. In the event Lessor has reason to believe that the duration of the Scheduled Outage will exceed the planned duration of the Scheduled Outage, Lessor 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, Lessor will use all reasonable efforts to return the Facility to operation in the shortest possible time.

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

8.04 Personnel. Lessor shall employ qualified personnel who shall be responsible for monitoring the Facility and for coordinating its operations with the Grid System. As personnel changes occur, Lessor shall periodically provide PREPA with an updated list and qualifications of Lessor's personnel who will be responsible for supervising the operation and maintenance of Facility and for coordinating operations of the Facility with the Grid System. Lessor shall ensure that supervisory personnel identified in such list will be on duty at all times, twenty-four (24) hours a day and seven (7) days a week.

8.05 Emergencies. If PREPA declares an emergency, PREPA's dispatching centers will notify Lessor's personnel and, if requested by PREPA, Lessor'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 Lessor'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 Design Limits. Lessor shall cooperate with PREPA in establishing Applicable 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. Lessor shall make technical information and data available to PREPA concerning start-up times, black-start capabilities and minimum load-carrying ability. If a Scheduled Outage or a Non-Scheduled Outage occurs or will likely occur during an emergency, then Lessor 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.

8.06 Communications. Lessor shall provide the following communication facilities linking the Facility with PREPA's dispatching centers:

- a. one (1) RTU, including setup installation and configuration, which shall be specified by PREPA;
- b. dynamic system monitoring equipment approved by PREPA, for recording power disturbances caused by electro-mechanical swings and to measure the system response to the swing disturbance;
- c. two (2) independent telecommunication circuits, including one voice grade to link the SCADA system to the Facility's RTU using DNP protocol through a designated PREPA communication node, and a second fiber optic circuit to link PREPA's network to the Facility in order to access protection equipment, revenue meters and the dynamic system monitor through the [ruggedcom] security device as specified by PREPA;
- d. a voice telephone extension for the purpose of accessing PREPA's dial-up Electrical Metering Equipment and for communicating with PREPA's energy control center;
- e. ring down telephone line to [Monacillos] transmission center; and
- f. telecommunications radio compatible with PREPA's trunking radio system.

8.07 Records. 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 in accordance with the following guidelines:

- a. Each Party shall maintain their records for a minimum of five (5) years after the creation of such record or data and for any additional length of time required by Applicable Law; provided, however, that neither Party shall dispose of or destroy any records designated by the other Party following the completion of such five (5) year period without giving thirty (30) Days' prior written 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. Lessor 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; and (iv) the Available Capacity as determined consistent with Prudent Utility Practices and subject to verification by PREPA; and
- 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.

8.08 Certifications. At PREPA's request, Lessor 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 Facility during operation and testing.

9. INTERCONNECTION

9.01 General. PREPA agrees to allow Facility to interconnect to the Grid System at the Interconnection Point in accordance with the terms of this Agreement. Lessor shall own and be responsible for the safe and adequate operation and maintenance of all Lessor 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.

9.02 Connection Requirements. The Parties shall agree in writing on PREPA proposed relay settings and a voltage schedule prior to synchronization of the Facility, and PREPA reserves the right to modify or expand its requirements for protective devices, voltage, and other minimum technical requirements for the Facility and Lessor Interconnection Facilities in conformance with Prudent Electrical Practices. 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. Lessor agrees (i) to comply with any reasonable request made by PREPA to provide acceptable relay settings, and (ii) to ensure that control and protection scheme parameters such as Ramp Rates, higher frequency fluctuations, low voltage ride-through, voltage support and dynamic power factor shall comply in all material respects with PREPA's minimum technical requirements for such type of generation.

9.03 Synchronization. Lessor shall notify PREPA in writing of the proposed synchronization date and the start-up and testing schedule for the Facility not later than fourteen (14) Days prior to such proposed initial synchronization date. The Parties shall agree on the actual initial synchronization date, and PREPA shall have the right to have a representative present at each of the Facility on such date.

9.04 Testing. Prior to the initial synchronization of the Facility with the Grid System at the Interconnection Point, Lessor shall retain a contractor, approved in writing by PREPA (such approval not to be unreasonably withheld, delayed or conditioned after Lessor has submitted to PREPA information about the experience of the contractor) to perform the acceptance testing of the Facility and related Lessor Interconnection Facilities, which testing shall be performed pursuant to the Operating Procedures. Lessor shall provide to PREPA no less than seven (7) Days' written notice of such testing and PREPA shall have a representative witness and evaluate the testing. Upon connection and synchronization, the Parties shall conduct the initial Performance Tests in accordance with Clause 12 (*Performance Tests*). Following the successful completion of the initial Performance Tests for the Facility, Lessor shall notify PREPA in writing of the test results and the Tested Capacity for the Facility. PREPA shall have the right to perform a final walk through with applicable stakeholders to verify Completion of the Facility as per the requirements of this Agreement and finally determine whether the Facility and related facilities have been adequately designed, installed and tested and comply with PREPA's requirements. Following the successful completion of the initial Performance Tests for all of the Facility and Completion of all other Installation Works, Lessor shall notify PREPA of the Tested Capacity for the Facility and the Completion Date by issuing a Completion Certificate to PREPA.

9.05 Drawings. Lessor shall provide PREPA with as-built drawings (single-line diagram and protection scheme) of the Facility, including Lessor Interconnection Facilities, upon Completion and shall update such drawings upon any material modification.

10. METERING OF NET ELECTRICAL OUTPUT

10.01 General. Lessor shall (i) install, own and maintain all Electrical Metering Equipment and backup Electrical Metering Equipment for the Facility at Lessor's cost and expense, provided that such equipment shall be subject to PREPA's approval, and (ii) locate and seal all Electrical Metering Equipment at the Interconnection Point. PREPA shall have the exclusive right to break such seals for the purposes of inspection, testing and adjustment. PREPA shall give Lessor two (2) weeks' prior written notice thereof and Lessor 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.

10.02 Testing of Metering Equipment. During the Lease Period, PREPA shall have the right, upon two (2) weeks' prior written notice to Lessor, to 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 Lessor. 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.

10.03 Meter Reading. During the Lease 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 (each, a “**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 Lessor prior to the Effective Date. PREPA shall notify Lessor in advance of any change on the meter reading program. Lessor may be present, at its option, during all meter readings. PREPA shall provide Lessor 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 for the Facility to the P3A, the owner of the Grid System and the T&D Operator.

11. COMPENSATION, PAYMENT AND BILLINGS

For each Billing Period, PREPA shall pay the Monthly Lease Payment as follows:

- a. On or before the tenth (10th) Day following the end of each Billing Period, Lessor shall provide PREPA with proposed terms for the purposes of calculating the Monthly Lease Payment due to Lessor 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 Lessor’s issuance of a Monthly Invoice pursuant to paragraph (b) below.
- b. On or before the fifteenth (15th) Day following the end of each Billing Period, Lessor shall provide PREPA with a written invoice for the Monthly Lease Payment and for all other amounts or reimbursements due to Lessor hereunder (a “**Monthly Invoice**”). PREPA shall pay each Monthly Invoice it receives within sixty (60) Days after the end of the Billing Period. Interest shall accrue at the Prime Commercial Lending Rate, less 1.0%, on the outstanding payments due to Lessor commencing on the sixty-first (61st) Day after the Billing Period. Payment to PREPA shall be made by wire transfer to an account with a bank to be specified by PREPA in writing. Payment to Lessor shall be made by wire transfer to an account with a bank to be specified by Lessor 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 Lessor 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 Parties resolve the disputed amount in accordance with this Agreement.

Lessor acknowledges and agrees that the Monthly Lease Payment, represents the all-in payment for the performance of the Installation Works; leasing of the Facility; and provision of

the O&M Services, including making available Contract Capacity, Net Electrical Output and Ancillary Services from the Facility; as well as all other costs to Lessor of complying with this Agreement.

12. PERFORMANCE TESTS

12.01 General. Prior to the Completion Date, Lessor shall conduct performance tests on the Facility to establish Tested Capacity, Ramp Rate and [●] for the Facility (each, a “Performance Test”) at its own cost and expense. Each of the Parties shall have the right to require additional performance tests at any time before the expiration of the Lease Period. The Party requesting an additional Performance Test shall bear one hundred percent (100%) of the cost of such test.

12.02 Declaration. Upon completion of the Performance Test and an additional Performance Test in accordance with Annex 12 (*Performance Tests*) for the Facility, Lessor shall declare, and provide PREPA with notification of the Tested Capacity 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 Annex 12 (*Performance Tests*). In the event that the Parties dispute the results of any Performance Test for any reason, the Parties shall exercise their reasonable efforts to resolve such dispute amicably and, once resolved, declare the applicable Tested Capacity for the Facility in accordance with such resolution.

12.03 Adjustments to Contract Capacity. If a Performance Test establishes that the Tested Capacity of the Facility exceeds the Contract Capacity, then PREPA shall have the right to request an increase in the Contract Capacity to any level up to such Tested Capacity, which Lessor, in its sole discretion, shall have the right to accept or reject. If Lessor accepts such request, a duly-authorized representative of each Party shall jointly sign a certificate, confirming such increase, and the Contract Capacity shall increase as agreed by the Parties from the date indicated in such certificate. If the initial Performance Test establishes that the Tested Capacity of the Facility falls below the Contract Capacity, then Lessor shall pay PREPA \$ [●] for each kW of power generation capacity shortfall below the Contract Capacity, such shortfall capped at ten percent (10%) of the Contract Capacity, as a liquidated damage, and the Contract Capacity and Monthly Lease Payment under this Agreement shall automatically reduce pro rata, as of the date of such testing, to reflect the results thereof.

13. LIABILITY

13.01 Risk of Loss. Each Party shall have responsibility and bear the risk of loss of electrical energy and facilities located on its respective side of the Interconnection Point. Legal title to the net electrical output of the Facility shall vest with PREPA upon generation. Each Party shall be liable for all foreseeable damages suffered by the other Party as a necessary consequence of the first Party’s respective negligent performance, omission or failure to perform its respective obligations under this Agreement or as stated under Article 1060 of the Puerto Rico Civil Code, subject to the terms of Sub-Clause 13.02 (*Limitation of Liability*) below.

13.02 Limitation of Liability. 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 have no liability 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 non-performance 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 Clause 11 (*Compensation, Payment and Billings*) and under other provisions of this Agreement. Nothing in this Clause 13 (*Liability*) shall relieve either Party of its obligation to make payments that become, or have become, due pursuant to Clause 11 (*Compensation, Payment and Billings*).

14. INDEMNIFICATION

14.01 General. 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.

14.02 Notice of Claim. 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.

14.03 Environmental Claims. As of the Effective Date and for the Agreement Term, Lessor 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 Lessor or Lessor's agents or employees in the design, planning, installation or operation of the Facility or arising as a result of the presence at the Site of Potentially Hazardous Materials in excess of amounts and concentrations permitted by Applicable Law. In the event Lessor 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 Lessor from PREPA under this Agreement.

15. EVENTS OF FORCE MAJEURE

15.01 General. Neither Party 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 an act, event or circumstance, or combinations of events or circumstances, whether of the kind described in Sub-Clause 15.02 (*Specific Examples*) or otherwise, prevents, delays or interferes with the ability of a Party to perform such obligation, but only if and to the extent that:

- a. the Party affected by such event (the "**Affected Party**") could not have prevented, avoided or deferred such act, event or circumstance, despite the exercise of reasonable diligence;
- b. the Affected Party took, or has taken, all reasonable precautions, due care and reasonable alternative measures in order to (i) avoid the effect of such act,

event or circumstance on the Affected Party's ability to perform such obligation under this Agreement and (ii) mitigate the consequences thereof;

- c. such act, event or circumstance did not directly or indirectly arise out of the breach by the Affected Party of any of its obligations under this Agreement or the fault or negligence of the Affected Party; and
- d. the Affected Party has given the other Party ("**Non-Affected Party**") notice of the occurrence of such act, event and/or circumstance in accordance with Sub-Clause 15.05 (*Notices*);

(each such act, event or circumstance, an "**Event of Force Majeure**"). Upon the occurrence of an Event of Force Majeure, the Affected Party shall use reasonable efforts (acting as a Reasonable and Prudent Operator) to resume full performance of the obligations under this Agreement impacted by such event as soon as possible.

15.02 Specific Examples. Events of Force Majeure shall include, but not be limited to, each of the following events, provided that the Affected Party demonstrates that it has satisfied all of the requirements set out in Sub-Clause 15.01 (*General*) relating to such event:

- a. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of the Facility;
- b. acts of God, lightning, storm, typhoon, hurricane, tornado, earthquakes, fires, floods, tsunami, earthquake, landslide, soil erosion, subsidence, washout, epidemics and quarantine restrictions; shipwreck, navigational and maritime perils, acts of any Relevant 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; 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 performance of its obligations under this Agreement; radioactive contamination or ionizing radiation; or breakdown or unavailability of port facilities or port services (including the channel, tugs or pilots); and
- c. loss of, serious accidental damage to, inaccessibility or incapacity of, or inoperability of, the Grid System that prevents the normal dispatch of the Facility.

15.03 Excluded Events. Notwithstanding the foregoing provisions of Sub-Clause 15.01 (*General*), Events of Force Majeure shall not include any of the following:

- a. events arising out of market decline, market failure, industry economic conditions, or general economic conditions; and
- b. the failure to obtain or the withdrawal of any authorization, approval, permit or permission of any Relevant Authority, of which the Affected Party 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, or the subsequent lapse of, any authorization, approval, permit or permission of any Relevant Authority, required for a Party to satisfy the Conditions Precedent shall under no circumstances be considered an Event of Force Majeure.

15.04 Grid Force Majeure Event. 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 an Event of Force Majeure 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 on which 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 Operating Procedures; provided, that PREPA exercises reasonable efforts to complete such restoration as soon as reasonably practicable under the then-prevailing circumstances and limitations.

15.05 Notices. As soon as reasonably practicable after a Party becomes aware of an event that could qualify as an Event of Force Majeure and desires to seek relief under this Clause 15 (*Force Majeure*), such Party shall:

- a. notify the other Party of the occurrence of an event that it considers may subsequently lead it to claim relief from an Event of Force Majeure under this Agreement, describing such event, in as much detail as 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 that 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 program 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 impacted by such Event of Force Majeure, specifying the actions being taken to remedy the impact of such event and the date on which the impact of such event will likely terminate.

15.06 Other Matters.

- a. If any Party claims relief under this Clause 15 (*Force Majeure*), then such Party shall allow reasonable access to the other Party, upon such other Party's written request, to examine the scene of the event or circumstance that gave rise to the Event of Force Majeure claim, provided that the Party not claiming relief under this Clause 15 (*Force Majeure*) shall bear the cost, expense and risk of examining such site.
- b. 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, such event or circumstance shall qualify as an Event of Force Majeure as to Lessor or PREPA, as appropriate, if and to the extent that, if such event had directly impacted a Party, such event would have qualified as Force Majeure under this Clause 15 (*Force Majeure*).
- c. An Event of Force Majeure takes effect at the moment that such event occurs, not upon giving notice. The Affected Party shall have no obligation, during the

period in which the Event of Force Majeure event applies, to incur uneconomic costs or make additional investments in new facilities.

- d. To the extent that (i) an Event of Force Majeure prevents or delays the Affected Party's performance of its obligations under this Agreement for a period of sixty (60) consecutive Days or more from the date on which such event first occurred, and (ii) in the reasonable opinion of the other Party, the non-performance of such obligations has had, or can reasonably be expected to have, a material adverse effect on such other Party, such other Party shall have the right to terminate this Agreement without liability to either Party by giving written notice to the Affected Party.
- e. [For the avoidance of doubt, to the extent required following an Event of a Force Majeure, Lessor shall perform all repairs, restoration, replacement, and maintenance, at its sole cost, to return the Facility to full commercial operations.]

16. TERMINATION

16.01 Right of Termination. Upon the occurrence of any of the events applicable to a Party (the "**Defaulting Party**") set forth in paragraphs (a) - (k) below (each, a "**Termination Event**"), the other Party shall have the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving written notice of such termination to the Defaulting Party and such termination shall take effect on the date of such notice:

- a. Failure of Lessor to achieve Completion on or before the sixtieth (60th) Day following the Guaranteed Completion Date as extended under Sub-Clause 5.04 (*Time Extensions*);
- b. Declaration by Lessor of a Tested Capacity of less than ninety percent (90%) of the Contract Capacity under Sub-Clause 12.02 (*Declaration*);
- c. For Lessor only as the Defaulting Party, the Equivalent Availability Factor falls below ninety percent (90%) for any period of [three (3)] consecutive months during the Lease Period;
- d. Failure of a Party to pay in full the amount payable under any invoice issued in accordance with this Agreement by the date due where the other Party has (after such due date) given notice to the first Party requiring payment of such amount and the first Party fails to pay such amount in full within sixty (60) Business Days after its receipt of such notice;
- e. Except as otherwise covered by paragraphs (a)-(d) above, failure by a Party to perform or comply with any material obligation or representation contained in this Agreement where such failure (i) continues unremedied for a period of twenty (20) Business Days following receipt of written notice of such default from the other Party, and (ii) will have, or can be reasonably be expected to have, a material adverse effect in the reasonable opinion of such other Party;
- f. The occurrence of a prolonged Event of Force Majeure, contemplated by paragraph (d) of Sub-Clause 15.06 (*Other Matters*);
- g. In the case of Lessor only, the conviction of one or more of Lessor's or its contractors' employees or representatives of a crime described in Sub-Clause

25.02 (*No Convictions Under Act No. 8-2017*) or Sub-Clause 25.03 (*No Convictions Under Certain Other Acts*);

- h. Making of an incorrect, inaccurate or misleading statement by Lessor in any representation, warranty or certification made or issued by Lessor under this Agreement as contemplated by Sub-Clause 25.04 (*Right of Termination*);
- i. Lessor's failure to cure an actual conflict of interest, or the appearance of such a conflict, to PREPA's satisfaction;
- j. (i) Inability of a Party to pay, suspension by a Party of payment of, or agreement by a Party to a moratorium of (or threat by a Party of any of the foregoing) all or a substantial part of its debts, (ii) the general assignment or any composition or compromise by a Party with, or for the benefit of, its creditors except to the extent otherwise permitted by this Agreement, and (iii) initiation of proceedings by a Party with a view to a readjustment, rescheduling or deferral of all or a substantial part of such Party's indebtedness (other than in the case of a refinancing); and
- k. The making of any order, or presentation of any petition, for the winding-up, liquidation, dissolution, custodianship or administration (or any equivalent proceedings) of a Party, not withdrawn within a period of twenty-one (21) Days

provided, however, that paragraph (j) and (k) above shall not operate as a Termination Event with respect to PREPA prior to the occurrence of the Bankruptcy End Date, and provided further, that PREPA shall have the right to terminate this Agreement under paragraph (i) upon thirty (30) Days' prior written notice to Lessor.

16.02 Conflict of Interest. An actual or the appearance of a conflict of interest on the part of Lessor shall be a Termination Event, which give PREPA the right at any time after such occurrence, or during the continuation of such event, to terminate this Agreement by giving thirty (30) Days' written notice of such termination to Lessor.

16.03 Suspension of Performance. On and at any time after the occurrence of a Termination Event, the non-Defaulting Party shall have the right, while such Termination Event subsists, by giving five (5) Days' written notice of its intentions to the Defaulting Party, to suspend performance of its obligations under this Agreement. If the Defaulting Party remedies such Termination Event 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 by the non-Defaulting Party under Sub-Clause 16.01 (*Right of Termination*), the notice of suspension served under this Sub-Clause 16.03 (*Suspension of Performance*) shall be deemed to be revoked automatically.

16.04 Termination for Convenience. PREPA shall have the right to terminate this Agreement for convenience, without further liability to PREPA, by providing Lessor with a written notice of termination, to be effective upon receipt by Lessor. Upon termination for convenience, PREPA shall pay Lessor all unpaid amounts accrued under this Agreement prior to termination, but in no event shall Lessor have any right to receive any amount for unabsorbed overhead, contingency, risk, or anticipatory profit.

16.05 Non-Exclusive Remedies. The termination of this Agreement under Sub-Clause 16.01 (*Right of Termination*) for any reason shall constitute a non-exclusive remedy of the terminating Party, which shall not limit the terminating Party's right to pursue all other remedies accrued up to such termination, including in respect of any antecedent breach (whether or not a repudiatory breach) giving rise to such termination. 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.

17. SECURITY

17.01 General. As security for the proper performance of all of Lessor's obligations arising out of this Agreement, Lessor shall (i) deliver to PREPA an on-first-demand bank guarantee (the "**Security**") issued by a Qualified Bank in the form set forth in Annex 13 (*Form of Security*) no later than the Effective Date with a face amount equal to \$ [●] ([●] United States Dollars), together with a certificate duly signed by an authorized representative, confirming that the issuing bank satisfies the requirements of a Qualified Bank (each, a "**Qualified Bank Certificate**"), and (ii) maintain the Security in full force and effect until the expiration of the Agreement Term. PREPA shall have the right to draw on the Security in satisfaction or partial satisfaction of Lessor's obligation to make payment of monies due and payable under this Agreement where Lessor fails to make payment in full of monies due and payable under this Agreement within ten (10) Business Days of the date on which such payment became due and payable. If PREPA draws on the Security for any amount due and owing in accordance with this Agreement prior to the expiration of the Lease Period, then Lessor shall immediately (and in any case within ten (10) Business Days) restore such Security to, or deliver a replacement security (together with a Qualified Bank Certificate) to Lessor with, the full face amount determined in accordance with this Sub-Clause 17.01 (*General*).

17.02 Security Requirements. The following requirements shall apply to the issuance, establishment and maintenance of the Security provided under this Agreement:

- a. Not less than twenty (20) Business Days prior to the stated expiration date of any Security, Lessor shall deliver to PREPA a replacement Security effective on the date of delivery together with a Qualified Bank Certificate; and
- b. In the event that the issuer (or confirming bank) of the Security ceases to meet the qualifications of a Qualified Bank, Lessor shall within twenty (20) Business Days thereof, for any Security, deliver to PREPA a replacement Security (and, if applicable, a confirmation thereof) or replacement confirmation of such Security (as the case may be) together with a Qualified Bank Certificate.

In the event that Lessor does not deliver a replacement of any then-effective Security, or replacement confirmation of the then-effective Security, as required by paragraphs (a) or (b) of this Sub-Clause 17.02, PREPA shall have the right, in its sole discretion, to draw on the then-effective Security for the full amount thereof. PREPA shall (i) have the right to retain all such amounts until the date (the "**Compliance Date**") on which Lessor delivers, or makes available, such replacement Security, (ii) unless PREPA's right to otherwise draw on such Security arises (in which event PREPA may apply the sums drawn as if drawn as a result of such right), hold such amounts in trust for the benefit of Lessor until the Compliance Date, and (iii) remit the amount drawn (without interest or penalty and less any amounts deducted as a result of PREPA's right to draw) into a bank account designated by Lessor within fifteen (15) Business Days of the Compliance Date.

17.03 Return of Security. Following (i) payment of any and all amounts owed to PREPA, (ii) resolution of any pending issues arising under this Agreement, and (iii) expiration of the Agreement Term, Lessor shall be entitled to terminate and have returned to it the then outstanding Security.

18. TAXES AND ENVIRONMENTAL COSTS

Lessor shall be responsible for all income taxes, repatriation (tollgate) taxes, Taxes and Environmental Costs. Lessor 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 Lessor 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 Lessor or any material interference with the use thereof by Lessor and (b) Lessor shall set aside on its books reserves deemed by it to be adequate with respect thereto.

19. INSURANCE

19.01 General. Lessor shall obtain and maintain in full force and effect during the Agreement Term and thereafter as provided herein, policies of insurance covering all operations engaged in by this Agreement, which shall be formally agreed with insurance companies authorized to do business in Puerto Rico, and to that effect it shall provide in original certificates of insurance and endorsements, as follows:

- a. Workmen's Compensation Insurance: Lessor shall provide and maintain Workmen's Compensation Insurance as required by the Workmen's Compensation Act of the Commonwealth of Puerto Rico. Lessor shall also be responsible for the compliance with said Workmen's Compensation Act by all its subcontractors, agents and invitees. Lessor shall furnish PREPA with a certificate from the State Insurance Fund showing that all personnel employed in the works under this Agreement are covered;
- b. Employer's Liability Insurance: Lessor shall provide and maintain Employer's Liability Insurance with minimum bodily injury limits of at least \$1,000,000 for each employee and \$1,000,000 for each accident covering against the liability imposed by law upon Lessor as a result of bodily injury, by accident or disease, including death arising out of and in the course of his/her employment outside of and distinct from any claim for Workmen's Compensation Act of the Commonwealth of Puerto Rico;
- c. Commercial General Liability: Lessor shall provide and maintain a Commercial General Liability Insurance with minimum limits of at least \$10,000,000 per occurrence and \$10,000,000 aggregate. Such insurance shall include specific coverage for contractual liability, "XCU" explosion, collapse and undergrounds damages coverage, products and completed operations liability;
- d. Automobile Liability Insurance: Lessor shall provide and maintain Automobile Liability Insurance with bodily injury and property damage combine single limits of at least \$1,000,000 per accident covering all owned or schedule autos, non-owned or hired autos;
- e. Professional Liability Insurance: Lessor shall provide and maintain a Professional Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;

- f. Pollution Liability Insurance: Lessor shall provide and maintain a Pollution Liability Insurance with minimum limits of at least \$1,000,000 per claim and \$1,000,000 aggregate;
- g. All Risk Physical Damage Property Insurance: Lessor shall maintain an All Risk Physical Damages Property Insurance, including machinery coverage, to cover all real and personal property of the proponent (including earthquake and hurricanes occurrence) to one hundred percent (100%) of replacement cost. This policy shall include a Business Interruption and Contingent Business Interruption coverage. The insurance shall cover work at the site and shall also cover portions of the work located away from the site and portions of the work in transit. The policy shall include as insured property scaffolding, false work and temporary buildings located at the Site;
- h. Equipment Breakdown Policy (Boiler & Machinery): Lessor shall maintain an Equipment Breakdown Policy to cover all equipment and machinery property of the Proponent. PREPA shall be named Additional Insured under this policy; and
- i. Builder's All Risk Insurance: Lessor shall provide and maintain a Builder's All Risk Insurance shall cover the full replacement cost of all work and all equipment used in the course of installation, testing and commissioning at the Site, and all equipment and materials delivered and stored at the Site which are to be used in the work or incorporated into de Facility. PREPA shall be named Additional Insured under this policy.

19.02 Requirements under the Policies. The Commercial General Liability Insurance and Automobile Liability Insurance required under this agreement shall be endorsed to include:

- a. As Additional Insured:

Puerto Rico Electric Power Authority Risk Management Office
PO Box 364267
San Juan, PR 00936-4267
- b. A 30 days' cancellation or nonrenewable notice to be sent by certified mail with return receipt to the above address.
- c. An endorsement including this Agreement under contractual liability coverage and identifying it by number, date and the Parties.
- d. Waiver of subrogation in favor of PREPA.
- e. The breach of any of the warranties or conditions in these policies by the Insured shall not prejudice PREPA'S rights under this policy.

19.03 Structure of Coverage. The amounts of insurance required in Sub-Clause 19.01 (*General*) above may be satisfied by Lessor 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 Lessor's option, so long as the total amount of insurance meets PREPA's requirements set forth in Sub-Clause 19.01 (*General*).

19.04 Comprehensive or Commercial General Liability Insurance. The coverages requested in paragraph (b) of Sub-Clause 19.01 (*General*) and any required umbrella or

excess coverage may be “occurrence” form policies if available on commercially reasonable terms. In the event Lessor has “claims-made” form coverage, Lessor shall notify PREPA and the retroactive date established on the first “claims-made” policy shall be maintained on all subsequent renewals.

19.05 Endorsements. Lessor shall cause its insurers to (i) amend its Comprehensive or Commercial General Liability, Equipment Breakdown Policy, and if applicable, Excess Umbrella Liability policies with the following endorsement items (a) through (e) with respect to the Facility; and (ii) amend its Lessor’s Worker’s Compensation and Automobile Liability policies with endorsement item (e):

- a. the Risk Management Office of PREPA and its respective board of directors, directors, officers and employees are additional insureds under this policy to the extent of Lessor’s indemnity obligations set forth elsewhere in this Agreement;
- b. this insurance is primary, but only for liability arising out of the operation of the Facility or other matters arising in relation to this Agreement; with respect to the interest of PREPA and its 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 its 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.

19.06 Breach of Warranty. Regarding breach of insurance warranties by Lessor, all insurance policies under paragraphs (b), (c) and (d) of Sub-Clause 19.01 (*General*) 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 Lessor shall not prejudice PREPA’s right under this policy.” If Lessor does not obtain the aforementioned endorsement, then Lessor shall pay to PREPA the premium required to obtain said policies to cover and insure itself directly.

19.07 Certificates of Insurance. Lessor 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 paragraph (f) of Sub-Clause 19.01 (*General*), 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 Facility. Failure of PREPA to

obtain certificates of insurance does not relieve Lessor of the insurance requirements set forth herein. Failure to obtain the insurance coverage required by this Clause 19 (*Insurance*) shall in no way relieve or limit Lessor's obligations and liabilities under other provisions of this Agreement.

20. REPRESENTATIONS, WARRANTIES & LIABILITIES

20.01 Representations by Lessor. Lessor hereby represents and warrants to PREPA that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. Lessor is a [*entity type*] 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;
- b. Lessor 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. Lessor's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of Lessor and Lessor does not (i) require any consent or approval of any Relevant Authority, Lessor'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 Lessor's ability to perform its obligations hereunder, (ii) violate any provision of Lessor'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 Lessor'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; and
- d. this Agreement is a legal, valid, and binding obligation of Lessor and enforceable against Lessor, in accordance with its terms.

20.02 Representations by PREPA. PREPA hereby represents and warrants to Lessor that, as of the Effective Date, to the actual knowledge of its officers and directors:

- a. PREPA 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;
- b. PREPA 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. PREPA's execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on the part of PREPA and PREPA does not (i) require any consent or approval of any Relevant Authority, PREPA'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 PREPA's ability to perform its obligations hereunder, (ii) violate any provision of PREPA'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 PREPA'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; and

- d. this Agreement is a legal, valid, and binding obligation of PREPA enforceable against PREPA, in accordance with its terms.

21. ASSIGNMENT

21.01 Assignment. 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 or delayed; provided that, for any assignment of this Agreement by Lessor to a Third Party as PREPA may approve, such Third Party successor shall (i) have the same responsibilities and benefits as Lessor, and (ii) comply with the requirements for pre-qualified bidders participating in the RFP process. Any permitted change in Lessor party shall not be considered a novation of any type whatsoever to demand changes or the extinction of the clauses of the Agreement.

21.02 Assignment to Project Lender. PREPA acknowledges that as a result of an assignment of Lessor's rights and interests (but not its obligations) under this Agreement to a lender of Lessor (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 Lessor to assume or cause a nominee to assume all of the rights and obligations of Lessor under this Agreement and (b) the Project Lender(s) will have the right to cure defaults by Lessor under this Agreement on the same terms and during the same periods available to Lessor.

21.03 Transfer. 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 Lessor's consent without cost, expense or incremental liability to PREPA, to a T&D Operator.

22. NOTICES

Each Party providing notice under this Agreement to the other Party shall deliver such notice in writing to the attention of the person indicated in this Clause 22 (*Notices*) via either (i) physical mail to the address specified below, or (ii) the e-mail address specified below, in which case, the Party delivering notification by email shall also forward such notice by a physical mail and, unless otherwise agreed, in either English or Spanish.

LESSOR: [•]

Attention: [•]

Telephone: [•]

Email: [•]

With copy to: [•]

Telephone: [•]

Email: [•]

PREPA: Puerto Rico Electric Power Authority
Apartado 363928
San Juan, Puerto Rico 00936-3928

Attention: Attn: [•]

Telephone: [•]

Facsimile: [•]

Email: [[•]@prepa.com]

With Copies to: Attn:

Telephone: [•]

Facsimile: [•]

Email: [[•]@prepa.com]

Either Party may change its address details by giving not less than five (5) Days' written notice to the other Party.

23. CHOICE OF LAW AND DISPUTE RESOLUTION

23.01 Choice of Law. 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.

23.02 Dispute Resolution. In the event of any dispute, controversy, or claim of any kind whatsoever arising out of, or in connection with, this Agreement, including any question regarding its existence, validity, interpretation, performance or termination (a "**Dispute**"), the Parties shall in the first instance attempt diligently and in good faith, for a period of thirty (30) Days after the receipt by a Party of a written notice from the other Party of a Dispute, to settle the Dispute by non-binding informal proceedings. During such proceedings: each Party shall (i) present allegations relating to such Dispute, and (ii) otherwise meet with the other Party and its executive director or his or her delegates, and the equivalent officer(s) to discuss their discrepancies. To the extent cannot resolve a Dispute amicably within such period of thirty (30) Days, either Party shall have the right to resolve such Dispute by initiating an action in a Court of Competent Jurisdiction against the other Party.

24. COMPLIANCE WITH THE COMMONWEALTH OF PUERTO RICO CONTRACTING REQUIREMENTS

24.01 General. The Parties will comply with all Applicable Laws that regulate the contracting process and other requirements of the Commonwealth of Puerto Rico.

24.02 Compliance Requirements. Lessor shall provide, before the Effective Date, or as otherwise required below, the following documents and certifications:

- a. Filing of Puerto Rico Income Tax Returns. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA an Income Tax Return Filing Certificate, issued by the Treasury Department of Puerto Rico assuring that Lessor has filed his Income Tax Return for the last five (5) tax years (Form SC 6088).
- b. Payment of Puerto Rico Income Taxes. In compliance with Executive Order Number OE-1991-24 of June 18, 1991, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor will deliver to PREPA a certification issued by the Treasury Department of Puerto Rico indicating that Lessor (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. Compliance with Requirements of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico. Pursuant to Executive Order Number 1992-52, dated August 28, 1992 amending OE-1991-24, Lessor shall, before the Effective Date and whenever requested by PREPA 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, Lessor shall deliver to PREPA:
 - 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 Lessor 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 Lessor has no debt with respect to such program.
- d. Real and Personal Property Taxes. Lessor shall, before the Effective Date and whenever requested by PREPA 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*). Lessor 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, Lessor shall deliver to PREPA:
 - i. (A) a certification issued by the Municipal Revenues Collection Center ("MRCC"), assuring that Lessor 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 Lessor indicating that (1) during the last 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; and

- ii. (A) an All Concepts Debt Certification issued by the MRCC assuring that Lessor 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. Sales and Use Taxes. Lessor shall deliver to PREPA:
 - i. A certification issued by the Puerto Rico Treasury Department indicating that either Lessor (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 Lessor's Certificate of Merchant's Registration issued by the Treasury Department of Puerto Rico.
- f. Puerto Rico Child Support Administration (ASUME). Lessor 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.

24.03 Compliance with Act No. 1 of Governmental Ethics. In compliance with Act No. 1 of January 3, 2012, as amended, known as the Ethics Act of the Government of Puerto Rico, Lessor certifies and warrants that no employee or executive of PREPA 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.).

24.04 Organization Documents. Lessor represents that it has delivered (a) a Good Standing Certificate issued by the Department of State of Puerto Rico; and (b) a Certificate of Incorporation, or Certificate of Organization or Certificate of Authorization to do business in Puerto Rico issued by the Department of State of Puerto Rico.

24.05 Law 168-2000 Certification. Lessor certifies and warrants that with respect to any judicial or administrative order that exists demanding payment or any economic support regarding Act No. 168-2000, as amended, the same is current and in all aspects in compliance. Act No. 168-2000 "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.

24.06 Law Num. 127, Contract Registration. Payment by PREPA under this Agreement will not be made until Lessor has properly registered this Agreement with the Office of the Comptroller of the Government of Puerto Rico pursuant to Law Number 18 of October 30, 1975, as amended.

24.07 Prohibition on Nepotism. 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.08 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.09 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 of Puerto Rico gives express authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.10 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.11 Execution by Public Officers of 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. Lessor certifies and warrants that the execution of this Agreement will not violate the foregoing provision.

24.12 Dispensation. Lessor certifies and warrants that any and all necessary dispensations required by this Agreement have been obtained from the Relevant Authority and acknowledges that said dispensations shall become part of the contracting record.

24.13 Rules of Professional Ethics. Lessor acknowledges and accepts that it understands the rules of ethics of his or her profession and assumes responsibility for his or her own actions.

24.14 Code of Ethics for Contractors. The provisions of Act No. 84 of June 8, 2002, "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies of the Commonwealth of Puerto Rico," to Act No 458 of December 29, 2000, as amended shall apply to Lessor during the performance of this Agreement.

24.15 PR Act No. 57-2014. During the performance of its obligations arising out of this Agreement, Lessor shall comply with the provisions of Act No. 57-2014 applicable to Electric Power Companies and Electric Power Generation Companies.

25. ANTI-CORRUPTION CODE FOR A NEW PUERTO RICO

25.01 Compliance with Act 2-2018. Lessor 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. Lessor hereby certifies that it does not represent particular interests in cases or matters that imply a conflict of interest, or of public policy, between the executive agency and the particular interests it represents.

25.02 No Convictions Under Act No. 8-2017. Lessor shall furnish a sworn statement to the effect that no contractor 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.

25.03 No Convictions Under Certain Other Acts. Lessor 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.

25.04 Right of Termination. PREPA shall have the right to terminate the Agreement in the event Lessor 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.

26. CONSEQUENCES OF NON-COMPLIANCE

26.01 Essential Requirements. Lessor expressly agrees that the conditions outlined throughout Clauses 24 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*) and 25 (*Anti-Corruption Code for a New Puerto Rico*) are essential requirements of this Agreement. If any of the certifications listed in Sub-Clause 24.02 (*Compliance Requirements*) shows a debt, and Lessor has requested a review or adjustment of this debt, Lessor 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, Lessor will provide, immediately, to PREPA a proof of payment of this debt. Otherwise, Lessor accepts that the owed amount be offset by PREPA and be retained at the origin and deducted from the corresponding payments to be forwarded to the corresponding Relevant Authority. 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 PREPA to terminate this Agreement or render this Agreement null and void, and Lessor shall reimburse PREPA for all moneys received under this Agreement. Lessor understands and agrees that PREPA is prohibited from processing any payment under this Agreement until the enumerated certifications and sworn statements are submitted to PREPA.

26.02 Subcontractors' Compliance. Lessor accepts and acknowledges its responsibility for, when requested by PREPA, requiring and obtaining a similar warranty and certification from each and every contractor and subcontractor whose service Lessor 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. Lessor shall require all subcontracted third parties to comply with all the previous certifications and agrees to notify PREPA of such compliance within ten (10) Business Days of subcontracting such third party.

27. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

27.01 Compliance with the Contract Work Hours and Safety Standards Act.

- a. Overtime requirements. Lessor shall not, and subcontractor contracting for any part of this Agreement which may require or involve the employment of laborers or mechanics shall not, require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), Lessor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Lessor and such subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- c. Withholding for unpaid wages and liquidated damages. The Government of Puerto Rico shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Lessor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or such Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).
- d. Subcontracts. Lessor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through

(d) of this Sub-Clause 27.01 (*Compliance with the Contract Work Hours and Safety Standards Act*).

27.02 Byrd Anti-Lobbying Amendment. Lessor certifies, represents and warrants that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, with such certification being provided substantially in the form set forth in Annex 14 (*Certification Regarding Lobbying for Contracts, Grants, Loan, and Cooperative Agreements*) and Annex 15 (*Form of Certification Regarding Debarment, Suspension and Other Responsibility Matters*). Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient (the Government of Puerto Rico).

27.03 Breach of Agreement Terms. Any violation or breach of terms of this Agreement on the part of Lessor or a subcontractor may result in the suspension or termination of this Agreement for default or such other action, including the recovery of damages, as may be necessary to enforce the rights of PREPA. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

27.04 Clean Air Act and the Federal Water Pollution Control Act. Lessor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Lessor agrees to report each violation to PREPA and understands and agrees that PREPA shall, in turn, report each violation as required to ensure notification to the Government of Puerto Rico, FEMA, HUD and the EPA Regional Office. Lessor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

27.05 Sufficiency of Funds. Lessor recognizes and agrees that PREPA will derive all or a portion of the funding for this Agreement from assistance awarded to PREPA by Federal agencies of the United States of America or local agencies of the Government of Puerto Rico. As part of its obligations under this Agreement, Lessor shall ensure that the work performed by it under this Agreement and the Facility made available to PREPA by way of a lease remains eligible for funding by complying with all applicable Federal law, regulations, executive orders, Federal agency policy, procedures, directives and guidelines. If during the Agreement Term, such Federal or local agencies reduce, de-obligate or withdraw such funds, then PREPA may reduce the scope of, or terminate, the Agreement, without penalty, by providing written notice to Lessor of the changes in scope or termination. PREPA shall have no obligation to remit any Monthly Lease Payment and have no liability for any work performed by Lessor under this Agreement to the extent that a Federal or local agency declares any part of such work or lease ineligible for funding during the Agreement Term. Lessor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from this Agreement.

27.06 Costs. All costs incurred by Lessor in performance of this Agreement must be in accord with the cost principles of 2 C.F.R. pt. 200, Subpart E. PREPA shall not be required to make payments to Lessor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E.

27.07 Financial Management System. Lessor's financial management system shall provide for the following:

- a. accurate, current and complete disclosure of the financial results of this Agreement and any other contract, grant, program or other activity administered by Lessor;
- b. records adequately identifying the source and application of all Lessor funds and all funds administered by Lessor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income, and shall be segregated by contract or on a contract-by-contract basis;
- c. effective internal control structure over all funds, property and other assets, sufficient to allow Lessor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
- d. comparison of actual outlays with budgeted amounts for Lessor and for any other contract, grant, program or other activity administered by Lessor;
- e. accounting records supported by source documentation;
- f. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by Lessor; and
- g. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Agreement.

27.08 Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Agreement, including any portion of any Monthly Lease Payment, or if any penalty is imposed due to an act or omission by Lessor, Lessor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse PREPA in full within ten (10) days of receiving notice from PREPA of such penalty, disallowance, or repayment demand. Any monies paid by Lessor pursuant to this provision shall not relieve Lessor of liability to PREPA for damages sustained by PREPA by virtue of any other provision of this Agreement.

27.09 Debarment, Suspension, and Ineligibility.

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. Lessor certifies it will comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by PREPA. If it is later determined that Lessor did not comply with 2 C.F.R. pt. 180, subpart C, and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of Puerto Rico and PREPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

27.10 Reporting Requirements. Lessor shall complete and submit all reports, expressly identified in this Agreement as well as all other reports that PREPA may request relating to this Agreement in such form and according to such schedule, as PREPA may require.

27.11 Review of Laws. Lessor certifies and warrants that it will access online and read each law that is cited in this Agreement and that, in the event it cannot access the online version, it shall notify PREPA in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to PREPA shall be evidence that Lessor was able to find it online and read it as required.

27.12 Notice of FEMA Reporting Requirements and Regulations.

- a. Lessor acknowledges and agrees that PREPA is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or PREPA to pay for the costs incurred under this Agreement. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and PREPA to provide various financial and performance reporting. Lessor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Lessor acknowledges and agrees that failure by Lessor to maintain and provide information necessary to satisfy these reporting requirements, or to carry out all work in accordance with Applicable Law, may result in the loss of Federal funding for this Agreement, and such failure shall constitute a material breach and default under this Agreement, entitling PREPA to a reduction in the amounts owed to Lessor in respect of work performed to compensate for such loss of Federal funding as well as any other rights and remedies under this Agreement, at law or in equity.
- b. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 1. 2 C.F.R. § 327 (Financial Reporting);
 2. 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance); and
 3. performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

27.13 Access to Records.

- a. Lessor agrees to provide PREPA, the Government of Puerto Rico, the FEMA and HUD Administrators, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Lessor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. Lessor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. Lessor agrees to provide the FEMA and HUD Administrators or their authorized representatives access to the work sites pertaining to the work being completed under the contract.
- d. In compliance with the Disaster Recovery Reform Act of 2018, PREPA and Lessor acknowledge and agree that no language in this Agreement is intended

to prohibit audits or internal reviews by the FEMA or HUD Administrators or the Comptroller General of the United States.

27.14 Retention Requirements for Records.

- a. Lessor agrees to maintain all books, records, accounts and reports and all other records produced or collected in connection with this Agreement for a period of not less than five (5) years after the date of final payment and closed-out of all pending matters related to this Agreement. If any litigation, claim, or audit is reasonably anticipated to arise or is started before the expiration of the five (5) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
 1. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 2. When PREPA is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 3. Records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.
 4. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the three (3) year retention requirement is not applicable to the non-Federal entity.
 5. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 6. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 7. If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis

for negotiation of the rate, then the three (3) year retention period for its supporting records starts from the date of such submission.

8. If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the three (3) year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

27.15 Program Fraud and False or Fraudulent Statements or Related Acts. Lessor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Lessor's actions pertaining to this Agreement.

27.16 Procurement of Recovered Materials. In the performance of this Agreement, Lessor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Lessor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

27.17 Equal Opportunity. During the performance of this Agreement, Lessor agrees as follows:

- a. Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Lessor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Lessor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- b. Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of Lessor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Lessor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an

investigation conducted by the employer, or is consistent with Lessor's legal duty to furnish information.

- d. Lessor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Lessor's commitments under Section 202 of the US Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Lessor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Lessor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of Lessor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Lessor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by Applicable Law.
- h. Lessor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Lessor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Lessor may request the United States to enter into such litigation to protect the interests of the United States.

- i. The applicant further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. The applicant agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such

information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

27.18 Energy Efficiency. Lessor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

27.19 Age Discrimination Act of 1975. Lessor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

27.20 Americans with Disabilities Act. Lessor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the Agreement Term.

27.21 Title VI of the Civil Rights Act of 1964. Lessor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

27.22 Section 504 of the Rehabilitation Act of 1973. Lessor agrees that no otherwise qualified individual with disabilities shall, solely by reason of its disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

27.23 Drug-Free Workplace. Lessor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.), and implementing regulations at 2 C.F.R. Part 3001.

27.24 Compliance with Laws, Regulations and Executive Orders. Lessor acknowledges that FEMA and HUD financial assistance will be used to fund this Agreement. Lessor shall comply with all Applicable Law, regulations, executive orders, agency policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA and HUD regulations in 44 C.F.R. Chapter I and 2 C.F.R. Part 200.

27.25 Provisions Required by Law Deemed Inserted. Each and every provision required by Applicable Law, regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

27.26 Agreement to Execute Other Required Documents. Lessor and all subcontractors, by entering into the Agreement, understand and agree that funding for the work is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth herein, Lessor agrees to execute such amendments or further agreements as may be necessary to ensure that PREPA receives Federal funding for this Agreement.

27.27 U.S. Department of Homeland Security Seal, Logo, and Flags. Lessor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

27.28 No Obligation by the Federal Government. PREPA and Lessor acknowledge and agree that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to PREPA, Lessor, or any other party pertaining to any matter resulting from the Agreement.

27.29 Section 3 of the Housing and Urban Development Act of 1968. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. Lessor agrees to send to each labor organization or representative of workers with which Lessor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Lessor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the Site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. Lessor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or

in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. Lessor shall not subcontract with any subcontractor where Lessor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

- e. Lessor shall certify and warrant that any vacant employment positions, including training positions, that are filled (1) after Lessor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Lessor's obligations under 24 C.F.R. part 135.
- f. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

27.30 Compliance with the Davis-Bacon Act.

- a. Lessor shall comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, including the requirement to furnish a completed Form WH-347 to PREPA [with each invoice], and the requirements of 29 C.F.R. § 5.5 as may be applicable, which are incorporated by reference into this Agreement.
- b. Lessor or subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

27.31 Compliance with the Copeland Anti-Kickback Act.

- a. Lessor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, as may be applicable, all of which are incorporated by reference into this Agreement.
- b. Lessor and any subcontractor shall insert in any subcontracts the foregoing clause and such other clauses as FEMA and HUD may by appropriate instructions require. Lessor shall require all subcontractors to include these clauses in any lower tier subcontracts. Lessor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.

- c. A breach of the clauses above shall constitute a default, creating grounds for termination of the Agreement, and for debarment of Lessor and subcontractor, as provided in 29 C.F.R. § 5.12.

27.32 Buy American—Construction Materials Under Trade Agreements.

A. Definitions. As used in this Clause—

1. **Caribbean Basin country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Caribbean Basin country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
2. **Commercially available off-the-shelf (COTS) item** means any item of supply (including construction material) that is:
 - a. a commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - b. sold in substantial quantities in the commercial marketplace; and
 - c. offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - d. does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
3. **Component** means an article, material, or supply incorporated directly into a construction material.
4. **Construction material** means an article, material, or supply brought to the Site by Lessor or subcontractor for incorporation into the Facility. The term also includes an item brought to any of the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
5. **Cost of components** means:
 - a. for components purchased by Lessor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to

- a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- b. for components manufactured by Lessor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
6. **Designated country** means any of the following countries:
- a. a World Trade Organization Government Procurement Agreement (WTO GPA) country (as of the execution date of this Agreement), Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
- b. a Free Trade Agreement (FTA) country (as of the Agreement Date, Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
- c. a least developed country (as of the Agreement Date, Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- d. a Caribbean Basin country (as of the Agreement Date, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).
7. **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
8. **Domestic construction material** means:

- a. an unmanufactured construction material mined or produced in the United States;
 - b. a construction material manufactured in the United States, if:
 - i. the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - ii. the construction material is a COTS item.
- 9. **Foreign construction material** means a construction material other than a domestic construction material.
- 10. **Free Trade Agreement country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
- 11. **Least developed country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a least developed country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
- 12. **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
- 13. **WTO GPA country construction material** means a construction material that:
 - a. is wholly the growth, product, or manufacture of a WTO GPA country; or
 - b. in the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

B. Construction materials.

1. This Clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
2. Lessor shall use only domestic or designated country construction material in performing this Agreement, except as provided in paragraphs (B)(3) and (B)(4) of this Clause.
3. The requirement in paragraph (B)(2) of this Clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer is to list applicable excepted materials or indicate "none"]
4. The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Clause if the Government determines that:
 - a. the cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - b. the application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - c. the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

1. Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:
 - a. a description of the foreign and domestic construction materials;
 - b. unit of measure;
 - c. quantity;
 - d. price;
 - e. time of delivery or availability;

- f. location of the Work;
- g. name and address of the proposed supplier; and
- h. a detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Clause.
 - i. A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - ii. The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - iii. Any Lessor request for a determination submitted after contract award shall explain why Lessor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If Lessor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- i. If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and Lessor negotiate adequate consideration, the Contracting Officer shall modify the Agreement to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Clause.
- j. Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, Lessor shall include the following information and any applicable supporting data based on the survey of suppliers:

1. Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			

Domestic construction material			
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2. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
3. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
4. Include other applicable supporting information.
5. Notes:
 - a. List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
 - b. If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

E. Restrictions on Certain Foreign Purchases

1. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
2. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.
3. The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

27.33 Inconsistency Between English Version and Translation of Contract. In the event of inconsistency between any terms of this Agreement and any translation into another language, the English language meaning shall control.

28. MISCELLANEOUS PROVISIONS

28.01 Demobilization and Final Report. No later than [sixty (60) Days] after the termination or expiration of this Agreement, Lessor shall demobilize and remove (at its sole cost, risk and expense) all materials, equipment, supplies, controls, and instruments forming part of the Facility, as well as all personnel, including arranging timely transportation via barge or airplane for the same, and restore the Site to its same condition as of the Effective Date, in

accordance with the Technical Scope, the Operating Procedures, Prudent Utility Practices and Prudent Electrical Practices, the requirements of Applicable Law and the other provisions of this Agreement, and (ii) provide a final report, including executive summary, chronology and descriptions for work completed.

28.02 Amendments. The Parties may only amend this Agreement by mutual agreement in writing, provided that (i) the Parties shall not amend this Agreement in any manner that would render the costs incurred in the performance of this Agreement unallowable or not allocable under, or outside the scope or not reasonable for the completion of, federal grant awards from FEMA, HUD or any other U.S. federal agency, and (ii) no amendment shall enter into full force and effect without the approval of PREB.

28.03 Non-Waiver. 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.

28.04 Third Party Rights. 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.

28.05 No benefits. No officer, employee, or agent of Lessor 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.

28.06 Relationship. 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.

28.07 Relief from Obligations. 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 warranties, remedies, promises of indemnity, confidentiality and Lessor's obligations under Sub-Clause 28.01 (*Demobilization and Final Report*).

28.08 Reasonableness. 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.

28.09 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Lessor and PREPA and their respective successors and assigns.

28.10 Waiver. 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.

28.11 Entire Agreement. 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 lease and operation of the Facility, the delivery of the Net Electrical Output, and the making available of the Contract Capacity hereunder and other matters set out herein with respect to the Facility. All prior written or oral understandings, offers or other communications of every kind pertaining to the lease and operation of the Facility hereunder to PREPA by Lessor are hereby superseded.

28.12 Severability. 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.

28.13 Costs. Each party shall be responsible for its own costs and expenses related to the preparation, negotiation and execution of this Agreement.

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

ATTEST:

[•]

By: _____
Title: [•]

By: _____
Title: [•]

ATTEST:

PUERTO RICO ELECTRIC POWER
AUTHORITY

By: _____
Title: [•]

Title: [•]

ANNEX 1

CONDITIONS PRECEDENT

PART 1 - LESSOR CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), Lessor shall deliver to Buyer:

- a. each of the following in form and substance acceptable to PREPA, and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed:
 - i. the Scheduled Outage Program; and
 - ii. the Applicable Plans referred to in the RfP;
- b. the Security;
- c. insurance certificates or cover notes evidencing the insurance coverages required pursuant to Clause 19 (*Insurance*), which insurance certificates and cover notes shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- d. all Relevant Consents required for Lessor on or prior to the Effective Date, in accordance with Annex 8 (*Relevant Consents*), which Relevant Consents shall be acceptable in form and substance to PREPA and shall be in full force and effect and PREPA having approved thereof in writing, such approval not to be unreasonably withheld or delayed;
- e. a legal opinion of Lessor's Puerto Rico legal adviser, confirming the due execution by, and enforceability of this Agreement against Lessor, in a form reasonably acceptable to PREPA;
- f. all of the certifications, sworn statement and documents required by, and otherwise satisfied the requirements of, Clause 24 (*Compliance with the Commonwealth of Puerto Rico Contracting Requirements*), Clause 25 (*Anti-Corruption Code for a New Puerto Rico*) and Clause 27 (*Compliance with Applicable Federal Law, Regulations and Executive Orders*); and
- g. Lessor's most recent available audited annual financial statements, prepared in accordance with the Accounting Standards.

PART 2- PREPA CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), PREPA shall deliver to Lessor in writing the name of the PREPA representative who shall serve as the authorized representative of PREPA for purposes of all communications between PREPA and Lessor with respect the Agreement.

PART 3 - MUTUAL CONDITIONS

Pursuant to Sub-Clause 3.02 (*Conditions Precedent*), there being no proceeding, action or claim pending or threatened which may have a potentially adverse effect on this Agreement or which involves or otherwise affects the public tender process pursuant to which Lessor was awarded this Agreement.

ANNEX 2

FORM OF CONDITION PRECEDENT CERTIFICATE

CONDITION PRECEDENT CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“PREPA”)

To: [●] (“Lessor”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “LOA”). Unless the context otherwise requires, capitalized terms used in this Condition Precedent Certificate shall have the meanings ascribed to them in the LOA.

Lessor hereby certifies and confirms to PREPA that Lessor has satisfied all of its Conditions Precedent under the LOA, including mutual conditions. By signature below, PREPA likewise certifies and confirms to Lessor that PREPA has satisfied all of its Conditions Precedent under the LOA, including mutual conditions.

We hereby certify that the Effective Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

SIGNED: _____
FOR LESSOR

DATE: _____

ANNEX 3

FORM OF COMPLETION CERTIFICATE

COMPLETION CERTIFICATE

Date: [●]

Agreement: [●] [NTD: Insert contract number and title.]

From: The Puerto Rico Electric Power Authority (“PREPA”)

To: [●] (“Lessor”)

We refer to the Lease and Operating Agreement dated [●] between PREPA and Lessor (the “LOA”). Unless the context otherwise requires, capitalized terms used in this Completion Certificate shall have the meanings ascribed to them in the LOA.

We hereby certify that Lessor has satisfied the requirements for Completion under the LOA, and the Completion Date occurred on [●].

SIGNED: _____
FOR PREPA

DATE: _____

ACKNOWLEDGED: _____
FOR LESSOR

DATE: _____

ANNEX 4

MONTHLY PAYMENT AND CALCULATIONS

The “**Monthly Lease Payment**” or “**MLP**” for each Billing Period shall be calculated as follows:

$$MLP (\$) = (LP \times FMAF \times EAF) + VOMP$$

where:

LP = Lease Price equal to \$ **●** per Billing Period

FMAF = Force Majeure Adjustment Factor determined in accordance with paragraph (i) below

EAF = Equivalent Availability Factor determined in accordance with paragraph (iii) below

VOMP = Variable O&M Payment as defined in paragraph (v) below

- (i) Force Majeure Adjustment Factor (FMAF) - For each Billing Period, the Force Majeure Adjustment Factor shall be determined taking into account (i) outages or deratings due to Events of Force Majeure claimed by Lessor, and (ii) during a Grid Restoration Period, the inability of PREPA, or curtailment of PREPA's ability, to Dispatch the Facility as a result of a Grid Force Majeure Event, and calculated as follows:

$$\frac{BPH - (ETFMH)}{BPH}$$

where:

BPH = Hours in Billing Period

ETFMH = Equivalent Total Force Majeure Hours, which is equal to

$$EFMH + EGFMH$$

where:

EFMH = Equivalent Force Majeure Hours, determined in accordance with paragraph (ii) below

EGFMH = Equivalent Grid Force Majeure Hours, determined in accordance with paragraph (iii) below

- (ii) “**Equivalent Force Majeure Hours**” means, for an Event of Force Majeure claimed by Lessor 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 Event of

Force Majeure by the Contract Capacity applicable to that Derated Hour, plus
(b) all Outage Hours attributable to such Event of Force Majeure.

- (iii) Equivalent Grid Force Majeure Hours (EGFMH) - During a Grid Restoration Period, the number of hours, in excess of the Equivalent Force Majeure Hours, that a Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the applicable Billing Period, determined by the following equation:

$$EGFMH = GFMH \times \left(\frac{CC - ASC}{CC} \right)$$

where:

GFMH	=	Number of hours that Grid Force Majeure Event curtailed PREPA's ability to Dispatch the Facility during the corresponding Billing Period
CC	=	Contract Capacity made available by Lessor, expressed in MW
ASC	=	the average Lessor capacity placed in service by PREPA's Dispatch of the Facility during the GFMH expressed in MW

- (iv) Equivalent Availability Adjustment Factor (EAAF) - For each Billing Period, the EAAF shall be calculated as follows:

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

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.

- (v) The "Variable O&M Payment" or "VOMP" for each Billing Period shall be calculated as follows:

$$VOMP (\$) = (NEO \times VOMC)$$

where:

NEO	=	Net Electrical Output for such Billing Period, expressed in kWh
VOMC	=	Variable O&M Charge equal to \$[●] / kWh

ANNEX 5

ANCILLARY SERVICES⁴

During the Lease Period and in addition to (or in lieu of) the Dispatch of Net Electrical Output, Lessor shall provide to, and PREPA shall have the right to Dispatch the Facility for 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) Energy Storage Reserve, (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.

“**Energy Storage Reserve**” means the online energy storage 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.

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

“**Supplemental Reserve**” means the off-line generation or energy storage at the Facility, which Lessor can synchronize with the Grid System within the times specified in the table below to replace Energy Storage Reserve following a Unit startup order from PREPA’s energy control center.

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

1. **Reactive Supply and Voltage Control Services**

During the provision of Reactive Supply and Voltage Control Services, Lessor 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**

⁴ Note: Under review to align with RfP.

Energy Imbalance Services will be provided following PREPA's ECC instructions via either AGC or verbal Dispatch Instructions.


4. **Energy Storage Reserve**

PREPA shall have the right to (i) nominate the Energy Storage Capacity from time to time and (ii) utilize the Energy Storage 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 request. The applicable Ramp Rate in such event will be as determined in accordance with Annex 6 (*Design Limits*). If at the time of Energy Storage Capacity operation, the Facility is dispatched at less than the Contract 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 Energy Storage Reserve Capacity operation.

For any hour, PREPA shall have the right to nominate Energy Storage 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".

Max MW _{net}		Min MW _{net}		AGC LREG Limit		AGC HREG Limit	
MW	%	MW	%	MW	%	MW	%

5. **Supplemental Reserve**

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

ANNEX 6

DESIGN LIMITS

I. Objective

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

II. Design Limits

The following are preliminary Design Limits for each of the Facility: [●]

III. Ramp Rates

The Facility shall have a Ramp Rate from standby to full load operation of less than [●] ([●]) minutes.

ANNEX 7

INTERCONNECTION



ANNEX 8

RELEVANT CONSENTS

[●]⁵

⁵ NTD: Consider FOMB, PREB, P3A, FERC and other approvals. Also, Puerto Rico counsel to advise.

ANNEX 9

SITE



ANNEX 10

TECHNICAL SCOPE

[Executed agreement will include a Technical Scope that covers:

I. Mobilization/Demobilization

- a. Mobilize/demobilize materials, equipment, supplies, controls, instruments, [*photovoltaic solar arrays, inverters, battery energy storage systems*] [*or other renewable technology*], personnel, *etc.*, to the Site;
- b. Door-to-door transportation of the units, materials, supplies, instruments, [gas,] *etc.*, to embarkation location via barge/airplane;
- c. Transport materials, supplies, equipment, personnel, *etc.*, from port/air terminal to the Site;
- d. Remove and transport the same, once the project is complete, back to stateside or original locations;
- e. Moore equipment and barge, as needed. and
- f. Coordinate with the port and/or airport for timely passage.

II. Site Preparation

- a. Photographic documentation of pre-installation condition of the critical facility, transport vehicles, life support, [*photovoltaic solar arrays, inverters, battery energy storage systems*], [*or other renewable technology*] *etc.*;
- b. Coordinate with, and/or notify appropriate jurisdictions concerning permits, clearances, *etc.*;
- c. Coordinate with PREPA to verify operational status of the substation and location of the units. PREPA point of contact (POC) to be indicated post-award; and
- d. Install command posts (trailers, offices, work areas, *etc.*) for the contractor and, PREPA and/or government personnel and must include phone and internet connectivity, during the Agreement Term.

III. Temporary Power Installation

- a. Place [*photovoltaic solar arrays, inverters, and battery energy storage systems*] [*or other renewable technology*] per PREPA requirements;
- b. Install the temporary pump station;
- c. Construct medium voltage cable chase at least 2 feet above ground to mitigate flooding concerns and associated damage to the terminals and other operation to the system;
- d. Install emergency notification system in the event of a shutdown; and
- e. Perform pre-commission of the system to verify system function as the [*photovoltaic solar arrays and battery energy storage*] [*or other generation technology*] [*or other renewable technology*] are being installed.

IV. Pre-Commissioning

Perform and report completion of the following pre-commissioning tasks, as applicable to:

- a. Battery systems;
- b. [*Photovoltaic solar arrays and inverter systems*] [*or other generation technology*];
- c. [*Battery energy storage systems*];
- d. [●];
- e. Fire system;
- f. [●] auxiliaries; and
- g. Any other pre-commissioning tasks based on new or used photovoltaic solar panel factory requirements.

V. Commissioning

- a. Perform commissioning on the installed system per manufacturers' requirements to include:
 - i. Manual start-up and stop;
 - ii. Emergency notifications sent to Site Management Team in the event of shut down mode; and
 - iii. Verify voltage, wattage, frequency per the following:
 - 1. net power output of not less than 20 MW; and
 - 2. Frequency 60 Hz;
- b. Low voltage connection for transformers at PREPA sites of 13.8kV;
- c. Revisit unit functional needs until criteria is met;
- d. Provide the following information to PREPA regarding protective relays:
 - i. Copy of the Protective Relay Study and its settings for the proposed power system;
 - ii. Power system protective relay settings criteria;
 - iii. Grant access to PREPA to protective relay events;
 - iv. Access to power system proprietary software/program to allow communication with relays;
 - v. Power system unit data sheet;
 - vi. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division;
 - vii. Lessor shall be responsible for the entire wiring and testing of its protective relay system. PREPA shall be responsible for its protective relay system within its transformer and substation;

- viii. Lessor shall share the Facility's technical information (and any other applicable information) with PREPA to determine fit of protective relays and install per PREPA requirements;
- ix. Lessor shall provide a generation demand multifunction meter. The generation demand multifunction meter can be installed or provided in the Facility's control room;
- x. Lessor shall provide PI server data and capability of transmission to PREPA of actual Megawatts, Megavars, Frequency, RPM, [operation mode];
- xi. Lessor shall provide a power unit operation procedure, specific to each site operations, including all start-up, synchronizing and black start sequences for interconnection to PREPA's grid; and
- xii. Protective Systems Specifications are included as Schedule 1 to this Annex.

VI. Final Walk Through

Once Commissioning is complete, perform a final walk through with applicable stakeholders to verify completions of system per scope requirements.

VII. Operation and Maintenance

- a. Lessor shall ensure spare parts are on hand and the system operates without interruption.
- b. Lessor shall be prepared to provide the following real time data to PREPA's Monacillo Dispatch for the duration of O&M:
 - i. Power output; and
 - ii. MVAR; and
 - iii. [Other parameters determined appropriate.]

VIII. Site Restoration

Restore Site to pre-existing conditions to include the following: (a) remove unit, barriers, emergency notification system from the site and transport back to the place of leasing, and (b) remove signs and posts.

IX. Final Report

Provide final report, including executive summary, chronology and descriptions for work completed, *etc.*

SCHEDULE 1 TO ANNEX 10

PROTECTION SYSTEM

[Executed agreement will contain system protection requirements (tailored to the applicable generation technology) such as:

- a. Protective Relay Study and its settings for the proposed power system.
- b. Power system protective relay settings criteria.
- c. Grant access to PREPA to protective relay events.
- d. Access to power system proprietary software/program to allow communication with relays.
- e. Power system data sheet.
- f. Protective relay single line diagram for the integration to PREPA's protection system. Such single line diagram shall be discussed with and approved by PREPA's Electrical Maintenance and Electric System Protection Division.
- g. Lessor shall be responsible for the entire wiring and testing of their protective relay system. PREPA shall be responsible for their protective relay system within its transformer and substation.
- h. The Facility protection system and its associated equipment connection shall comply with the latest applicable standards for small generators.
- i. Current Transformers (CTs) associated to the protection shall be protection class and shall comply with the applicable latest standards (ratio, accuracy, connection).
- j. At least the generator CT for unit differential protection (PREPA's transformer + proponent generator) shall be 5 Amps secondary. For example: 3000/5.
- k. [The drawings for the Facility shall be submitted for the approval of the Engineering Design Department. Lessor shall discuss the approved drawings 20 days prior to installation with DCEPSE personnel.]
- l. A complete protective relay study must be submitted at least fifteen (15) Days prior to the commissioning. Such study shall cover the applicable standards, manufacturer's guidelines, and include each setting criteria with detailed explanation. The settings shall be signed and stamped by a PR licensed electrical engineer.
- m. [Lessor shall provide all the manufacturer information for each solar panel and inverter, such as manuals, data sheets, setting guidelines and curves.]
- n. Proper protection with its associated equipment (CT's, PTs), wiring and proper detailed settings shall be provided by Lessor for any connection or segment (between PREPA's facility and/or the Facility and associated apparatus) that is not covered by the unit differential protection.
- o. Lessor shall submit the equipment and protection tests for PREPA's approval at least fifteen (15) Days prior to energization. These documents shall observe and be presented for PREPA's consideration according to the applicable standards or guidelines and be stamped and signed by a PR licensed electrical engineer.]

ANNEX 11

OPERATING PROCEDURES

[•]

ANNEX 12

PERFORMANCE TESTS

Objective

The Parties will use the Performance Tests to set and/or assess the Tested Capacity, to verify the Ramp Rate of the Facility, and [insert any other necessary tests].

Test Procedure

Lessor 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 Facility or temporary instrumentation will be defined as part of the procedure. The Site-specific test procedure and parties (Lessor, PREPA and Third Party) scope and division of responsibilities will be agreed upon and finalized by the Parties no later than thirty (30) Days before testing implementation.

Test Duration

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.

Test Conditions

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. 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 Facility 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.

ANNEX 13

FORM OF SECURITY ON-FIRST-DEMAND BANK GUARANTEE

Guarantor:

_____ [Bank's Name, and Address of Issuing Branch or Office]



Beneficiary: The Puerto Rico Electric Power Authority



Attn.: Chief Executive Officer

Date: 

LOA / PERFORMANCE SECURITY No. 

We understand that  (the “**Applicant**”) has entered into a contract with you (the “**Beneficiary**”) dated  (as amended from time to time, the “**LOA**”).

Furthermore, we understand that the terms of the LOA require the delivery by the Applicant of an on-first-demand bank guarantee that secures the Applicant's performance thereunder.

At the request of the Applicant [by registered mail/e-mail], we [name of Bank], hereby unconditionally and irrevocably undertake to pay you (in U.S. Dollars) any sum or sums not exceeding in total the Maximum Amount (as defined below), immediately upon receipt by us of your first demand in writing in the form attached as Schedule 1 hereto (signed by your authorized representative), without you needing to prove or to show grounds for your demand or the sum specified therein. We shall remit all our payment(s) under this guarantee into a bank account of your own choice and discretion as specified in Schedule 1, without any set off or counterclaim. You may make one or more demands under this guarantee, and any dispute between you and the Applicant under the LOA shall not affect or prejudice our obligations hereunder.

“**Maximum Amount**” means (i) prior to the Completion Date (as evidenced by the delivery of a certified true and correct copy of the Completion Certificate), \$ , and (ii) thereafter, \$ .

This guarantee shall expire on [date]. Consequently, we must receive any demand for payment under this guarantee at our above-mentioned office on or before such expiry date. Upon its expiry, you shall return the present guarantee to us. It will, however, become null and void irrespective of whether you have returned it.

The Beneficiary may assign and transfer its rights under this guarantee to its lenders pursuant to its financing agreements. The Beneficiary may also assign and transfer its rights under this guarantee to any other party on the condition that: (i) such assignment and transfer will not violate any applicable international trade sanctions or anti-money laundering regulations, and (ii) the Applicant consents in writing to such assignment and transfer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, excluding sub-article 15(a), and to the extent not inconsistent therewith, the laws of Puerto

Rico. In the event of a conflict between the terms of this guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this guarantee shall prevail.

The courts of San Juan, Puerto Rico, shall have non-exclusive jurisdiction in respect of all disputes arising out of this guarantee.

By:
Authorized Signatory

SCHEDULE 1 TO ANNEX 13

[Letterhead of Beneficiary]

DEMAND LETTER

[Name of Guarantor]

Date: [●]

Performance Security No. [●]

We refer to the above-captioned Unconditional On-Demand Bank Guarantee (the “**Guarantee**”). Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them in the Guarantee. We hereby inform you that the Applicant has breached its obligations under the LOA, and/or other related agreements, entitling us to call upon the Guarantee. This letter serves as our demand for payment under the Guarantee.

We request that you immediately pay the sum of [●] into the bank account below:

Account Name: [●]

Account Number: [●]

Bank Name: [●]

Bank Address: [●]

Swift Code: [●]

Yours very truly,

By:
Authorized Signatory

ANNEX 14

FORM OF CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

CONTRACTOR Name

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ANNEX 15

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the CONTRACTOR (referred to herein as the “prospective lower tier participant”) is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that

which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CONTRACTOR Company Name

Contract Number

Name

Title

Signature

Date